

FILED

JUN 28 2004

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
BRIAN L. WARE, D.P.M.)
Kansas License No. 12-00359)
_____)

Docket No. 04-HA-56

JOURNAL ENTRY AND ORDER

NOW ON THIS Nineteenth Day of June 2004, this matter comes on for hearing before the Board. Brian L. Ware, D.P.M. appears in person. Stacy L. Cook appears for the Board.

The parties present to the Board a proposed consent order. That proposed order is adopted as the Final Order of the Board. Thereupon, Dr. Ware requests that the Board reinstate his expired license retroactive to the expiration date of October 1, 2003. The Board finds that it should grant the request.

IT IS, THEREFORE, ORDERED that the license of Brian L. Ware, D.P.M. is reinstated, and that the effective date of reinstatement shall be October 1, 2003.

DATED THIS 28th Day of June, 2004. *L. Buening*

Kansas State Board of Healing Arts

Lawrence T. Buening, Jr.
Lawrence T. Buening, Jr.,
Executive Director

Certificate of Service

I certify that a true copy of the foregoing order was served this 29th day of June 2004 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Brian L. Ware, D.P.M.
3252 Kimball Avenue
Manhattan, KS 66503

and a copy was hand-delivered to the office of:

Stacy L. Cook
Litigation Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603



BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
JUNE 22 2004
KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
BRIAN L. WARE, D.P.M.)
Kansas License No. 12-00259)
_____)

Docket No. 04-HA-56

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through Stacy L. Cook, Litigation Counsel (“Petitioner”), and Brian L. Ware, D.P.M. (“Licensee”), and move the Board for approval of a Consent Order affecting Licensee’s license to practice podiatry in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s last known address to the Board is 3252 Kimball Avenue, Manhattan, Kansas 66503.
2. Licensee is or has been entitled to engage in the practice of podiatry in the State of Kansas, having been issued License No. 12-00259 on approximately August 7, 1993. Licensee last renewed his license on November 12, 2003. Licensee’s license status is active.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of podiatry. K.S.A. 65-2001.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 77-505. Upon approval, these stipulations shall constitute the finding of the Board, and this Consent Order shall constitute the Board’s Final Order.

5. The Kansas Podiatry Act is constitutional on its face and as applied in this case.

6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. The terms and conditions of the Consent Order are entered into between the under signed parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign the Consent Order on behalf of the Board.

9. Licensee's license expired on October 1, 2003.

10. Licensee's license to practice podiatry was canceled on November 1, 2003.

11. Licensee's license was not renewed until approximately November 12, 2003.

12. Licensee practiced podiatry in Kansas after October 1, 2003 and before November 12, 2003.

13. From October 1, 2003 to November 12, 2003, Licensee treated more than three hundred patients.

14. Pursuant to K.S.A. 65-2006, the Board has grounds to limit, suspend, or revoke Licensee's license.

15. According to K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

16. In lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following:

- a. Licensee shall be fined in the amount of one thousand dollars (\$1,000.00). Such fine is due and payable to the Board of Healing Arts on or before July 19, 2004.

17. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

18. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Podiatry Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Kansas Podiatry Act.

19. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as ("Releasees"), from any and all claims, including but not limited to, those

alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

20. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, and any other reporting entities requiring disclosure of the Consent Order.

21. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

22. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

23. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the

consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceedings on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

24. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

25. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

26. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

27. Licensee shall obey all federal, state and local laws and rules governing the practice of podiatry in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

28. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

29. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

PREPARED AND APPROVED BY:

_____/s/_____
Stacy L. Cook #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

AGREED TO BY:

_____/s/_____
Brian L. Ware, D.P.M.
Licensee

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing **CONSENT ORDER** was mailed on the 22nd day of June, 2004, by United States mail, postage pre-paid and addressed to the following:

Brian L. Ware, D.P.M.
3252 Kimball Ave.
Manhattan, Kansas 66503

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

/s/ _____
Stacy L. Cook