

FILED

AUG 29 1991

KANSAS STATE BOARD OF HEALING ARTS

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

In the Matter of )
STEPHAN SCOTT CORDER, M.D. )
Kansas License No. 18903 )

Case No. 89-DC-0097

FINAL ORDER

NOW on this 17th day of August, 1991, comes on for hearing before the Kansas State Board of Healing Arts (hereafter "Board"), a Petition of Stephan Scott Corder, M.D. (hereafter "Respondent") for Review of Certain Issues Decided in Order of May 6, 1991 served and made on May 6, 1991 by Michael A. Barbara, Presiding Officer in the above-entitled case.

NATURE OF CASE

An ex parte Order of Emergency Suspension of License was issued by the Board on March 13, 1989, temporarily suspending Respondent's license (confidential)

(confidential)

The Order was served personally on Respondent on March 13, 1989. Respondent admits that he has refused to obey the Order of March 13, 1989, contending that said Order is unlawful and void.

On May 1, 1990, the Board, through its Disciplinary Counsel, Joseph M. Furjanic, filed a Petition to take disciplinary action

against Respondent for violation of the Order of March 13, 1989,  
(confidential) [On June 22, 1990,  
an Amended Petition was filed correcting the statutory provision  
of K.S.A. 1988 Supp. 65-2836(k)]. Also on May 1, 1990, Michael A.  
Barbara was appointed Presiding Officer in this matter.

A pretrial conference was conducted on March 6, 1991, and on  
April 8, 9, 10, 11 and 12, 1991 an evidentiary hearing was  
conducted. This matter was then taken under advisement by the  
Presiding Officer.

On May 6, 1991, the Presiding Officer issued an Initial Order  
entitled "Findings of Fact, Conclusion of Law and Memorandum  
Opinion". In the Initial Order, the Presiding Officer determined  
there were nine issues to be decided. The Board has been requested  
to and has determined it will exercise review of the two issues as  
requested by Respondent.

In the Initial Order, the Presiding Officer made ten  
separately numbered Findings of Fact and six separately numbered  
Conclusions of Law on three issues, of which two of these issues  
are under review by the Board pursuant to Respondent's request.  
These are set forth on pp. 4-13 of the Initial Order.

In the Memorandum Opinion of the Presiding Officer set forth  
on pp. 22 and 23, the Presiding Officer states as follows:

(confidential)

Administrative notice is taken that Respondent, through his counsel, filed a Petition for Review of Certain Issues Decided in Order of May 6, 1991 in accordance with the Kansas Administrative Procedure Act. Thereafter, the Board issued a Notice of Intention to Exercise Review of Initial Order which was filed May 22, 1991 and served on that date upon the attorneys for the Board and Respondent setting the review for 10:00 a.m. on June 8, 1991.

Members present were: Franklin Bichlmeier, M.D., President; John White, D.O., Vice-President; Donald Bletz, M.D.; Jimmy Buller, D.O.; Edward Fitzgerald, M.D.; Harold Guldner; Tom Greene, D.C.; Mark Hatesohl, D.C.; Cameron Knackstedt, D.O.; Graciela Marion; Joseph Philipp, M.D.; Irwin Waxman, D.P.M.; Kenneth Wedel, M.D.; Ronald Zoeller, D.C. Also present were: Lawrence T. Buening, Jr., General Counsel for the Board; Steve A. Schwarm, Litigation Counsel for the Board; Respondent appeared in person and by and through his counsel, Alan V. Johnson.

Counsel for Respondent submitted Respondent's Brief Regarding Review of Initial Order and presented oral arguments in support thereof. Litigation Counsel had filed a Memorandum of Law In Support of Agency Action on June 7, 1991 and presented oral arguments. Thereafter, the Board went into a closed session for deliberation of quasi-judicial matters as authorized by K.S.A. 77-4318. Following a return to an open meeting, the Board, by motion made, seconded and carried continued deliberation on this matter in light of the voluminous record involved.

THEREUPON, on August 17, 1991, the Board continued deliberations on this matter. Board members present on August 17, 1991 are: John P. White, D.O., President; Rex A. Wright, D.C., Vice-President; Franklin Bichlmeier, M.D.; Donald Bletz, M.D.; Howard Ellis, M.D.; Edward Fitzgerald, M.D.; Harold Guldner; Mark Hatesohl, D.C.; Graciela Marion; Irwin Waxman, D.P.M.; Kenneth Wedel, M.D.; Ronald J. Zoeller, D.C.; and Richard A. Uhlig. The Board's General Counsel, Lawrence T. Buening, Jr. appeared in person. Thereafter, the Board went into a closed session for deliberation of quasi-judicial matters as authorized by K.S.A. 77-4318 and returned to an open meeting.

After considering the record, the arguments and statements of counsel, Respondent's Brief and argument before the Board of Healing Arts, Litigation Counsel's Memorandum of Law, and being otherwise duly advised in the premises, the Board upon motion duly made, seconded and carried makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. That the Presiding Officer's Finding of Fact No. 1 set forth on p. 4 of the Initial Order should be amended to read as follows:

1. During the times relevant to this proceeding,  
Richard G. Gannon ~~is~~ was the duly qualified Executive Director of the Board with responsible for the overall function of the agency ~~in~~ including the administration

sitting as Presiding Officer for procedures under the Kansas Administrative Procedures Act (K.S.A. 77, Art. 5). He also ~~sits~~ sat as Presiding Officer ~~on~~ for emergency actions. Such authority had been delegated to Gannon by the Board. (Tr., pp. 53-54).

2. That the Presiding Officer's Finding of Fact No. 2 set forth on p. 4 of the Initial Order should be amended to read as follows:

2. In early December 1988, Steven French, a Medical Investigator with the Board saw a tabloid in a supermarket with an article entitled "They're Coming." He noticed that the article referred to Respondent. The magazine was dated December 13, 1988. Remembering the name because of

(confidential)

(confidential)

French purchased a copy and brought it back to the Board's office. (Exh. 1, pp. 1 and 2 and Tr., pp. 424-425). French obtained a copy of the Ottawa newspaper which contained an article of an interview with Respondent by a news reporter entitled, "Ottawa Lands in Middle of UFO Tale." (Exh. 1, pp. 3 and 4). These exhibits were given to Mr. Gannon and Mr. Furjanic, Disciplinary Counsel for the Board. Investigation proceeded to inquire into this matter. (Respondent's Exh. B).

3. That Finding of Fact No. 3 as set forth on pp. 4 and 5 of the Initial Order be supplemented as follows:

(confidential)

4. That Finding of Fact No. 4 be amended and supplemented as follows:

4. On March 8, 1989, French received a telephone call from Tony Delatore, Ottawa detective, and Larry Stewart, Secret Service Agent, informing French that Respondent had written a letter, dated February 15, ~~1984~~ 1989, addressed to the Defense Intelligence Agency,

Director of the D.I.A., Pentagon, Washington, D.C. (Exh. 1, pp. 54-55). Furjanic directed French to accompany Stewart to Ottawa to confer with Respondent. They met with Respondent, who admitted that he sent the letter. Further, Respondent informed them that:

(confidential)

5. That Finding of Fact No. 5 be supplemented as follows:

(confidential)

(confidential)

6. That Finding of Fact No. 6 be supplemented as follows:

(confidential)

7. That Finding of Fact No. 7 be supplemented as follows:

(confidential)

8. That Finding of Fact No. 8 of Presiding Officer as set forth on pp. 6-9 of Initial Order be accepted and adopted by the Board.

9. That Finding of Fact No. 9 was incorrectly noted as No. 7 on p. 9 of the Initial Order and should be amended to reflect as



No. 9. Except as thus amended, Finding of Fact No. 9 is adopted by the Board.

10. That Finding of Fact No. 10 is adopted by the Board.

That Findings of Fact of the Presiding Officer should be supplemented by the addition of Finding of Fact No. 11 as follows:

11. Respondent testified that his beliefs were primarily religious in nature and, in his opinion, have no effect upon the manner in which he practices medicine. (Tr., pp. 444-508, 578-692.) During the course of Respondent's testimony, the following was provided:

(confidential)

particular instance I've not been able to do that for sure. (Tr., pp. 450-451).

12. The Initial Order of the Presiding Officer should be supplemented by adding Finding of Fact No. 12 as follows:

(confidential)

13. The Initial Order of the Presiding Officer should be supplemented by adding Finding of Fact No. 13 as follows:

13. Opinions from the two non-physician witnesses at the adjudicative hearing before Presiding Officer Barbara and opinions of other physicians in Ottawa were not presented to Richard Gannon prior to the issuance of the Emergency Order of Suspension on March 13, 1989.

#### CONCLUSIONS OF LAW

1. Conclusion of Law No. 1 set forth by the Presiding Officer on pp. 11-12 of the Initial Order is accepted by the Board.

2. Conclusion of Law No. 2 on p. 12 of the Initial Order is amended in its entirety to read as follows:

2. The aforementioned findings of fact, as amended and supplemented by this Order, establish that the Board has probable cause to believe that Respondent had the inability to practice medicine and surgery.

3. Conclusion of Law No. 3 is hereby accepted by the Board.

4. Conclusion of Law No. 4 is hereby accepted by the Board.

5. Conclusion of Law No. 5 is hereby accepted by the Board.

6. Conclusion of Law No. 6 is hereby accepted by the Board.

The Board makes the following additional Conclusions of Law:

7. K.S.A. 65-2801 recognizes that the practice of the healing arts is a privilege and is not a natural right of individuals and that the granting of that privilege and its subsequent use, control and regulation is necessary to ensure the public is properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct.

8. The Board was created for the purposes of administering the Healing Arts Act. (K.S.A. 65-2812).

9.

(confidential)

(confidential)

10. The Board, as the Respondent in this case, is in the business of preventing harm. Its functions are principally curative on behalf of the public and remedial in terms of the offending health care professional (Memorandum Opinion and Entry of Judgment, p. 19, Williams v. Kansas State Board of Healing Arts, Shawnee County District Court, Case No. 90-CV-2304).

11.

(confidential)

(confidential)

#### ORDER AND DISCIPLINARY ACTION

NOW, THEREFORE, based upon the aforementioned Findings of Fact and Conclusions of Law, the Board enters the following order:

A. The Memorandum of Opinion of the Presiding Officer as set forth on pp. 22-23 of the Initial Order are adopted by the Board, incorporated herein and made the Order of the Board except as hereafter modified.

B. The following contained in the Memorandum of Opinion is not adopted by the Board nor made a part of the Order of the Board:

(confidential)

C. It is further ordered that the Order of Emergency Suspension of License issued March 13, 1989 was a valid order of the Board and remains in effect.

D. (confidential)

(confidential)

E. For his violation of lawful order of the Board (confidential)  
(confidential) the license of Respondent should be indefinitely suspended.

F. Costs of this proceeding are assessed against Respondent. These costs are those as in ordinary civil actions in the District Court as this case was heard and Initial Order entered prior to the 1991 amendment to K.S.A. 65-2846.

**NOTICE REGARDING RELIEF FROM THIS ORDER**

This Order is a Final Order. Any party may file a "Petition for Reconsideration" with the Board within 15 days of service of


this Order. Such Petition is not a prerequisite for seeking judicial review.

Judicial review of this Order may be sought by filing a Petition for Judicial Review in the District Court in the State of Kansas, County of Shawnee, Third Judicial District, or in another district wherein venue is proper along with payment of the docket fee as required by K.S.A. 60-2201. Such Petition is timely if filed within 30 days of this Order, but such time is extended during the pendency of timely attempts to exhaust administrative remedies.

This Order is effective upon service, but may be stayed in accordance with K.S.A. 77-528 and K.S.A. 77-616.

Dated this 29<sup>th</sup> day of August, 1991.

KANSAS STATE BOARD OF HEALING ARTS

  
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JOHN P. WHITE, D.O.  
President

**CERTIFICATE OF SERVICE**

I, Lawrence T. Buening, Jr., hereby certify that on the 29<sup>th</sup> day of August, 1991, a true and correct copy of the above and foregoing FINAL ORDER was deposited in the United States mail, postage prepaid, to the following:

Stephan Scott Corder, M.D.  
R.R. 2, Box 362  
Ottawa, Kansas 66067

Alan V. Johnson  
SLOAN, LISTROM, EISENBARTH,  
SLOAN & GLASSMAN  
700 Kansas Avenue, Suite 714  
Topeka, Kansas 66603

and a copy hand-delivered to:

Steve A. Schwarm  
Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, Kansas 66603

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LAWRENCE T. BUENING, JR.