

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

In the Matter of )  
DEREK URBAN, M.D. )  
 )  
Applicant for Kansas License ) KSBHA Docket No. 15-HA00007  
\_\_\_\_\_ )

**FINAL ORDER DENYING LICENSURE AND ASSESSING COSTS  
AND ORDER GRANTING MOTION TO STAY PENDING JUDICIAL REVIEW**

NOW on this 9<sup>th</sup> day of October, 2015, the above-captioned matter comes before the Kansas State Board of Healing Arts (“Board”) on the Board’s own motion to review the Initial Order of the Presiding Officer filed on July 6, 2015. Derek Urban, M.D. appears in person, and through counsel, Mark Stafford of Simpson, Logback, Lynch, Norris, P.A. and Jeff King, admitted *pro hac* vice. Reese Hays, Litigation Counsel, appears on behalf of the Respondent Board.

Pursuant to the authority granted to Board by 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.*, the Board hereby enters this Final Order in the above-captioned matter with the following Findings of Fact, Conclusions and Orders:

**Procedural History**

1. On or about July 10, 2014, Dr. Urban submitted an application for licensure to practice medicine and surgery in the State of Kansas.
2. On or about August 5, 2014, the Board’s litigation counsel (“Respondent”) filed a Response in Opposition to Application for Licensure to Practice Medicine and Surgery (“Response”). The Response alleged facts and legal grounds for denial of licensure and requested that Dr. Urban’s application be denied.

3. A formal hearing before a Presiding Officer from the Office of Administrative Hearings was held on March 17, 2015. During the formal hearing, the parties presented evidence in the form of documentary exhibits and testimony.
4. The Presiding Officer subsequently issued an Initial Order finding violations of the Healing Arts Act and concluding that Dr. Urban's application for licensure be denied.
5. On its own motion, the Board gave notice to the parties that it would review the Initial Order after the submission of briefs and oral arguments by the parties.
6. Prior to the oral arguments, the Board reviewed the entire agency record, including the briefs submitted by the parties.
7. Dr. Urban requested that the Board reverse the findings and conclusions in the Initial Order and grant Dr. Urban's application for licensure.
8. Respondent requested that the Board adopt the findings and conclusions in the Initial Order and determine that the appropriate sanction in this matter is denial of Dr. Urban's application. Respondent also requested that the Board issue an Order requiring Dr. Urban to pay the costs of the matter pursuant to K.S.A. 65-2846.
9. At the oral argument held before the Board on October 9, 2015, the Board heard arguments from both parties and directed questions to both counsel.
10. Board members Dr. M. Myron Leinwetter, Dr. Kimberly Templeton, Dr. Terry Webb and Mr. John Settich recused themselves from participating in the Board deliberations and decision in this matter. A quorum of Board members were present and participated in the deliberations and decision.

11. In reviewing the Initial Order, the Board gave due regard to the Presiding Officer's opportunity to observe the witnesses and determine their credibility during the formal hearing.
12. At the conclusion of the oral arguments and following the Board's deliberations, the Board announced its decision to deny Dr. Urban's application for licensure and assess the costs of the proceedings against him. Dr. Urban's counsel orally moved that the Board grant a stay of the effectiveness of the resulting Final Order pursuant to K.S.A. 2015 Supp. 77-528.

### **Findings of Fact**

13. The Board accepts the Findings of Fact made by the Presiding Officer in the Initial Order in part and modifies in part. The Findings of Fact made by the Presiding Officer in paragraphs 1 through 3, 5 through 15, and 17 through 24 are adopted as Findings of Fact for this Final Order. These Findings of Fact are hereby incorporated by reference and are part of this Final Order.
14. The Board modifies the following Findings of Fact made by the Presiding Officer to correct factual errors:
  - a. Finding 4: The applicant was named as a defendant in and settled a malpractice case resulting in a payment on the applicant's behalf in the year 2000 Confidential for failing to properly assess a patient with neurologic symptoms in 1996.
  - b. Finding 16: Based upon the Pretrial Agreement, the applicant's commander found violations of the Uniform Code of Military Justice with two Article 92 violations in that the applicant distributed Celexa to an individual in Toronto, Canada and that the applicant ingested Clomid. Additionally, the commander

found one violation of Uniform Code of Military Justice with one Article 112a violation in that the applicant used anabolic steroids, a Schedule III controlled substance.

- c. Finding 25: In 1994, the applicant was investigated and subject to an Article 15 non-judicial discipline for wrongful distribution of a prescription medication when he provided Doxycycline to an individual with whom he did not have a professional relationship.

#### **Applicable Law**

15. K.S.A. 2015 Supp. 65-2836 provides in pertinent part:

A licensee's license may be revoked, suspended or limited, or the licensee may be publically or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated license.

(b) The licensee has committed an act of unprofessional conduct or dishonorable conduct or professional incompetency except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasions that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for discipline under this section.

### Conclusions of Law

16. The Board accepts the Conclusions of Law made by the Presiding Officer in the Initial Order in part and modifies in part. The Conclusions of Law made by the Presiding Officer in paragraphs 1 through 4 and 6 through 15 are adopted as Conclusions of Law for this Final Order. These Conclusions of Law are hereby incorporated by reference and are part of this Final Order.

17. The Board modifies the Conclusions of Law made by the Presiding Officer in paragraph 5 of the Initial Order as follows:

a. Question No. 21 of the applicant's application addendum asked whether he had ever been charged with a crime. He answered "NO." This is clearly wrong. It is clear that the applicant was charged in the Article 32 proceeding. He was charged in military court and it resulted in the applicant entering into a Pretrial Agreement with the USAF. The applicant wrote:

I, Col Derek K. Urban, am presently the Accused in the above-captioned case. I have read the charges and specifications alleged against me, and my defense counsel have explained them to me. I understand the charges and specifications, and I am aware that I have a legal and moral right to plead not guilty and to leave upon the prosecution the burden of proving my guilt beyond a reasonable doubt... (Emphasis added)

18. The Board declines to adopt paragraphs 16 and 17 of the Conclusions of Law made by the Presiding Officer in the Initial Order. The Board concludes that Dr. Urban's medical malpractice settlement Confidential paid in the year 2000, for a failure to properly assess a patient in 1996, does not rise to the level of being grounds for denial of licensure in light of the lack of relationship to the other violations in this matter.

19. The Board finds Dr. Urban's pervasive misrepresentations in attempting to obtain licensure adversely reflect on his character and fitness to hold a medical license in Kansas. The Board concludes that Dr. Urban's commission of fraud or misrepresentation in applying for or securing an original, renewal or reinstated license pursuant to K.S.A. 2015 Supp. 65-2836(a) supports the sanction of denial of Dr. Urban's application for licensure.

20. The Board finds Dr. Urban's other acts related to inappropriately providing and using prescription medications additionally reflect on his character and fitness to hold licensure in Kansas. When considered in conjunction with the misrepresentations Dr. Urban made about these acts and being arrested and charged with a crime, the Board concludes that Dr. Urban's dishonorable conduct pursuant to K.S.A. 2015 Supp. 65-2836(b) further supports the sanction of denial of Dr. Urban's application for licensure.

21. Since Dr. Urban is the unsuccessful party in this matter and the proceedings on his application were necessary due to Dr. Urban's own acts and conduct, the Board concludes that pursuant to K.S.A. 2015 Supp. 65-2846, it is appropriate for Dr. Urban to bear the agency's costs of \$4,232.95 set forth in Respondent's Statement of Costs.

**IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that Dr. Urban's application for licensure is hereby **DENIED** based on violations of K.S.A. 2015 Supp. 65-2836(a) and K.S.A. 2015 Supp. 65-2836(b).

**IT IS FURTHER ORDERED** that Dr. Urban is hereby ordered to pay **COSTS** in the amount of \$4,232.95, due and payable in full on December 30, 2015.

**IT IS FURTHER ORDERED** that Dr. Urban's motion to stay the effectiveness of this Final Order pending judicial review shall be **STAYED** pursuant to K.S.A. 2015 Supp. 77-528.

IT IS SO ORDERED THIS 20 DAY OF OCTOBER, 2015, 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, Applicant 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, Executive Director, Kansas State Board of Healing Arts, 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 DENYING LICENSURE AND ASSESSING COSTS AND ORDER GRANTING MOTION TO STAY PENDING JUDICIAL REVIEW** was served this 20<sup>th</sup> day of October, 2015, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Derek Urban, MD  
**Confidential**  
Spring Hill, TN 37179

Mark Stafford  
Simpson, Logback, Lynch, Norris, P.A.  
107 SW 6<sup>th</sup> Ave. Ste. 210  
Topeka, KS 66603

And a copy was delivered to:

Reese Hays, Litigation Counsel  
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 the Executive Director.

  
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