

FILED

*Asif Uddin*

JUL 15 2019

**BEFORE THE BOARD OF THE HEALING ARTS  
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

**In the Matter of  
ASIF UDDIN, M.D.,**

**Kansas License No. 04-40938**

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**Docket No. 19-HA00053**

**FINAL ORDER ON REVIEW OF INITIAL ORDER**

On June 14, 2019, the above-captioned matter came before the Kansas State Board of Healing Arts ("Board") for review of the Initial Order issued by Dr. Robin Durrett, D.O., following a formal hearing on March 25, 2019. Respondent, Asif Uddin, M.D. ("Licensee"), appeared in person and through counsel, Mark Stafford. The Petitioner appeared through Jared Langford, Associate Litigation Counsel. Dr. DeGrado, Dr. Estep, Dr. Settich, Dr. Varner, Dr. Durrett, and Mr. Poling were recused. Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801 et seq., and in accordance with the provisions of the Kansas Administrative Procedure Act ("KAPA"), K.S.A. 77-501 et seq, the Board enters this Final Order.

**BACKGROUND, PROCEDURAL POSTURE, AND CONCLUSIONS**

A Petition was filed in this matter on February 4, 2019, after the Board received information Licensee was convicted of a felony. On February 12, 2019, Dr. Robin Durrett, D.O., was appointed by the Board as the Presiding Officer to issue an Initial Order based upon the Petition filed in this matter.

A Case Management Order ("CMO") was entered on February 12, 2019, placing all parties on notice that the Presiding Officer intended to issue an initial order that would be subject to review by the full Board on review of initial order. The CMO directed that any objections to the procedures described in the CMO must be filed by February 25, 2019. No party filed objection to the procedure outlined in the CMO.

A notice of hearing was filed and served on February 12, 2019, setting a hearing on the Petition for March 25, 2019, limited to the material issues that remained in dispute based on the parties' pleadings. The material controverted issues identified for determination at the hearing was whether Licensee posed a threat to the public and whether he had been sufficiently rehabilitated to warrant the public trust. No objection to the notice of hearing was filed.

On March 25, 2019, a formal hearing was held before Dr. Robin Durrett, D.O. Dr. Durrett concluded that, under the conditions and limitations described in the Initial Order, Licensee would not pose a threat to the public and was sufficiently rehabilitated to warrant the public trust.

Upon de novo consideration of the issues and the entire agency record after giving due regard to the Presiding Officer's witness credibility determinations<sup>1</sup>, under the conditions and limitations described in this Final Order, the Board concludes by 2/3 majority that Licensee will not pose a threat to the public and is sufficiently rehabilitated to warrant the public trust. The Board accepts and adopts the Presiding Officer's findings and conclusions, modified only as necessary to account for the Board's departure from the sanctions imparted by the Initial Order. The Board adopts the sanctions of the Initial Order except as articulated herein to account for Licensee's inability to comply with the sanctions of the Initial Order as written, but significantly, publicly censures Licensee in lieu of the period of suspension imposed by the Initial Order. The Board views the period of suspension as unnecessarily punitive and detrimental to Licensee's ability to pay restitution required by related and concurrently running criminal proceedings.

### FINDINGS OF FACT

The Board adopts the Presiding Officer's findings of fact contained in the Initial Order, listed herein as follows:

1. On June 25, 2018, Licensee was charged with Conspiracy to Pay and Receive Health Care Kickbacks in violation of 18 U.S.C. § 371, a felony, in United States District Court Southern District of Florida.
2. On August 30, 2018, Licensee pleaded guilty to Conspiracy Pay and Receive Health Care Kickbacks in violation of 18 U.S.C. § 371, a felony, in United States District Court Southern District of Florida.
3. On August 30, 2018, Licensee signed a Factual Proffer, wherein he stipulated to the following:
  - a. The government would have proved that between in or around December, 2014, and continuing through in or around May, 2015, [Licensee] combined, conspired, and confederated with Karl Frederick Voeller ("Voeller"), co-conspirator 1, and others known and unknown to the Attorney for the United States to pay and receive health care kickbacks in violation of Title 18, United States Code, Section 371.
  - b. Specifically, the government would have proved that in or around December of 2014, [Licensee] invited Voeller into the scheme by offering to pay him in exchange for recruiting and referring TRICARE beneficiaries to him and a co-conspirator 1 so that the beneficiaries' orders for prescription compounded medications could be filed by Pharmacies 1 and 2, which are compounding pharmacies located in the Middle District of Florida and the Western District of

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<sup>1</sup> In advance of the oral arguments, the Board was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including the hearing transcript and all exhibits, briefs, and motions filed by the parties in advance of oral arguments. The entire agency record was considered by the Board in rendering its decision. In reviewing the Initial Order, the Board gave due regard to the Presiding Officer's opportunity to observe the witness and determine his credibility during the formal hearing.

Oklahoma respectively. [Licensee] agreed to recruit and refer TRICARE beneficiaries, referred to him by Voeller to co-conspirator, who in turn agreed to pay [Licensee] an amount equal to 25% of the claims paid by TRICARE to Pharmacies 1 and 2 that were traceable to beneficiaries recruited and referred by [Licensee].

- c. The government would have further proved that [Licensee] established a corporation, Uddin Enterprises, Inc., for the sole purpose of receiving and paying kickbacks in connection with the scheme, and that during the course of the charged conspiracy, [Licensee], through Uddin Enterprises, solicited and received the approximate sum of \$274,039.00 from co-conspirator 1 as kickbacks in exchange for the referral of TRICARE beneficiaries.
  - d. The government would have further proved that during the course of the charged conspiracy, [Licensee] offered and paid the approximate sum of \$64,000 to co-conspirator Voeller in exchange for Voeller's referral of TRICARE beneficiaries to [Licensee]. [Licensee] admits that all of these monies were in fact unlawful health care kickbacks tied to his direct and indirect referral of TRICARE beneficiaries to Pharmacies 1 and 2.
4. Licensee has not yet been sentenced for the felony conviction.
  5. The allegations of fact, as stated herein at paragraphs 1-4, inclusive, were not disputed by Licensee.
  6. Licensee testified in depth at the hearing regarding the details of the kickback arrangement described above. Licensee's testimony, as recorded at pages 126-142 of the March 25, 2019 formal hearing transcript, is incorporated here by reference. As more specifically described therein, Licensee's role was described within the arrangement as a "marketing representative" who generally provided patient referrals by forwarding demographic information of interested patients.
  7. Licensee graduated from Ross University Medical School in November 2014. Shortly thereafter, he began participating in the scheme described above. Within one month after receiving his initial payment for the activities described above, Licensee consulted an attorney regarding the legality of the arrangement. Licensee took the step of consulting with an attorney because he suspected that the business arrangement might not be legitimate. As Licensee testified, he suspected that "it can't be this easy to make this much money." (See 3/25/19 hearing transcript at p. 141). Based on the evidence in the record and testimony received at the hearing, and inferences drawn therefrom, the presiding officer finds that Licensee was not advised that the scheme was illegal as a result of this initial attorney consultation.
  8. Despite the results of the initial attorney consultation, approximately six months later, in May 2015, Licensee removed himself voluntarily from participation in the activities described above prior to beginning his residency program in July 2015.

9. Licensee admitted that, prior to voluntarily removing himself from the scheme, Licensee accepted more than \$250,000 in payments as part of the scheme. Licensee admitted that his actions were both ethically and legally wrong, that he knew the scheme was suspicious, and that he failed to meet the legal and ethical standards that are appropriately expected of a physician.
10. Licensee was later contacted by federal authorities, in December 2017. Licensee unconditionally cooperated fully with the federal authorities from the point of first contact and continues to cooperate fully and candidly in ongoing criminal proceeding relating to other individuals involved in the scheme. Licensee has begun to repay the money he wrongfully received and is engaged in a payment plan that will require him to pay a significant amount in excess of the amount he wrongfully received.
11. Licensee testified that during medical school he did not receive significant training and education on the topic of Stark Law and other anti-kickback laws and ethical rules. He testified that he has received training and information on these topics during his residency.
12. Licensee is in his fourth year of a five-year residency program in internal medicine and psychiatry at the University of Kansas School of Medicine, with a June 2020 projected date of completion of the program. Licensee passed all three steps of his board exams on his first attempt. Licensee has had no disciplinary, ethical, or significant patient care issues during his residency program thus far. His clinical supervisors' reviews of his patient care have been above average during his residency.
13. The Licensee's graduate medical committee reviewed Licensee's case and retained him in the residency program. The program director of Licensee's residency program, Dr. Teresa Long, who has also served as a supervising and attending physician with Licensee, testified at the hearing that Licensee provides very good patient care and that she is confident in his safety to practice.
14. Based on the presiding officer's opportunity to observe and consider the Licensee's testimony at a full formal hearing, including extensive questioning by the presiding officer, the presiding officer finds that the Licensee presented as the most genuinely remorseful licensee that the presiding officer has ever encountered during the Presiding Officer's long tenure of involvement with Board disciplinary processes. This is a credibility determination of the Presiding Officer.
15. Based on the Presiding Officer's opportunity to observe and consider the Licensee's testimony and the other witnesses' testimony at a full formal hearing, including extensive questioning by the Presiding Officer, the Presiding Officer finds Licensee to be a highly credible and convincing witness. The Presiding Officer finds Licensee's testimony to be accurate and trustworthy.

16. At the hearing.

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CONFIDENTIAL The presiding officer finds Licensee has taken full and unqualified personal responsibility for all his actions.

17. Licensee candidly testified that his task of professional and personal rehabilitation from his participation in the scheme described above will be a lifelong process.
18. Under the conditions described in this Final Order, Licensee does not pose a threat to the public in his capacity as a physician.
19. Licensee has been sufficiently rehabilitated to warrant the public trust under the conditions described in this Final Order.

### CONCLUSIONS OF LAW AND POLICY

#### **I. Statutory standard**

K.S.A. 65-2836(c)

"[T]he board shall revoke a licensee's license following conviction of a felony... unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust."

#### **II. Discussion**

This is a case in which a recent medical school graduate committed ethical and legal misconduct relating to the practice of medicine, for which it is lawful and appropriate that he face serious consequences. However, revocation is not the legally or practically appropriate consequence under the facts of this case. Monitoring, education, and treatment are the appropriate measures to affect the goals of the Healing Arts Act, consistent with K.S.A. 65-2836(c). Pursuant to K.S.A. 65-2836(c), the core findings that rebut the presumption of revocation in this case are: (1) rehabilitation sufficient to warrant public trust; and (2) safety to practice.

*Licensee is sufficiently rehabilitated to warrant the public trust  
under the conditions described in this Final Order.*

The testimony at the hearing, and evidence submitted, showed that Licensee joined a scheme during the period between medical school and beginning his residency that he quickly

suspected to be less than legitimate. He admitted that he was motivated by greed to take these actions. He admitted that his actions were wrong and cannot be excused.

However, the evidence also shows that although Licensee's naivety regarding the true legal and ethical nature of the scheme was, by his own admission, willful at times, there was indeed a degree of naivety at play in this case. Further, the following are all factors relevant to Licensee's state of mind and rehabilitation from his bad acts prior to the initiation of this Board action: (1) Licensee made an effort to determine the legality of the scheme after he first received a payment; (2) despite not being made aware of the illegality of the scheme as a result of his initial attorney contact, he ultimately removed himself from the scheme prior to law enforcement contact; and (3) he fully and honestly cooperated once contacted by law enforcement investigators.

Licensee testified that he initially viewed the business plan as a referral fee arrangement and that he was genuinely unaware at that time that referral fees were unlawful in the practice of medicine. He testified that he was aware of other professions utilizing referral fees and he was not aware that different rules applied to medicine. However, once he received his first check as part of the plan, he suspected that the business plan was not legitimate.

He sought legal review of the business plan after receiving his first check. He admitted that, based on his own lack of complete and accurate understanding of how all aspects of the scheme operated in practice, the information his original attorneys reviewed did not accurately capture the true nature of the scheme. The record indicates that this original legal review did not raise "red flags" and Licensee proceeded with his participation for a period of several months thereafter. However, prior to starting his residency Licensee voluntarily quit the scheme. At the hearing, he admitted that he suspected he was doing something wrong due to receiving a large amount of money in exchange for doing very little other than forwarding patient referral information.

When Licensee was contacted by federal investigators in December 2017 regarding the scheme, he cooperated fully with the investigation. He has continued to cooperate fully with the prosecution of the criminal case and is scheduled to be sentenced in June 2019. He also provided full, detailed, and candid testimony at the formal hearing of this disciplinary matter.

This is a case that exemplifies the purpose of the deference accorded under Kansas law to the "presiding officer's opportunity to observe the witnesses and to determine the credibility of the witnesses" in the context of a full evidentiary hearing. See K.S.A. 77-527(d). Here, based on the Presiding Officer's unique opportunity to observe the Licensee's extensive in person testimony, including cross examination from the Board's litigation attorney and the Presiding Officer's own questioning of Licensee, the Presiding Officer found Licensee's testimony to be

highly credible. Further, the Presiding Officer found Licensee's remorse to be more genuine than any other licensee with whom the Presiding Officer has interacted during his many years of involvement with Board disciplinary processes.

In determining whether Licensee is sufficiently rehabilitated from these actions to warrant public trust, the Presiding Officer considered whether Licensee appreciates the wrongfulness of his actions, whether he is committed to never repeating such actions, and whether there is a significant danger that Licensee will repeat similar actions. The Presiding Officer found, by clear and convincing evidence, that Licensee understands the wrongfulness of his actions, is committed to rehabilitating himself as a lifelong professional and personal project, and there is very little danger that he will ever commit any similar bad acts as a member of the medical profession again. Further, the conditions described below in this Final Order provide additional safeguards to ensure that Licensee will continue on his path of commitment to rehabilitating himself as a member of the profession.

***Under the conditions described in this Final Order, Licensee  
will not pose a threat to the public.***

Based on the facts and rationale described above, the Board unanimously agrees with the Presiding Officer and finds, by clear and convincing evidence, that Licensee will not pose a threat to the public under the conditions described below. Here, public protection is served by requiring monitoring, treatment, and education. This will allow Licensee to complete his residency program but will also provide a significant period of time prior to allowing unrestricted and unstructured independent practice to permit the Board to review Licensee's compliance with the requirements of this order.

### **Conclusion**

Licensee violated K.S.A. 65-2836(c), when he was convicted of a felony. Based on all the relevant facts and circumstances of this case, and in large part on credibility determinations made as a result of the Presiding Officer's opportunity to observe and evaluate the various witnesses' testimony at the formal hearing, the Board agrees with the Presiding Officer and finds, by clear and convincing evidence, Licensee has been sufficiently rehabilitated to warrant the public trust under the conditions and orders described below in this Final Order. The Board also finds, by clear and convincing evidence, that under the conditions and orders described below in this Final Order Licensee does not pose a threat to the public in his capacity as a physician.

Orders

Licensee is hereby **Publicly Censured** for violations of the Healing Arts act. The Board imposes this sanction in lieu of the period of suspension required by the Initial Order. The Board departs from the period of suspension because it believes it is unnecessary and will result in more harm than benefit. Licensee has demonstrated rehabilitation as articulated herein and will have punitive sanctions imposed by the related criminal proceedings. As such, a suspension is unnecessary for either rehabilitation or punitive purposes. Further, Licensee's ability to pay restitution will be impaired by and absence from practice, depriving recipients from their restitution due. The Board also believes, at least where a suspension is unnecessary for rehabilitation or punitive purposes, that the public will be better served by a physician actively practicing due to the high demand for and shortage of physician services, and since prolonged absence from practice requires significant remediation prior to re-entry to ensure competence.

Licensee shall attend and successfully complete the Center for Personalized Education for Professional's PROBE Ethics & Boundaries Program, on or before October 12, 2019.

Licensee shall successfully complete the following medical/legal courses on or before September 15, 2019:

- Basic Introduction to Stark Law, Massachusetts Medical Society;
- Avoiding Medicare and Medicaid Fraud and Abuse, Office of Inspector General; and
- Fraud and Abuse Prevention Simplified, Texas Medical Association.

Licensee shall

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Within 20 days, Licensee shall enter into a three-year monitoring agreement with the CONFIDENTIAL

Licensee shall cause KMS to report to the Board at regular intervals regarding Licensee's compliance with these requirements based upon communication CONFIDENTIAL

Licensee shall, in lieu of the Initial Order's requirement to provide at least one in-person lecture annually to University of Kansas School of Medicine ("KUMC") for a period of 3 years regarding medical legal issues, including his experience with the scheme described in paragraphs 1-4, above, instead work with the University of Kansas Graduate Medical Education Committee

("GME") to identify a substantially equivalent outreach option, to be approved by the Board, in lieu of annual lectures to KUMC. The Board reserves the right to order a different outreach requirement if the GME committee's option is deemed not substantially equivalent to the annual lectures to KUMC.

Licensee shall submit to **CONFIDENTIAL** to be conducted by **CONFIDENTIAL** **CONFIDENTIAL** Licensee shall comply with all recommendations of **CONFIDENTIAL** and shall cause the result thereof to be submitted to the Board within 30 days of when they become available. All **CONFIDENTIAL** are incorporated herein. Licensee shall sign all releases necessary to authorize the Board to monitor Licensee compliance with **CONFIDENTIAL** **CONFIDENTIAL** shall monitor Licensee for a period of at least 3 years.

Unless otherwise specified herein, Licensee shall provide proof of successful completion of any requirement of this order within 30 days of completing the requirement.

All costs associated with complying with this order shall be the Licensee's.

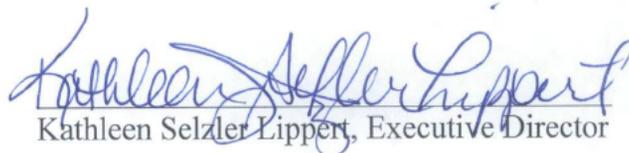
Any continuing education hours completed to comply with this order shall be in addition to the continuing education hours required for renewal of licensure.

Proof of successful completion or any documentation associated with this order's requirements shall be submitted by to:

Kansas Board of Healing Arts  
Attn: Compliance Coordinator  
800 SW Jackson, Lower Level - Suite A  
Topeka, Kansas 66612  
[KSBHacompliancecoordinator@ks.gov](mailto:KSBHacompliancecoordinator@ks.gov)

**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**

  
Kathleen Selzler Lippert, Executive Director

**NOTICE OF APPEAL RIGHTS**

**PLEASE TAKE NOTICE** that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Parties may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Order was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 15<sup>th</sup> day of July, 2019, addressed to:

Asif Uddin, M.D.

**CONFIDENTIAL**

### *Licensee*

Mark Stafford  
Kelli J. Stevens  
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And delivered to:

Jared T. Langford, Associate Litigation Counsel  
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Kansas Board of Healing Arts  
800 SW Jackson, Lower Level - Suite A  
Topeka, Kansas 66612

and the original was filed with the office of the Executive Director.



Susan Gile  
Operations Manager