

FILED

JAN 26 1996

KANSAS STATE BOARD OF
HEALING ARTS

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

IN THE MATTER OF)
)
KRISTOPHER K. WENDLER, M.D.)
Kansas License #04-21487)
_____)

Case No. 96-00080

FINAL ORDER

NOW ON THIS 27th day of December, 1995, comes on for conference hearing the First Amended Petition to Revoke, Suspend or Otherwise Limit Licensure in the Matter of Dr. Kristopher Wendler, M.D. The Board appears through Disciplinary Counsel Kevin K. LaChance. Respondent, Dr. Wendler, appears in person and through counsel, Kenneth J. Reilly.

The Presiding Officer notes that the Respondent has filed an Answer to the Petition, generally admitting the facts alleged therein. There being no dispute as to a material fact, resolution of this matter through a conference proceeding is proper.

After hearing the arguments of counsel and the testimony of Respondent, the Presiding Officer makes and enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent is licensed to practice medicine and surgery within the State of Kansas. He has practiced psychiatry in the Kansas City metropolitan area since 1990.
2. Sometime in November, 1993, the Johnson County District Attorney's Office commenced a criminal prosecution against Dr. Wendler. On August 8, 1995, a Fourth Amended Complaint was filed in the District Court of Johnson County, Kansas, alleging ten

counts of the criminal offense of making a false writing, and four counts of theft of property. Each count was alleged as felony.

3. A jury trial on the criminal allegations commenced October 2, 1995. The jury returned verdicts of guilty on all fourteen counts on October 17, 1995.

4. The journal entry of conviction was filed November 13, 1995.

5. Each of the counts in the criminal case arose out of Respondent's practice of the healing arts, and generally related to his method of billing for psychotherapy and to obtaining payment for professional services from third party payors.

6. Contrary to Respondent's assertion that the convictions are unrelated to the delivery of health care, the Board finds that, as a matter of policy, false representations regarding the quantity or type of health care rendered and the fraudulent billing for professional services is directly related to the system of health care delivery. Payors and patients alike have a legitimate expectation that health care professionals will act in good faith and honesty when dealing with the financial resources available to pay for health care. These resources should not be inappropriately depleted. In that regard, fraudulent billing practices have an adverse effect on the delivery of health care in this country.

7. Respondent is aware of the disrepute he has brought upon the profession by his actions. While he states he does not want to be seen as shirking his responsibility, he maintains his innocence.

8. The testimony of Dr. Wendler is credible insofar as it pertains to the difficulty

his patients may experience in finding another health care provider in the future. However, the Board is not convinced that disciplinary action will deprive the community of the sole source of health care. The testimony does not mitigate against disciplinary action.

9. Dr. Wendler described steps taken to correct billing problems for the present and the future. These steps should be the natural response to billing problems. They do not mitigate against disciplinary action.

10. There is no evidence that Dr. Wendler has engaged in a plan to pay restitution for losses to payers whether or not connected with the criminal proceeding.

11. Additional disciplinary matters against Dr. Wendler are pending before the Board. Case number 93-00140 involves separate allegations which do not involve the criminal convictions. Those allegations are not resolved by this Final Order.

CONCLUSIONS OF LAW

1. There is no natural right to practice the healing arts. A license to practice in the healing arts is a privilege which is subject to the provisions of the healing arts act.

2. A license to practice the healing arts may be revoked, suspended or limited, or the license may be publicly or privately censured, upon a finding that the licensee has been convicted of a felony, whether or not related to the practice of the healing arts.

3. A conviction occurs upon filing of the journal entry of conviction. Dr.

Wendler has now been convicted of fourteen felonies.

IT IS, THEREFORE, ORDERED that the license to engage in the practice of the healing arts, issued to Kristopher K. Wendler, M.D., is revoked. Conduct exhibited by Dr. Wendler significantly and negatively impacts society and the medical profession. The multiple instances are just cause for the harshest of penalties.

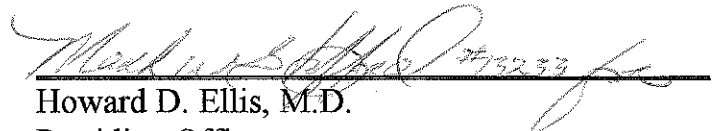
IT IS FURTHER ORDERED that the order of revocation is stayed. In light of the right established by K.S.A. 65-2844 to request reinstatement of a revoked license, Dr. Wendler may at some time seek to prove he is sufficiently rehabilitated to warrant the public trust. Resolution of the other case now pending before the Board should proceed so that Dr. Wendler and the Board both have adequate notice of all issues from which rehabilitation must occur. If the Board finds no additional violations have occurred, then rehabilitation will relate only to the felony convictions relating to this order, as well as to Dr. Wendler's conduct subsequent to this order. In contrast, if the Board finds additional violations which would justify disciplinary action, then Dr. Wendler must rehabilitate himself from all of the deficiencies before presenting himself to the Board for reinstatement. The stay of the order of revocation will, by its own terms, expire at the time an order in case number 93-00140 becomes effective as a final order.

IT IS FURTHER ORDERED that during the time that the stay of the order of revocation is in effect, the license to engage in the practice of the healing arts, issued by the

Board to Kristopher K. Wendler, M.D., is suspended. Such suspension is appropriate on the same grounds which justify revocation of the license.

IT IS SO ORDERED.

Entered this 26th day of January, 1996.


Howard D. Ellis, M.D.
Presiding Officer

NOTICE REGARDING RELIEF

This is a final order, and is effective when issued. A party may seek relief by requesting reconsideration by the Board. A petition for reconsideration must state the specific grounds upon which relief is requested. Such petition is not timely unless filed within 15 days following service of the Final Order. A petition for reconsideration is not a prerequisite to seeking judicial review. A petition for judicial review may be filed in the District Court within 30 days after service of the Final Order.

Any petition for reconsideration or for judicial review may be served upon the agency by sending a copy of the same to Lawrence T. Buening, Jr., Executive Director for the Board.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **FINAL ORDER** was deposited in the United States mail, postage prepaid this 26th day of January, 1996 addressed to the following:

Kenneth J. Reilly
Shook, Hardy & Bacon
1200 Main Street, One Kansas City Place
Kansas City, Missouri 64105-2118

Kristopher K. Wendler, M.D.
5750 W. 95th St., Apt. 205
Overland Park, Kansas 66207

and a copy was hand-delivered to:

Kevin K. LaChance, Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068



MARK W. STAFFORD