FILED
DEC 22 2014
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 14-HA00130
Mary C. Vernon, M.D.	)	
Kansas License No. 04-17719	)	

FINAL ORDER REVOKING LICENSURE

NOW on this 12th day of December, 2014, the above-captioned matter comes before the Kansas State Board of Healing Arts ("Board") for review of the Initial Order filed with the Board on September 30, 2014. Mary C. Vernon, M.D. ("Licensee") appears by and through her counsel of record, Floyd Finch. Susan Gering, Associate Litigation Counsel, appears for the Board.

Pursuant to the authority granted to Board by 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. After reviewing the agency record, hearing the statements and arguments of Ms. Gering and Mr. Finch, and being otherwise duly advised in the premises, the Board makes the following findings of fact, conclusions and order:

1. The Board adopts the Initial Order, including all findings of fact and conclusions of law contained therein, as its Final Order. Such findings of fact and conclusions of law are incorporated herein by reference.

2. During the review hearing, Licensee advised the Board that she had been sentenced to 41 months incarceration and the sentencing court denied her request to

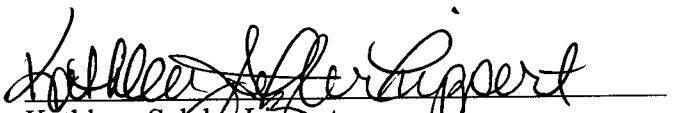
remain on release pending her appeal. She will be unable to practice medicine during her incarceration. Based on these circumstances, Licensee requested that she be allowed to voluntarily surrender her license in lieu of revocation.

7. The Board concurs with the Presiding Officer that revocation is appropriate in this matter and declines to accept the voluntary surrender of Licensee's license.

IT IS THEREFORE ORDERED that Licensee's license is hereby REVOKED effective upon date of filing of this Final Order.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS



Kathleen Selzler Lippert
Executive Director

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, 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 I served a true and correct copy of the **FINAL ORDER REVOKING LICENSURE** by United States mail, postage prepaid, on this 22nd day of December, 2014, to the following:

Floyd Finch
24211 East Strode Road
Blue Springs, MO 64015
Attorney for Licensee

Mary C. Vernon, M.D.
Confidential
Lawrence, KS 66045

And a copy was hand-delivered to:

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

And the original was filed with the office of the Executive Director.

Cathy A. Brown

Cathy A. Brown
Executive Assistant

FILED
SEP 17 2014
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
Mary C. Vernon, M.D.	)	
	)	**KSBHA Docket No. 14-HA00130**
Kansas License No. 04-17719	)	
	)	

INITIAL ORDER

A formal hearing was held July 18, 2014, at the Office of the Board of Healing Arts in Topeka, Kansas on a petition filed in this matter on April 22, 2014. John F. Settich, was appointed by The Kansas State Board of Healing Arts ("Board") as the Presiding Officer for this matter. The Board appeared by and through Susan R. Gering, Associate Litigation Counsel and Anne Barker Hall, Associate Litigation Counsel ("Petitioner"). Respondent, Mary C. Vernon, M.D. appeared by and through her attorney, Floyd Finch.

Betsy Williams testified on behalf of Petitioner. Testifying for Respondent were Martin Sellberg, Daniel Runion and Mary C. Vernon.

Rulings on Motions

1. On July 16, 2014, Petitioner filed a Motion in Limine requesting that Respondent be prohibited from calling any witnesses or presenting any evidence due to her failure to produce a witness and exhibit list two weeks prior to the formal hearing. Upon reviewing the motion and hearing statements of counsel, the Presiding Officer denies the Motion in Limine. The Presiding Officer finds that although the witness and exhibit list of Respondent was not submitted on time, that Petitioner does not suffer any prejudice with the late submission.

2. Respondent then made an oral motion requesting that the matter be continued until after such time as she has been sentenced by the United States District Court of Kansas. Respondent argues that the formal hearing on the Petition is premature in that although she was found guilty of five counts of tax evasion by a jury; that finding does not become a final judgment until she is sentenced. At this time, Respondent does not know when a sentencing hearing will be scheduled by the United States District Court of Kansas.
3. The Board has been tasked by the Legislature with protecting the public from unprofessional, improper, unauthorized and unqualified practice of the healing arts as well as from unprofessional conduct by persons licensed to practice the healing arts. The Legislature implemented this task by providing that the Board "shall revoke a licensee's license following conviction of a felony. . ." As acknowledged by both parties in this hearing, words matter. And in this instance the legislature choose to use the word "conviction" as opposed to "following final judgment or sentencing."
4. It is in the best interests of the public and for those whom the Board licenses for the Board to determine as soon as possible after a Licensee's conviction if such licensee will not pose a threat to the public in such person's capacity as a licensee and if such person has been sufficiently rehabilitated to warrant the public trust.
5. In *State v. Holmes*, 222 Kan. 212, 214, 563 P.2d 480 (1977), the Kansas Supreme Court made it clear that a conviction occurs when guilt is determined, not when sentence is later imposed and the judgment becomes final. The Supreme Court stated "It is clear to us that once the statutory procedure has been complied with and the plea of guilty or *nolo contendere* has been accepted and a finding of guilty entered thereon, the defendant stands

convicted of the offense." *Id* at 214. Any determination of guilt, whether by plea or by verdict is a conviction.

6. The Presiding Officer denies the motion for continuance and specifically finds that the matter is ripe for a hearing as Dr. Vernon has been convicted of felony offenses in the United States District Court of Kansas.

Findings of Fact and Conclusions of Law

7. On or about December 19, 2012, Dr. Vernon was indicted in the United States District Court, District Court of Kansas, Kansas City Division, on five (5) counts alleging tax evasion and one (1) count alleging Dr. Vernon submitted false statements to a bank.
8. On or about February 17, 2014, count six (6) of the Indictment was dismissed by the United States District Court Judge based on the government's motion.
9. On or about March 28, 2014, a jury found Dr. Vernon guilty of Counts one (1) through five (5), charging Dr. Vernon with five (5) counts of tax evasion in violation of Title 26, United States Code, Section 7201 for the following years: 2004, 2005, 2006, 2007, and 2008. These were felony level offenses.
10. Dr. Vernon has a current active license to practice medicine and surgery in Kansas. Such license was originally issued on July 1, 1978.
11. Dr. Vernon currently practices at Southwest Medical Center in Liberal, Kansas. Dr. Vernon has practiced in the emergency department of Southwest Medical Center since September 2013. She was appointed the medical director for the emergency department in January 2014.
12. Dr. Vernon's direct employer is EmCare, an emergency department staffing company that employs physicians from all over the United States.

13. Prior to her 2012 indictment, Dr. Vernon's previous history with the Internal Revenue Service ("IRS") included IRS efforts to collect taxes, interest and penalties Dr. Vernon owed to the IRS, but failed to pay for the years of 1991-2005. The IRS has collected approximately two million dollars ($2,000,000) in taxes, interest and penalties from Dr. Vernon for the years of 1991-2005.
14. On November 12, 2013, Dr. Vernon filed a Verified Petition for the Appointment of a Financial Conservator in Jefferson County, Kansas. In support of the Petition, Dr. Vernon informed the court that "she is not skilled at managing business or financial affairs, and that she is not sufficiently interested in business and financial matters to manage such matters herself."
15. On November 23, 2013, Daniel Runion, was appointed as Dr. Vernon's financial conservator. As Dr. Vernon's conservator, Mr. Runion collects Dr. Vernon's income and disburses funds to people and entities to whom Dr. Vernon owes money, including federal and state taxes. Mr. Runion is also the sole signatory on Dr. Vernon's bank account.
16. Dr. Martin Sellberg, a licensed physician in the State of Kansas, testified on Dr. Vernon's behalf. Dr. Sellberg testified that he became acquainted with Dr. Vernon while she was an emergency physician working in Emporia, Kansas. Dr. Sellberg testified that Dr. Vernon later worked for him as an independent contractor for emergency physicians.
17. Dr. Sellberg testified that he did not believe Dr. Vernon was a threat to the public in her capacity as a physician in that he knew her to be a very knowledgeable and competent physician.

18. Dr. Sellberg also testified that he believed Dr. Vernon was sufficiently rehabilitated to warrant the public trust. However, when questioned about what he knew about Dr. Vernon's rehabilitation, Dr. Sellberg admitted that he only had a limited understanding. Dr. Sellberg was unable to state why he believed Dr. Vernon was rehabilitated other than he has no concern about her practice being any kind of detriment and that she is a benefit to the citizens of Kansas.
19. The Presiding Officer finds that Dr. Sellberg is a credible witness. However, because of the limited scope of Dr. Sellberg's knowledge, the Presiding Officer does not find that Dr. Sellberg is persuasive in his opinion regarding whether Dr. Vernon has been sufficiently rehabilitated to warrant the public trust.
20. Daniel Runion, a licensed CPA and attorney in the State of Kansas testified on behalf of Dr. Vernon. Mr. Runion testified that he first became acquainted with Dr. Vernon in either late 2011 or early 2012, prior to her federal indictment for tax evasion.
21. Mr. Runion testified that his work was part of the effort to ensure that Dr. Vernon has been rehabilitated by filing her past due tax returns. Mr. Runion testified that the underlying reason for the criminal charges was that Dr. Vernon did not file her tax returns. Mr. Runion further testified that Dr. Vernon was charged with attempting to avoid the reporting of income or payment of tax on income.
22. Mr. Runion testified that he believed Dr. Vernon was sufficiently rehabilitated due to Dr. Vernon hiring himself and Mr. Finch to file her past due tax returns and requesting a voluntary appointment of a financial conservator to manage her financial affairs.
23. Mr. Runion testified that the taxes in question arose from monies paid to Rockledge Medical Services, an S Corporation formed by Sara Wentz. At the time of the formation

of Rockledge Medical Services, Sara Wentz was the domestic partner of Dr. Vernon. S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. The only shareholder of Rockledge Medical Services was Sara Wentz.

24. Rockledge Medical Services held the intellectual property rights for "Atkins Diabetes Revolution", a book authored by Dr. Vernon, as well as additional computer programs that Dr. Vernon developed for nursing homes. Dr. Vernon testified that the purpose of the S corporation was to separate her writing and speaking activities from her medical practice, which at the time included high-risk obstetrics. Dr. Vernon wanted to protect the value of her writing and speaking activities from potential patients' medical malpractice attorneys.
25. Ms. Wentz, through and on behalf of Rockledge Medical Services, contracted with the Atkins Company for Dr. Vernon to write her book. Dr. Vernon further testified that Rockledge Medical Services was the entity that was paid for the work Dr. Vernon did on the book. Dr. Vernon testified that she was not paid by Rockledge for the work she did for Rockledge, but that she volunteered her services to Rockledge.
26. Dr. Vernon testified that it was after a visit from the IRS regarding Rockledge Medical Services and her personal income taxes that she enlisted the assistance of Mr. Runion.
27. Dr. Vernon testified that since the Indictment, she has been under court ordered supervision and is unable to leave the State of Kansas without permission.

28. Dr. Vernon was referred by Board staff to Professional Renew Center ("PRC") for a fitness to practice evaluation. Betsy Williams, a clinical psychologist with a master's in public health and the clinical program director at Professional Renewal Center, testified on behalf of Petitioner. Dr. William's testimony did not address whether Dr. Vernon would pose a threat to the public in her capacity as a licensee or whether Dr. Vernon has been sufficiently rehabilitated to warrant the public trust.

29. Dr. Vernon underwent a fitness for duty evaluation at PRC with an initial evaluation occurring on May 10, 2014, through May 13, 2014. PRC determined that Dr. Vernon is not impaired by virtue of a chemical dependency, severe mood disorder, cognitive disorder, a thought disorder, a psychotic process, dissociative processes, pathological aggression, psychopathy, or impulse control disorder.

30. As additional evidence of rehabilitation, Dr. Vernon presented multiple affidavits from professional colleagues from Southwest Medical Center. These affidavits generally reference the need of Southwest Medical Center to retain physicians as well as provide positive observations regarding Dr. Vernon's personal character and professionalism in her practice of medicine. Other than a general statement that each affiant believed that Dr. Vernon was rehabilitated, none of the affiant's provided any specific evidence of rehabilitation to support their statement. The Presiding Officer views these affidavits as statements of endorsement by Dr. Vernon's peers, rather than as specific evidence of rehabilitation.

31. As evidence of aggravating circumstances, the Presiding Officer notes that Dr. Vernon has had previous dealings with the IRS dating back to 1991, regarding Dr. Vernon's failure to pay taxes.

32. Pursuant to K.S.A. 65-2836(c), there are grounds for disciplinary action against a licensee's license for a felony conviction, regardless of whether the crime was related to the practice of the healing arts. K.S.A. 65-2836(c), further provides that:

> The board shall revoke a licensee's license following a conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

33. The Presiding Officer concludes that Dr. Vernon has violated K.S.A. 65-2836(c), in that she has been convicted of five (5) felony crimes. The Presiding Officer further concludes that the Board has jurisdiction and authority to consider the Petition filed concerning the license of Dr. Mary C. Vernon.

34. The Presiding Officer concludes that the mitigating circumstances presented by Dr. Vernon, that she has good clinical skills, do not outweigh the aggravating factors surrounding her criminal acts. Dr. Vernon testified that she was only following the advice of legal counsel and does not believe that she has done anything wrong. Dr. Vernon does not demonstrate an appreciation for the disrepute she has brought to the profession by her criminal convictions.

35. The Presiding Officer concludes, pursuant to the Board Sanctioning Guidelines, that conduct which is criminal, or is deemed criminal, may form the basis for imposing discipline against a licensee because such misconduct reflects upon the licensee's fitness and qualifications to practice in the healthcare field and detracts from the trust the public must be able to give healthcare professionals. A licensee who has exhibited dishonesty, poor moral character, a lack of integrity and/or an inability or unwillingness to follow the

law has demonstrated an unfitness to practice and may be subject to discipline against his or her professional license. Honesty and integrity are deeply ingrained in the practice of the various healthcare professions.

36. The Presiding Officer finds that Dr. Vernon's statements that she "volunteered" her time and efforts to Rockledge Medical Services and did not charge for her work on the Atkins book to be unconvincing. The Presiding Officer concludes that Dr. Vernon's motivation for creating an S corporation was to hide her income, whether to protect it from potential malpractice patients, as she professes, or to avoid paying income taxes, is irrelevant. Either way, Dr. Vernon was being dishonest by allocating her income to an S corporation in which she was not a shareholder.

37. The Presiding Officer concludes that Dr. Vernon's efforts at rehabilitation have largely been aimed at avoiding or mitigating her criminal charges, for Dr. Vernon's own benefit. Dr. Vernon has done little to rehabilitate herself other than to hire a "team" to get her affairs in order to try to avoid or mitigate her criminal charges. The Presiding Officer finds that Dr. Vernon's voluntary conservatorship entered into in November of 2013, although a positive step towards rehabilitation, is not in and of itself sufficient to show that Dr. Vernon is rehabilitated to warrant the public trust.

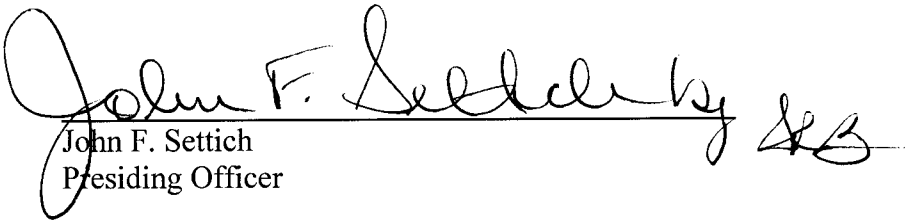
38. The Presiding Officer concludes that although no evidence was presented to show that Dr. Vernon's medical skills are deficient, that Dr. Vernon's actions of being convicted of five felony offenses, reflects the potential for public harm and brings ill repute upon the profession as a whole.

39. The Presiding Officer concludes that Dr. Vernon has not presented clear and convincing evidence that she will not pose a threat to the public in her capacity as a licensee and that she has been sufficiently rehabilitated to warrant the public trust.

40. The Presiding Officer concludes that revocation of licensure is warranted in the circumstances and that the costs of the proceeding should be assessed against Dr. Vernon in an amount to be determined after the issuance of the Initial Order and after Petitioner files a Statement of Costs.

IT IS THEREFORE ORDERED, that the medical license of Dr. Vernon is hereby **REVOKED.**

IT IS SO ORDERED THIS 17 DAY OF SEPTEMBER, 2014, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



John F. Settich
Presiding Officer

NOTICE OF RIGHTS

Pursuant to K.S.A. 77-527, either party may appeal this initial order. A petition for review must be filed within 15 days from date of this initial order. Failure to timely request review may preclude further judicial review. Petitions for review shall be mailed or personally delivered to: Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level, Suite A, Topeka, Kansas 66612.

Pursuant to the requirements of K.S.A. 65-2836(c), the matter will be reviewed by the full Board at its December 12, 2014, meeting.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the above and foregoing **INITIAL ORDER** on this 17 day of September, 2014, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Floyd Finch
24211 East Strode Road
Blue Springs, MO 64015
Attorney for Licensee

Mary C. Vernon, M.D.
Licensee
Confidential
Lawrence, KS 66045

And a copy was hand-delivered to:

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

And the original was filed with the office of the Executive Director.

Jennifer Cook, Legal Assistant