

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**FILED**

OCT 22 1997

KANSAS STATE BOARD OF  
HEALING ARTS

In the Matter of )  
 )  
KRISTOPHER K. WENDLER, M.D. )  
Kansas License No. 04-21487 )  
\_\_\_\_\_ )

Case no. 97-00217

**FINAL ORDER**

NOW ON THIS Eighteenth Day of October, 1997, comes before the Board of Healing Arts (hereinafter, "Board") the First Amended Petition to Revoke, Suspend or Otherwise Limit Licensure for a conference hearing. The Board appears through Kevin K. LaChance, Disciplinary Counsel. Respondent, Kristopher K. Wendler, M.D., appears in person and without counsel.

The Board notes that the original petition and notice of hearing were served more than thirteen days prior to the hearing. However, the amended petition, which contains allegations not arising out of the same facts as the original petition, was not served within the statutory time period for giving notice. Respondent was prepared to respond to the new allegations at the time of hearing, and stated to the Board that he waived the notice period.

The amended petition essentially alleges that Respondent has violated the Board's prior order in case number 93-00140/93-00080 (hereinafter referred to as the "June 24, 1996 Order"). The Board takes official notice of that order.

Now having the agency record before it, and hearing the arguments of the parties, the Board finds and concludes as follows:

1. Respondent is currently licensed by the Board and is actively engaged in the practice of medicine and surgery in the State of Kansas. Respondent resides and practices in the State of Kansas.

2. As provided by the Kansas health care provider insurance availability act, K.S.A. 4-3401, *et seq.* and amendments thereto, each person who is actively engaged in the practice of the healing arts and who is a resident of the State of Kansas is required to maintain a policy of professional liability insurance, and to pay an annual premium surcharge to the health care stabilization fund.

3. Respondent's professional liability insurance policy issued by KaMMCO was canceled July 17, 1996 for failure to renew, as indicated by the notice of cancellation dated July 25, 1996. The health care stabilization fund did not receive notice of coverage or a premium surcharge payment at the time renewal should have occurred. The Board was subsequently notified by letter dated October 17, 1997 that the Board of Governors of the health care provider insurance availability plan had voted to extend coverage to Respondent from July 16, 1996 to March 21, 1997, the date when Respondent came into compliance with the insurance requirements.

4. Respondent's failure to timely renew his professional liability insurance policy and to comply with the stabilization fund requirements, though subsequently remedied, constitutes a violation of K.S.A. 65-2836(y) and (z).

5. The additional allegation raised by the amended petition arises out of Respondent's duty to engage an disinterested entity to conduct a monthly billing audit, to seek and obtain the Board's approval of that entity to conduct the audit, and to submit to the Board an annual billing review. This duty is established by the June 24, 1996 Order. Respondent has not identified a disinterested entity to the Board, and there is no evidence that such an ongoing monthly audit is taking place. Further, the Board has not received an annual billing review from Respondent. By his conduct, Respondent has violated K.S.A. 65-2836(k).

6. The purpose of the audit as described above was to only provisionally resolve the disputed case in which Respondent was alleged to have been convicted by a jury in the Johnson County, Kansas District Court of fourteen felony counts relating to Respondent's professional billing practices. The conviction is now on appeal. A prior Final Order dated January 26, 1996 held that the convictions themselves warranted revocation of Respondent's license. That Final Order was modified by the June 24, 1996 Order to allow the appeal to be completed prior to final disposition.

7. The failure to comply with the audit provisions undermines the Board's attempt to balance Respondent's desire to continue practicing pending the appeal with the Board's duty to protect the public. The policy reasons which supported revocation of the license as indicated by the January 26, 1996 Final Order now support suspension of Respondent's license until his appeal of the criminal convictions is finally resolved.

**IT IS, THEREFORE, ORDERED THAT** Respondent's license is indefinitely suspended until such time as the pending criminal proceedings have been completed, including exhaustion of appeal procedures and any retrial, if ordered, following which this order may be reviewed by the Board and final disciplinary action, including allocation of costs, may be determined.

**IT IS FURTHER ORDERED THAT** Respondent may petition the Board to lift the suspension upon complete compliance with the audit provisions of the June 24, 1996 Order; the Board may grant or deny any such petition, or modify this order of suspension.

**ENTERED THIS** 21<sup>st</sup> **Day of October, 1997.**

**PLEASE TAKE NOTICE THAT** this is a Final Order, which is effective upon service. A party to an agency proceeding may seek relief by requesting reconsideration by the Board. A petition for reconsideration must state its grounds and be filed within 15 days after service of the Final Order. A petition for reconsideration is not a prerequisite to seeking judicial review. A petition for judicial review must be filed with 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 Board by sending a copy to Lawrence T. Buening, Jr., Executive Director, 235 S. Topeka Blvd., Topeka, Kansas 66603.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

**Certificate of Service**

I certify that the foregoing Final Order was served this 22<sup>d</sup> day of October, 1996, by depositing the same in the United States mail, first-class postage prepaid, and addressed to Dr. Kristopher K. Wendler, M.D., 3408 Rainbow Blvd., Kansas City, Kansas 66103, and by delivering a copy to the office of Kevin K. LaChance, Disciplinary Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603.

