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KS State Board of Healing Arts

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

**In the Matter of** )  
**DEREK URBAN, M.D.** )  
 )  
**Kansas License No. Pending** )  
\_\_\_\_\_ )

**KSBHA Docket No. 15-HA00007**  
**OAH Docket No. 15HA0001**

**FINAL ORDER ON REMAND DENYING LICENSURE**

**NOW** on this 11<sup>th</sup> day of August 2017, comes before the Kansas State Board of Healing Arts (“Board”) the application of Derek Urban M.D. (“Applicant”) for a license to practice medicine and surgery in the State of Kansas. Applicant appears in person and through counsel Mark Stafford of Forbes Law Group, and Jeffrey King, Law Office of Jeffrey King, PLLC, by *pro hoc vice*. Reese Hays, Litigation Counsel, appears on behalf of the Respondent Board.

Pursuant to the authority granted to the Board by K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving evidence, and being otherwise advised in the premises, the Board makes the following findings, conclusions and order:

**Procedural History**

1. On or about November 19, 2013, Dr. Urban submitted an application to the Board for a license to practice medicine and surgery in the State of Kansas. Such application was complete and filed with the Board on July 10, 2014.
2. On or about August 5, 2015, Associate Litigation Counsel filed a Response in Opposition to Application for License to Practice Medicine and Surgery (“Response”).

3. A formal hearing was held by a Presiding Officer from the Office of Administrative Hearings (“OAH”) in this matter on March 17, 2015.

4. An Initial Order was filed by OAH in this matter on or about July 6, 2015. The Initial Order found that Dr. Urban’s application for licensure “should be denied as a result of applicant’s violations of the Kansas Healing Arts Act and the costs of this proceeding should be assessed against the applicant.”

5. On or about October 9, 2015, the matter came before the Board for a Review of Initial Order. The Board issued a Final Order on or about October 20, 2015, find that Dr. Urban’s applicant for licensure was denied based upon findings of violations of the Healing Arts Act. Applicant was also assessed \$4,232.95 in costs. The Final Order was stayed pending judicial review.

6. On or about November 6, 2015, Dr. Urban filed a Petition for Judicial Review in the District Court of Shawnee County, Kansas.

7. On or about March 24, 2017, the District Court filed its Memorandum Opinion and Entry of Judgment. The Court vacated the Final Order and remanded the matter to the Board for reconsideration.

8. Prior to the oral arguments, the Board reviewed the entire agency record, including the briefs submitted by the parties.

9. At the oral arguments held before the Board on August 11, 2017, the Board heard arguments from both parties and directed questions to both counsel, as well as Dr. Urban.

10. Board members Dr. M. Myron Leinwetter, Dr. Kimberly Templeton, Dr. Terry Webb and Mr. John Settich recused themselves from participating in the Board deliberations and

decision in this matter. A quorum of Board members was present and participated in the deliberations and decision.

11. In reviewing the Initial Order on remand, the Board gave due regard to the Presiding Officer's opportunity to observe the witnesses and determine their credibility during the formal hearing.

### **Findings of Fact**

12. The Board accepts the Findings of Fact made by the Presiding Officer in the Initial Order in part and modifies in part. The Findings of Fact made by the Presiding Officer in paragraphs 1 through 3, 5 through 15, 17, 19, and 21 through 23 are adopted as Findings of Fact for this Final Order. These Findings of Fact are hereby incorporated by reference and are part of this Final Order.

13. The Board modifies the following Findings of Fact made by the Presiding Officer to correct factual errors:

- a. Finding 4: The applicant was named as a defendant in and settled a malpractice case resulting in a payment on the applicant's behalf in the year 2000 [REDACTED] for failing to properly assess a patient with neurologic symptoms in 1996.
- b. Finding 16: Based upon the Pretrial Agreement, the applicant's commander found violations of the Uniform Code of Military Justice.
- c. Finding 25: In 1994, the applicant was investigated and subject to an Article 15 non-judicial discipline for wrongful distribution of a prescription medication when he provided Doxycycline to an individual with whom he did not have a professional relationship.

14. The Board declines to adopt paragraphs 18, 20, and 24 of the Findings of Fact made by the Presiding Officer in the Initial Order.

15. The Board finds that the Offer for Pretrial Agreement dated 1 August 2013, specifically states:

“1. I, Col Derek K. Urban, am presently the Accused in the above-captioned case. I have read the charges and specifications alleged against me, and my defense counsel have explained them to me. I understand the charges and specifications, and I am aware that I have a legal and moral right to plead not guilty and to leave upon the prosecution the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence.”

The Pretrial Agreement further states:

“7.c. My counsel fully advised me of the nature of the charges against me, the possibility of my defending against them, any defense that might apply, the effect of accepting an Article 15 that I am offering to accept, the effects of a federal conviction and the possibility of a punitive discharge, and I fully understand their advice and the meaning, effect, and consequences of this agreement.”

16. The Board find that the Pretrial Agreement was signed and acknowledged by Dr. Urban on 1 August 2013. Dr. Urban’s counsel, both his civilian defense counsel, Jeff King and his Area Defense Counsel, Rachel Van Maasdam, Capt. USAF signed the document on 1 August 2013, also certifying that “we have given the Accused the advice referred to above and that we have explained to him the elements of the offenses prior to his voluntary signature on this Offer for Pretrial Agreement.”

17. The Board finds that a charge sheet was prepared regarding Dr. Urban on or about 17 January 2013. Such charge sheet states “On 17 January, 2013, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. . . .” The charge sheet was signed by Colonel Thomas A. Bacon.

18. The Board finds that Dr. Urban's testimony at the formal hearing in this matter is not credible as to his statements that he was never charged, never had charges preferred against him, or was ever advised that charges had been preferred against him. The evidence is overwhelming that on at least two occasions by three separate people he was advised that charges had been preferred against him.

#### **Applicable Law**

19. K.S.A. 2017 Supp. 65-2836 provides in pertinent part:

A licensee's license may be revoked, suspended or limited, or the licensee may be publically or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated license.

(b) The licensee has committed an act of unprofessional conduct or dishonorable conduct or professional incompetency except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasions that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for discipline under this section.

#### **Conclusions of Law**

20. The Board accepts the Conclusions of Law made by the Presiding Officer in the Initial Order in part and modifies in part. The Conclusions of Law made by the Presiding Officer

in paragraphs 3, 4, 6, 7, 9, 12, and 14 are adopted as Conclusions of Law for this Final Order. These Conclusions of Law are hereby incorporated by reference and are part of this Final Order.

21. The Board modifies the following Conclusions of Law made by the Presiding Officer in the Initial Order as follows:

a. Paragraph 5: Question No. 21 of the applicant's application addendum asked whether he had ever been charged with a crime. He answered "NO." This is clearly wrong. It is clear that the applicant was charged in the Article 32 proceeding. He was charged in military court and it resulted in the applicant entering into a Pretrial Agreement with the USAF. The applicant wrote:

I, Col Derek K. Urban, am presently the Accused in the above-captioned case. I have read the charges and specifications alleged against me, and my defense counsel have explained them to me. I understand the charges and specifications, and I am aware that I have a legal and moral right to plead not guilty and to leave upon the prosecution the burden of proving my guilt beyond a reasonable doubt... (Emphasis added)

b. Paragraph 8: In the Board's investigation of this matter, when asked about the circumstances leading to the applicant being questioned by the AFOSI, he informed the Board that the investigation involved allegations made by his ex-wife. Again, this is contrary to the evidence. The evidence establishes that the investigation was a result of the applicant's [REDACTED] distribution of Schedule I, II, or III drugs.

c. During the Board's investigation of this matter, the applicant informed the Board that he USAF's investigation had "no impact

on his professional life”, that he was retiring from the USAF “with no blemish on his record”, and that there were not actual violations. Telling the Board that the investigation had no impact on his professional life is clearly wrong. As a result of the investigation, the applicant was forced to resign from the USAF and was forced to forfeit pay for two months. For the applicant to say that he has “no blemish on his record” is a total falsification.

22. The Board declines to adopt paragraphs 1 and 2 as although the evidence shows that Dr. Urban was reported as having been arrested, it is conceivable, that Dr. Urban did not understand that because of being ordered to meet with investigators, even though he was not detained, that he was considered arrested by the USAF.

23. The Board declines to adopt paragraphs 11 and 13.

24. The Board declines to adopt paragraphs 16 and 17 of the Conclusions of Law made by the Presiding Officer in the Initial Order. The Board concludes that Dr. Urban’s medical malpractice settlement in the amount of \$25,000.00 paid in the year 2000, for a failure to properly assess a patient in 1996, does not rise to the level of being grounds for denial of licensure in light of the lack of relationship to the other violations in this matter.

25. The Board finds Dr. Urban’s pervasive misrepresentations in attempting to obtain licensure adversely reflect on his character and fitness to hold a medical license in Kansas. The Board concludes that Dr. Urban’s commission of fraud or misrepresentation in applying for or securing an original, renewal or reinstated license pursuant to K.S.A. 2015 Supp. 65-2836(a) supports the sanction of denial of Dr. Urban’s application for licensure.

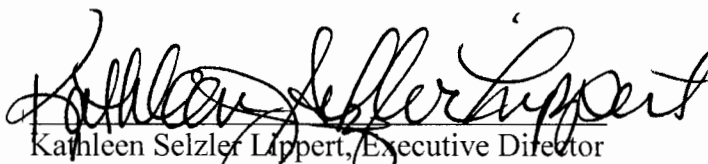
26. Since Dr. Urban is the unsuccessful party in this matter and the proceedings on his application were necessary due to Dr. Urban's own acts and conduct, the Board concludes that pursuant to K.S.A. 2015 Supp. 65-2846, it is appropriate for Dr. Urban to bear the agency's costs of \$4,232.95 set forth in Respondent's Statement of Costs.

**IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that Dr. Urban's application for licensure is hereby **DENIED** based on violations of K.S.A. 2015 Supp. 65-2836(a).

**IT IS FURTHER ORDERED** that Dr. Urban is hereby ordered to pay **COSTS** in the amount of \$4,232.95, due and payable in full on October 15, 2017.

**IT IS SO ORDERED THIS 15 DAY OF SEPTEMBER 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

**KANSAS STATE BOARD OF HEALING ARTS**

  
Kathleen Selzler Lippert, Executive Director  
Kansas State Board of Healing Arts



## NOTICE OF 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, Licensee 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 Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER ON REMAND FROM DISTRICT COURT DENYING LICENSURE** was served on this 15<sup>th</sup> day of September, 2017, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Derek Urban  
*Applicant*  
[REDACTED]  
Spring Hill, TN 37179

Mark Stafford  
*Attorney for Applicant*  
Forbes Law Group  
6900 College Blvd., Suite 840  
Overland Park, KS 66211

And a copy was hand-delivered to:

Reese Hays, Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

John Nichols, Licensing Administrator  
Kansas State 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

  
Cathy Brown, Executive Assistant