EFFECTIVE AS A FINAL ORDER

DATE: 1/7/15

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 MARVIN WILSON, M.D.	)	
	)	**KSBHA Docket No. 12-HA00098**
Application to Change License Designation	)	

PROPOSED DEFAULT ORDER DENYING APPLICATION FOR CHANGE OF LICENSE DESIGNATION TO ACTIVE

NOW on this 11th day of December, 2014, comes before the Kansas State Board of Healing Arts ("Board") the application of Marvin Wilson, MD ("Licensee") for change of designation/type from exempt to active status. Jessica Bryson, Associate Litigation Counsel, appears on behalf of the Respondent Board. Licensee fails to appear.

Pursuant to the authority granted to the 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 Proposed Default Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

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 designation was changed to exempt status.

4. From approximately February 1, 2011 through at least January 5, 2012, Licensee practiced medicine and surgery in a limited scope and manner and without compensation under the supervision of Nason Lui, M.D., is a General and Vascular Surgeon in Topeka, Kansas.

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 support of his application for active license designation, Licensee provided a letter from Dr. Lui detailing his practice activities. Dr. Lui indicated that Licensee had "excellent knowledge, the ability to communicate understanding and concern for patients."

7. Licensee also submitted documentation indicating he obtained fifty-five (55) continuing medical education hours between March 9, 2011 and December 7, 2011.

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 alleged that because Licensee was absent from active practice for more than three (3) years, he should be required to 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. The Board concluded that Licensee's absence from active practice since 2004 was significant and warranted a comprehensive evaluation in order to determine if Licensee was presently able to practice with reasonable skill and safety to patients.

10. The Board found that the observational information from Dr. Lui alone was insufficient to adequately make a determination about Licensee's current clinical competency.

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

12. Due to Licensee's extensive absence from active practice and limited information available regarding his clinical knowledge and skills, the Board concluded 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.

13. The Board ordered that Licensee 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 could be performed by the Board. The Board concluded that it would sponsor Licensee to take the SPEX.

14. It was 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 would be held before the Board. Licensee was further requested to submit Dr. Lui's curriculum vitae to the Board to provide information regarding his professional qualifications, experience and scope of practice.

15. Licensee did not complete the SPEX as recommended by the Board.

16. Licensee renewed his license with an exempt designation in both June 2013 and June 2014.

17. A conference hearing on the Licensee's application was noticed for December 11, 2014 at the offices of the Kansas State Board of Healing Arts.

18. Pursuant to K.S.A. 2013 Supp. 77-531, Licensee was served with a Notice of Conference Hearing to Licensee's mailing address via United States Mail, first-class postage prepared on or about November 20, 2014.

19. The Notice of Conference Hearing provided Licensee notice that any party who fails to attend or participate in the Conference Hearing or other state of a proceeding may be held in default.

20. Licensee failed to appear at the Conference Hearing held on December 11, 2014.

21. Pursuant to K.S.A. 2013 Supp. 77-520, Licensee is in default for his failure to appear at the conference hearing on December 11, 2014.

22. Upon review of the agency record and after being fully advised in the premises, the Board finds and concludes that Licensee's present ability to practice with reasonable skill and safety cannot be adequately established.

23. Denial of Licensee's application for designation change to active status is warranted in the circumstances.

24. This Proposed Default Order becomes effective ten (10) days after the date it is mailed. Licensee has ten days (7 days plus 3 for mailing) to request this Proposed Default Order be vacated. Such a request must be in writing; set forth the grounds relied upon; and received by the Board no later than the 10th day after the date this Proposed Default Order is mailed. The Proposed Default Order will not become effective if the Board vacates it as provided above.

25. If this Proposed Default Order becomes effective, it will constitute the Final Order of the Board.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee is hereby held in DEFAULT pursuant to K.S.A. 77-520.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS upon this Proposed Default Order becoming effective as a Final Order, Licensee's Application for License Designation Change to Active Status is hereby **DENIED**.

IT IS SO ORDERED THIS 22 DAY OF Dec, 2014, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

FINAL ORDER NOTICE OF RIGHTS

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. 77-601, *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 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 copy of the foregoing **FINAL ORDER DENYING APPLICATION FOR CHANGE OF LICENSE DESIGNATION TO ACTIVE** was served this 7 day of Jan, 2015 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Marvin Wilson, MD
Confidential

Topeka, KS 66611

And a copy was hand-delivered to:

Jessica Bryson, 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

General 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.

Cathy A. Brown

Cathy Brown, Executive Assistant