

- Dr. [Mindy] Abbey and her husband agreed to be compensated by Vision Doctors on the basis of a set base salary and an additional fee ('exam bonus') for each full eye exam performed. In order to receive exam bonuses, Dr. [Mindy] Abbey and her husband reported the number of full eye exams they each performed on a bi-weekly basis to Vision Doctors' external payroll accountant.

- Relying on the statements provided by Dr. [Mindy] Abbey and her husband reflecting the number of exams performed, their exam bonuses were added to their salaries in their bi-weekly checks.

- In August 2010, Vision Doctors discovered the number of full eye exams reported for Dr. [Mindy] Abbey and her husband exceeded the number they had actually performed. As a result, the Abbeyes each received bonus checks substantially larger than what they were entitled to receive for optometry services they had not actually performed.

- After discovery of the inflated numbers, Dr. Gordon further investigated and determined the inflated exam numbers for Dr. [Mindy] Abbey and her husband had occurred beginning in 2000 and had escalated over time until the discovery in 2010. The amount of money paid to Dr. [Mindy] Abbey on 18,100 fraudulent exams from 2000 to 2010 totaled \$282,487.00 and the amount of money paid to Dr. [Mindy] Abbey's husband on 19,608 fraudulent exams from 2000 to 2010 totaled \$300,573.00. The total amount paid to Dr. [Mindy] Abbey and her husband for fraudulent exams over this time period was \$583,060.00.

- On May 27, 2013, U.S. District Court Judge Eric F. Melgren sentenced Wade Abbey. In declining to depart downward from the sentencing guidelines as requested by Wade Abbey, Judge Melgren noted the lack of remorse by Wade Abbey in the fraudulent obtainment of monies through a purported format of justification. Judge Melgren found the "white collar" crimes at issue were serious offenses. Judge Melgren also openly expressed

his displeasure with the Government's decision to drop criminal charges against Dr. [Mindy] Abbey, who was present at the sentencing hearing.

- Notwithstanding her husband's guilty plea and admission of a longstanding fraudulent scheme, Dr. [Mindy] Abbey continued to defend the civil suit brought by Vision Doctors. On or about August 20, 2013, Dr. Gordon dismissed the civil suit on the grounds that he could not afford to continue with the suit."

4. During the discussion portion of her Initial Order, Judge Tunnell included the following conclusions:

- "If Dr. [Mindy] Abbey believed she was not adequately compensated for her work with Dr. Gordon, she could have quit or renegotiated her agreement. It was not only illegal but unethical to falsify information to increase her salary.

- Dr. [Mindy] Abbey's husband admitted and pled guilty to receiving money in the amount of \$583,060.00 from the scheme to defraud, \$282,487.00 of which were fees obtained for Dr. [Mindy] Abbey.

- While it appears that Wade Abbey submitted the statements reflecting the number of exams performed by Dr. [Mindy] Abbey to the accountant, it is unfathomable that Dr. [Mindy] Abbey, a well educated and obviously intelligent professional, did not know that her husband was providing statements that were false and inflated beyond the number of full eye exams she was actually performed. The magnitude of the fraudulent inflation was certainly not insignificant.

- Wade Abbey admitted to having received \$583,060.00 from the fraudulent scheme from Vision Doctors. These are monies that Dr. [Mindy] Abbey knew about and had access to through their joint checking account. Other than one settlement offer, which the undersigned considers was not a good faith offer, there has been no effort taken by Dr. [Mindy] Abbey to reimburse or otherwise make amends to Vision Doctors for the excess and

fraudulently obtained compensation she received in the admitted fraudulent scheme. Dr. [Mindy] Abbey argues that she does not have the funds to repay Dr. Gordon, however, she utilized some of her financial resources to vigorously defend the civil case filed by Dr. Gordon, even after Wade Abbey had pled guilty to the long standing fraudulent scheme. This placed an additional financial burden on Dr. Gordon in addition to that which he suffered as a result of the Abbey's scheme defrauding him out of over a half a million dollars."

5. In conclusion, Judge Tunnell held:

"The Board has established by competent and substantial evidence that Dr. [Mindy] Abbey has violated K.S.A. 65-1516(b)(3), K.S.A. 65-1516(b)(8), K.S.A. 65-1516(b)(9) and K.S.A. 65-1516(b)(10) by: 1) directly receiving a fee or other compensation for professional services she did not actually and personally render; (2) obtaining a fee by fraud, deceit or misrepresentation; (3) using false and fraudulent statements in a documents connected with the practice of optometry; and (4) engaging in conduct that caused harm to the public. Dr. [Mindy] Abbey has failed to take responsibility for her own involvement as a beneficiary in the admitted fraudulent scheme."

6. When the Board determined not to review Judge Tunnell's Initial Order, that order became a final order of the Board, subject only to appeal to the District Court of Shawnee County, Kansas. No appeal was taken.

II. CONCLUSIONS OF LAW AND FACT

Vakas v. Kansas Board of Healing Arts, 248 Kan. 589, 808 P.2d 1355 (1991)¹ is the leading Kansas Supreme Court decision addressing what a licensing agency, such as the Optometry Board, should consider when faced with an application to reinstate a revoked license. The *Vakas* Court found the following eight factors relevant in determining if a license to practice medicine should be reinstated:

- (1) The present moral fitness of the petitioner,
- (2) The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession,

¹ At the time relevant to the *Vakas* decision, the Healing Arts Act contained a provision allowing reinstatement of a revoked license that was identical to the provision found in the Optometry Act found at K.S.A. 65-1521.

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- (3) The extent of petitioner's rehabilitation,
- (4) The seriousness of the original misconduct,
- (5) Conduct subsequent to discipline,
- (6) The time which has elapsed since the original discipline,
- (7) The petitioner's character, maturity, and experience at the time of revocation, and
- (8) The petitioner's present competence in the skills of the profession.

See *Vakas*, 248 Kan. at 600. The eight factors are now commonly referred to as the "Vakas Factors." The *Vakas* Court also noted that, for the licensing board, "[t]he objective in determining whether to reinstate a license is the same objection in deciding whether to grant a license initially – to exclude the impotent and unscrupulous from the practice...". *Vakas*, 248 Kan. at 602. Although the objective is the same, the burden is different. The *Vakas* Court stated that a person "seeking reinstatement has an even greater burden than when he was initially granted a license because he must overcome the prior finding by the Board as to his fitness to practice. . .". *Id* at 608. In fact, the *Vakas* Court noted that "[t]he conduct which results in revocation of a license . . . may be so serious in and of itself as to preclude reinstatement." *Id*. Ultimately, the decision of whether to deny or grant reinstatement is left to the discretion of the Board. In exercising that discretion the goal of the Board should be protection of the public. "The optometry law was deemed necessary by the legislature, in the interest of public health, safety, and welfare to provide statutes concerning the granting of that privilege and its use, control, and regulation to the end that *the public should properly be protected* against unprofessional, unauthorized and unqualified practice of optometry." (emphasis added). *State ex rel. Londerholm v. Doolin*, 209 Kan. 244, 257, 497 P.2d 138 (1972).

Based upon the evidence submitted at the hearing, the foregoing findings and conclusions and the severity of the conduct that lead to the revocation of Applicant's license to practice Optometry in the State of Kansas, the Board determines that Applicant's application for reinstatement should be DENIED.

III. FINAL AGENCY ORDER

THEREFORE, the Board orders that Applicant's application for reinstatement of her license to practice Optometry in the State of Kansas is hereby DENIED.

IV. NOTICES


Within fifteen (15) days after service of this Final Agency Order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

Within the time limits established in K.S.A. 77-613, either party may seek judicial review of this Final Agency Order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Jan Murray
Executive Officer
Kansas Board of Examiners in Optometry
3109 W. 6th Street, Suite B
Lawrence, KS 66049

IT IS SO ORDERED.

1-15-2016
Date



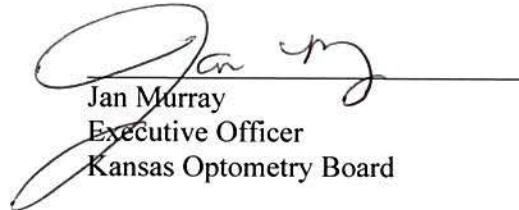
RON HANSEN, OD
Acting President
Kansas Board of Examiners in Optometry

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 19th day of January, 2016, deposit in the United States mail, postage prepaid, a copy of the foregoing FINAL AGENCY ORDER, properly addressed to the following:

Mindy Abbey
4615 Mark Twain
Derby, KS 67037

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FRIEDEN, UNREIN & FORBES, LLP
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Jan Murray
Executive Officer
Kansas Optometry Board