

FILED

DEC 14 2001

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
KRISTOPHER K. WENDLER, M.D.)
Application for Reinstatement)
_____)

Docket No. 02-HA-29

FINAL ORDER

NOW ON THIS Eighth Day of December, 2001, comes before the Board the application of Kristopher K. Wendler, M.D. for reinstatement of his license to practice medicine and surgery. Applicant appears in person and without counsel. Kelli J. Benintendi appears for the Board.

After hearing the arguments and having the agency record before it, the Board finds, concludes and orders as follows:

1. Applicant was first licensed by the Board to practice medicine and surgery on July 1, 1986.
2. The Board revoked Applicant's license on January 26, 1996 based upon his convictions by a jury in Johnson County District Court involving ten counts of making a false writing and four counts of theft, each of which constituted a felony and each of which related to Applicant's practice of the healing arts. The Board's order of revocation was stayed pending Applicant's appeal of the criminal convictions. The stay was lifted on June 13, 1998, resulting in revocation of Applicant's medical license.
3. Applicant was also convicted by a jury in the United States District Court for the Western District of Missouri of twenty one counts of billing fraud, each of which constituted

felonies, arising out of Applicant's practice of the healing arts. The fraudulent bills involved submissions to Medicare, Champus and the Missouri Medicaid program. Applicant was sentenced to be incarcerated for 46 months, and was ordered to pay \$206,687 in restitution.

4. Based upon the state-court convictions, Applicant is excluded by the United States Department of Health and Human Services from participation in the Medicare/Medicaid programs for a period of ten years. Based upon the federal court convictions, Applicant is excluded from those programs for a period of 25 years.

5. Applicant has had five medical malpractice claims adversely settled since 1992. The Board is not required to determine whether Applicant actually practiced below the standard of care in those cases.

6. The Board concludes that it may, in its discretion, deny an application for reinstatement if the applicant has an adverse settlement or judgment from a medical liability claim arising out of conduct that would constitute grounds for disciplinary action under this section, including professional incompetence, as provided by K.S.A. 2000 Supp. 65-2836(w).

7. The Board concludes that, in its discretion, it may deny an application for reinstatement if the applicant has been sanctioned by a federal agency for conduct similar to that which would constitute grounds for discipline under the healing arts act, as provide by K.S.A. 2000 Supp. 65-2836(s).

8. The conduct that resulted in adverse settlements and in exclusion from government reimbursement programs involved practice below the standard of care to a degree constituting professional incompetence, and involved fraudulent billing practices. This conduct would be grounds for disciplinary action under the healing arts act.

9. The Board concludes that it must deny an application for reinstatement if the applicant has been convicted of a felony unless two-thirds of the Board find there is clear and convincing evidence that the applicant is sufficiently rehabilitated to warrant the public trust, as provided by K.S.A. 2000 Supp. 65-2836(c). This statute does not vest the Board with discretion as do the statutes establishing other grounds for denial, as discussed above.

10. In determining rehabilitation the Board may consider the factors announced in *Vakas v. State Board of Healing Arts*, 248 Kan. 589. In the instant case, it is appropriate to consider the nature and seriousness of the original misconduct, the amount of time that has elapsed, and the Applicant's maturity at the time of the original revocation. Applicant's misconduct did not involve mere technical violations, but rather consisted of crimes of dishonesty. These convictions resulted in his expulsion from Medicare and Medicaid for a twenty-five year period. He is expected to be on supervised release until the year 2004, suggesting that his punishment for the crimes has not been completely served. Applicant was several years into his practice of psychiatry when his misconduct occurred, so he cannot attribute his actions to youthfulness and immaturity.

11. The Board President did entertain a motion finding that Applicant is sufficiently rehabilitated. Because no motion from the Board was offered following the President's request, there were not two-thirds of the Board willing to find clear and convincing evidence that Applicant is sufficiently rehabilitated. Thus, the Board concludes that it is required by statute to deny the application.

IT IS, THEREFORE, ORDERED THAT the application for reinstatement is denied.

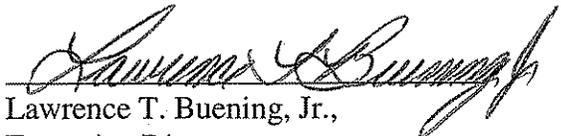
IT IS FURTHER ORDERED THAT a protective order is issued prohibiting the parties

from disclosing to any third party the reports of the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank, reports of the Federation of State Medical Boards, and the settlement agreement between Applicant and Plaintiff Yvonne R. Chapman, all of which were offered to the Board and constitute part of the agency record, unless ordered by the Board or a court of competent jurisdiction.

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. 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. 77-610, et seq. Reconsideration of the 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 the Board's executive director at 235 S. Topeka Blvd., Topeka, KS 66603.

DATED THIS 14th **Day of December, 2001.**

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.,
Executive Director

Certificate of Service

I certify that a true copy of the foregoing order was served this ~~14~~¹⁷ day of December, 2001 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Kristopher K. Wendler, M.D.
4129 Cambridge
Kansas City, KS 66103-3318

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

Kelli J. Benintendi
Associate Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

