

FILED
JUL 15 2003
Kansas State Board of
Healing ARTs

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

In the Matter of)
)
RAYMOND E. WINGER, M.D.)
Kansas License No. 4-17959)
_____)

Docket No. 03-HA -54

FINAL ORDER

NOW ON THIS Fifteenth Day of July 2003, this matter before the Presiding Officer to review the Initial Order issued by Charlotte Seago, M.D. Vinton Arnett, D.C., Ms. Sue Ice, and Roger Warren, M.D. are appointed to serve as Presiding Officers and to issue a Final Order. Raymond E. Winger, M.D. appears in person and through Grant M. Glenn and Cailin Farrel-Ringelman, Attorneys at Law. The Respondent Board of Healing Arts appears through Stacy L. Cook, Litigation Counsel.

Having heard the testimony statements of counsel, and having the agency record before it, the Presiding Officers adopt the following findings of fact, conclusions of law and orders stated in the Initial Order, with modifications as noted:

1. The Board originally granted Dr. Winger a license to practice medicine and surgery in June 1978. Dr. Winger's license was active from June 1978 until July 1998. At that time Dr. Winger asked that his license become designated as inactive, and it has remained inactive until the present. Dr. Winger did not practice the healing arts during the time his license was inactive. Dr. Winger now asks that the Board grant him an active license.

2. This is the second attempt by Dr. Winger to change his license from inactive to active. In November 2002 the Board issued a final order denying a request for an active license. That denial was based upon the Board's finding that Dr. Winger was not professionally

competent to engage in the active practice of medicine and surgery. The Board based its finding upon a February 2001 evaluation performed by the Colorado Personalized Education for Physicians program (CPEP). Dr. Winger did not seek judicial review of the Board's final order. The findings of fact, conclusions of law and order are conclusive and may not be challenged in this proceeding. Thus, Dr. Winger has the burden to overcome the fact that he was not professionally competent to engage in the active practice of the healing arts as of the November 2002 final order.

3. Following the CPEP evaluation, Dr. Winger accumulated 210 hours of continuing education. He studied the University of Iowa Family Practice Handbook, and the Washington Manual of Medical Therapeutics, published by the Washington School of Medicine at St. Louis, Missouri.

4. Dr. Winger took the Special Purpose Examination (SPEX) on November 25, 2002 and obtained an overall passing score. His scores did span into the Lower Performance range in the Clinical Encounter Categories of acute/circumscribed problems, chronic or progressive illness, and emergency conditions/critical care; in the Physician Tasks Category of managing therapy; and in the System Classifications Categories of gastrointestinal, reproductive, and musculoskeletal/dermatologic. -----Confidential-----

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5. The Presiding Officers find that Dr. Winger has improved his overall level of professional competence following the Board's November 2002 order, but not to the extent that he should be granted an unlimited active license. As indicated by his SPEX results, Dr. Winger is not yet professionally competent in some areas of practice. The Board is authorized by K.S.A. 65-2836(b) to limit a license upon a finding of professional incompetence. The Presiding

Officers find and conclude that Dr. Winger should be granted an active license, but that license should be limited.

Paragraph 6 of the Initial Order is modified as follows:

6. Dr. Winger offered a proposed plan for supervision of his license. The plan would support Dr. Winger's general outpatient practice in family medicine with routine hospital privileges in family practice. Supervision would follow the model of a third-year resident, including supervision on site, review of all medical charts daily with immediate review of medical charts for severely ill patients. Supervision would be for three months, and then decreased at the recommendation of the supervising physician and approval of Jerry Old, M.D. Dr. Old would review ten charts every two weeks to assure that the process is being followed. Charlotte Seago, M.D. is appointed as Presiding Officer to approve a supervising physician to review and sign Dr. Winger's charts as a preceptor would review and sign a resident's charts.

7. The Presiding Officers find that the suggested plan for supervision is acceptable if modified to require a minimum of one-year supervision, and may be modified or decreased only upon further order of the Board.

8. -----Confidential-----

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The following additions are made to the Initial Order

9. When Dr. Winger obtains a new offer of employment and determines that there is a willing and competent person to perform the services for his mentor previously described in Paragraph 6 of this order, Dr. Winger shall submit the name of the proposed mentor to Dr. Seago for her consideration and approval. Dr. Winger shall also submit a copy of his letter to the

Board's Executive Director and its litigation counsel Stacy L. Cook. The Board shall have five days to provide any objections regarding the proposed mentor to Dr. Seago and Dr. Winger. Dr. Winger shall have five days to respond. Dr. Seago should issue a Journal Entry noting her approval or disapproval of the proposed mentor at her earliest convenience to maximize the chances that Dr. Winger does not lose the proposed employment opportunity.

10. If Dr. Winger does not obtain employment that is approved in the manner required by this order within six months following the effective date of this order, then he shall not practice medicine and surgery until he first come before the full Board showing proof that he has completed 50 hours of continuing medical education.

11. Dr. Winger shall be responsible for assuring that reports to the Board as required by this order are completed and filed with the Board.

IT IS, THEREFORE, ORDERED that Dr. Winger's request for an active license is granted, subject to the following limitations, which may be modified only upon further order of the Board:

a. Dr. Winger shall not engage in the practice of the healing arts except under the supervision of a physician approved by the Board. Supervision shall follow the model of a third-year resident, including on-site supervision, daily review of all medical charts, and immediate review of medical charts for severely ill patients. Dr. Winger shall be responsible for the costs associated with supervision.

b. Dr. Winger shall not engage in the practice of the healing arts unless his supervision, as provided above, is monitored by Jerry Old, M.D. Monitoring by Dr. Old means review of ten medical charts for Dr. Winger's patients every two weeks to assure that the process

is being followed, reporting to the Board every two months identifying the number of charts reviewed and an assessment of the supervision.

c. -----Confidential-----

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d. Dr. Winger shall not perform professional services that are outside the normal and customary scope of family practice.

e. Charlotte Seago, M.D. is appointed as Presiding Officer to approve the supervising physician.

IT IS FURTHER ORDERED that the parties shall bear their own costs of this proceeding.

IT IS FURTHER ORDERED that Dr. Winger provide to the Board's Executive Director an agreement signed by Dr. Olds indicating that he is willing to perform the duties of supervision and monitoring described in this order. A copy of the agreement shall be served upon Counsel for Respondent. In the event either Dr. Olds is unwilling or unable to perform those duties, Respondent shall notify the Board's Executive Director in writing.

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 15th Day of July 2003.

Kansas State Board of Healing Arts

/s/

Lawrence T. Buening, Jr.,
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 16th day of July 2003 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Grant M. Glenn
Cailin Farrel-Ringelman
5611 SW Barrington Court South
P.O. Box 67689
Topeka, Kansas 66667-0689

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

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

____/s/ Lawrence T. Buening, Jr._____