

AUG 29 2012

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

In the Matter of )
Marvin H. Wilson, M.D. )
)
Kansas License No. 04-14926 (Exempt) )
\_\_\_\_\_ )

KSBHA Docket No. 12-HA00098

FINAL ORDER REQUIRING ADDITIONAL TESTING AND FURTHER PROCEEDINGS

NOW on this 17th day of August 2011, comes on for conference hearing before the Kansas State Board of Healing Arts ("Board"), the application of Marvin H. Wilson, M.D. ("Licensee/Applicant") for change of designation/type of license from "exempt" to "active." Licensee appears in person and pro se. Stacy Bond, Associate Litigation Counsel, appears on behalf of the Respondent Board.

After reviewing the agency record, hearing the statements and arguments of Board counsel and Licensee, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order pursuant to the authority granted to Board in the Kansas Healing Arts Act, 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.:

- 1. Licensee is presently licensed to engage in the practice of medicine and surgery in the State of Kansas, having been issued license number 04-14926, and has been so licensed since approximately January 8, 1972.
2. On or about June 28, 2004, Licensee changed the designation of his license to "exempt" status.
3. Licensee has not actively practice medicine and surgery since his license was changed to exempt status.

4. Since February 1, 2011, Licensee has practiced medicine and surgery in a limited scope and manner and without compensation under the supervision of Nason Lui, M.D. Dr. Lui is a General and Vascular Surgeon in Topeka, Kansas. At the conference hearing, Licensee described his practice experience with Dr. Lui as being like a “fellowship.”

5. On or about February 27, 2012, Licensee submitted an application for change of designation/type of license which requested his exempt license be changed to “active” status. Such application was deemed complete and filed with the Board on June 11, 2012.

6. In conjunction with his application for change of designation/type, Licensee provided documentation indicating that he obtained fifty-five (55) continuing medical education hours between March 9, 2011, and December 7, 2011.

7. Licensee submitted a letter to the Board from Dr. Lui in support of his application for change of designation/type. Dr. Lui indicated that Licensee has “excellent knowledge, the ability to communicate understanding and concern for patients.”

8. On or about June 11, 2012, Associate Litigation Counsel filed a Response in Opposition to Application for Change of Designation/Type on behalf of the Board’s Disciplinary Panel #27. The Response in Opposition alleges that because Licensee has been absent from active practice for more than three (3) years, he must complete a program recommended by the Board in order to establish his present ability to practice with reasonable skill and safety pursuant to K.S.A. 65-2809(f) and K.A.R. 100-10a-5(a)(3).

9. K.S.A. 65-2809(f) states, in pertinent part:

Any licensee whose license has been exempt for more than two years and who has not been in the active practice of the healing arts or engaged in a formal educational program since the licensee has been exempt may be required to complete such additional testing, training or education as the board may deem necessary to establish the licensee’s present ability to practice with reasonable skill and safety.

10. K.A.R. 100-10a-5(a)(3) states in pertinent part:

If the exempt licensee has held the exempt license for more than three years, the applicant must complete a program recommended by the board.

11. At the conference hearing, Associate Litigation Counsel asserted that to meet the statutory and regulatory requirements, Licensee should be required to have a clinical skills assessment geared towards re-entry to practice by the Center for Personalized Education for Physicians (“CPEP”). Associate Litigation Counsel asserted that Licensee had refused to have such an assessment and that denial of the application was therefore warranted. Licensee confirmed that he declined Disciplinary Panel #27’s request for him to have an assessment at CPEP.

12. At the conference hearing, Licensee testified about his previous education, training and professional experience. Licensee testified that he believed the experience he gained working with Dr. Lui was superior to having a clinical skills evaluation at CPEP and following any educational and re-entry to practice recommendations that CPEP might have based on their findings.

13. At the conference hearing, Licensee testified that if the Board granted the designation change, he intended to only practice in an office-setting for approximately five (5) years.

14. The Board concludes that Licensee’s absence from active practice since 2004 is significant and warrants comprehensive evaluation in order to determine if Licensee is presently able to practice with reasonable skill and safety to patients.

15. The Board finds that the observational information from Dr. Lui alone is insufficient to adequately make a determination about Licensee’s current clinical competency.

16. In accordance with K.S.A. 65-2809(f) and K.A.R. 100-10a-5(a)(3), the Board concludes that additional testing, training or education is necessary in order to establish Licensee's present ability to practice with reasonable skill and safety.

17. Due to Licensee's extensive absence from active practice and limited information available regarding his clinical knowledge and skills, the Board concludes that the Special Purpose Examination ("SPEX") would provide the Board with more information to evaluate Licensee's current medical knowledge. The SPEX is an examination developed in collaboration by the Federation of State Medical Boards and the National Board of Medical Examiners. The examination is designed to assess an individual's ability to apply, at a minimally acceptable level, the general medical knowledge considered essential to unrestricted practice.

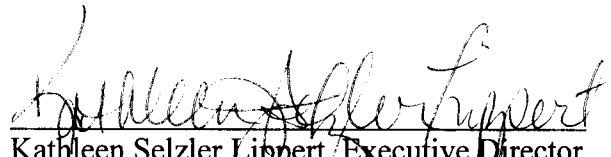
18. The Board concludes that Licensee's scores on the SPEX should be evaluated in combination with additional information from Dr. Lui about Licensee's observed practice ability in order to determine if Licensee is presently clinically competent or if further evaluation and/or education and testing are necessary. This information should include the details of Dr. Lui's professional qualifications, experience and scope of practice.

**IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS** that Licensee shall complete additional testing by taking the Special Purpose Examination ("SPEX") on or before November 30, 2012, so that further evaluation of Licensee's current clinical competency may be performed by the Board. The Board shall sponsor Licensee to take the SPEX.

**IT IS FURTHER ORDERED** that upon either the Board's receipt of Licensee's scores on the SPEX, or upon Licensee's failure to complete the SPEX by November 30, 2012, further hearing proceedings on Licensee's application for change of designation/type shall be held

before the Board. Licensee is further requested to submit Dr. Lui's curriculum vitae to the Board to provide information regarding his professional qualifications, experience and scope of practice.

**IT IS SO ORDERED THIS 24<sup>th</sup> DAY OF AUGUST, 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

  
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, the Board's Executive Director, at 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 REQUIRING ADDITIONAL TESTING & FURTHER PROCEEDINGS** was served this 29<sup>th</sup> day of August, 2012 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Marvin H. Wilson  
CONFIDENTIAL  
Topeka, KS 66611

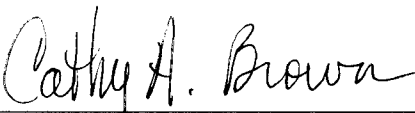
And a copy was hand-delivered to:

Stacy Bond, Associate Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Katy Lenahan, 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:

Kathleen Selzler Lippert, Executive Director  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

  
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Cathy Brown, Executive Assistant