

BEFORE THE KANSAS BOARD OF EXAMINERS IN OPTOMETRY

In The Matter Of)
) File No. 2016-2
WADE ABBEY)
_____)

FINAL AGENCY ORDER

On October 2, 2015 The Kansas Board of Examiners in Optometry (“Board”) conducted a hearing regarding the application of Wade Abbey (“Wade Abbey” or “Applicant”) for reinstatement of his Kansas license to practice of Optometry. The Applicant appeared in person and through counsel Stephen E. Robison of Fleeson Gooing Coulson & Kitch, L.L.C. Randall J. Forbes appeared as Disciplinary Counsel for the Board. After considering the evidence admitted at the hearing and hearing the statements of counsel, the Board makes the following findings and conclusions.

I. FINDINGS OF FACT

1. On April 18, 2013, the Board entered a Final Order, based upon the stipulation of Wade Abbey, which Final Order revoked Wade Abbey’s license to practice optometry in the State of Kansas. The revocation was based upon Wade Abbey’s admission that he had engaged in a scheme to defraud his employer, Vision Doctors of Optometry, resulting in Wade Abbey receiving \$586,060.00 he was not entitled to. Based upon the same conduct, Wade Abbey was also found guilty of crimes by the United States District Court for the District of Kansas.

2. The Board found Wade Abbey’s conduct justified revocation of his Kansas optometry license based upon the following provisions of the Optometry Law:

A. “K.S.A. 65-1517(c). The licensee has been convicted of a felony, whether or not related to the practice of optometry.”

B. “K.S.A. 65-1517(b). The licensee has committed an act of unprofessional conduct or professional incompetence.” Specifically, the Board found Wade Abbey guilty of having willfully engaged in the following acts of unprofessional conduct:

- K.S.A. 65-1516(b)(8). The use of any false, fraudulent or deceptive statement in any document connected with the practice of optometry.
- K.S.A. 65-1516(b)(9). Obtaining any fee by fraud, deceit or misrepresentation.
- K.S.A. 65-1516(b)(10). Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

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 is. 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,
- (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

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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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).

The Board feels that an insufficient amount of time has elapsed since the revocation of Applicant’s license to practice Optometry in the State of Kansas and 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 his 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:

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Jan Murray
Executive Officer
Kansas Optometry Board