

FILED

JAN 25 2019

Wyoming Board
of Medicine

**BEFORE THE
WYOMING BOARD OF MEDICINE**

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| IN THE MATTER OF THE |) | |
| PETITION FOR REINSTATEMENT OF: |) | Docket No. 17-12 |
| John S. Sappington, M.D. , Petitioner. |) | OAH Docket No. 17-118-052 C102 |

**ORDER ALLOWING WITHDRAWAL OF THE PETITION FOR
REINSTATEMENT**

THIS MATTER having come before a hearing panel of the Wyoming Board of Medicine (Board) consisting of Ms. Val Burgess; Valerie Goen, PA-C; Thor Hallingbye, M.D.; René Hinkle, M.D.; Michael Jording, M.D.; Ms. Jody McGill; and Melinda Poyer, D.O.; during its regular Board meeting on January 25, 2019, upon the presentation of PETITIONER’S MOTION TO WITHDRAW PETITION FOR REINSTATEMENT (MOTION) filed by John S. Sappington, M.D. (Petitioner) and RESPONSE TO PETITIONER’S MOTION TO WITHDRAW PETITION FOR REINSTATEMENT (RESPONSE) filed by the duly assigned Application Review Committee, Anne MacGuire, M.D. (Respondent); Petitioner appeared by and through counsel, Meri v. Geringer, Esq., and Respondent appeared by and through counsel, Bill G. Hibbler, Esq., Board Prosecutor; the Board having considered the request, RESPONSE, and being otherwise advised in the premises finds, concludes, and orders as follows:

I. JURISDICTION

The Board is the sole, exclusive, and duly-authorized licensing, regulatory, and administrative agency in the State of Wyoming regarding the practice of medicine as authorized by the Wyoming Medical Practice Act, Wyo. Stat. Ann. §§ 33-26-101 to -601.

The Board may reinstate a license to practice medicine in Wyoming following a petition for reinstatement. Wyo. Stat. Ann. § 33-26-406.

Therefore, the Board has jurisdiction over Petitioner and his petition for reinstatement.

II. STATEMENT OF THE CASE

On March 22, 2017, the Board office received Petitioner's petition for reinstatement of his Wyoming physician license.

On December 17, 2018, the Board office received Petitioner's MOTION. On January 16, 2019, Respondent filed RESPONSE.

III. ISSUES AND CONTENTIONS

The sole issue in this matter is whether the Board should accept Petitioner's request to withdraw his petition for reinstatement of his Wyoming physician license.

IV. FINDINGS OF FACT

1. Previously, the Board issued Petitioner a license to practice medicine in Wyoming.
2. In 2011 and 2013, Petitioner requested reinstatement of his Wyoming physician license. Subsequently, Petitioner withdrew those petitions.
3. On March 22, 2017, the Board office received Petitioner's petition for reinstatement of his Wyoming physician license.
4. On December 17, 2018, the Board office received Petitioner's MOTION, fully incorporated herein.

5. On January 16, 2019, Respondent filed RESPONSE, fully incorporated herein.

6. On January 25, 2019, the Board held a hearing to consider Petitioner's MOTION and Respondent's RESPONSE.

V. CONCLUSIONS OF LAW

7. The Findings of Fact, paragraphs 1 – 6, are fully incorporated herein.

8. Statutory enactments, such as the Wyoming Medical Practice Act, are presumed to be constitutional. *Hoem v. State*, 756 P.2d 780, 782 (Wyo. 1988).

9. "Licensure acts such as the [Medical Practice Act] are passed for the express purpose of affording the public protection[.]" *Allhusen v. State by and through Wyo. Mental Health Professions Licensing Bd.*, 898 P.2d 878, 885 (Wyo. 1995) (citing *Mapes v. Foster*, 266 P. 109, 116 (Wyo. 1928)).

Principles and Rules of Law – Withdrawal of Reinstatement Application

10. The Wyoming Medical Practice Act establishes the general powers and authority of the Board. Specifically, the Board is empowered and directed to "[g]rant, refuse to grant, suspend, restrict, revoke, reinstate or renew licenses to practice medicine [.]" Wyo. Stat. Ann. § 33-26-202(b)(i).

11. The Wyoming Medical Practice Act establishes the requirements for seeking reinstatement. Wyo. Stat. Ann. § 33-26-406.

12. The Wyoming Medical Practice Act establishes that following a contested case hearing, the Board may "[a]ssess part or all of the cost of the proceeding against a disciplined licensee[.]" Wyo. Stat. Ann. § 33-26-405(a)(viii).

13. Under the Board's administrative rules, "costs" are defined as:

[T]hose expenses incurred in a hearing to deny, refuse to renew, reactivate, reinstate, revoke, restrict, place conditions upon, or suspend a license pursuant to W.S. 33-26-405(a)(viii) and includes, but is not limited to, reasonable attorneys' fees incurred by the board, hearing officer fees, service fees, subpoena fees, reporter fees, lay and expert witness and consultant fees, travel and per diem expenses, deposition costs and other costs and expenses incurred in the investigation, discovery, preparation and hearing of any disciplinary matter.

BD. OF MED. RULES, Ch. 1, § 3(s), 052.0001.1.10182017.

Application of Principles and Rules of Law to Facts - Withdrawal of Reinstatement

Application

14. The Board finds and concludes Petitioner's request to withdraw his petition for reinstatement of his Wyoming physician license should be ACCEPTED.

15. The Board has incurred costs in hearing this matter. In Respondent's RESPONSE, Respondent provided evidence of some costs incurred in responding, preparing, and hearing Petitioner's request, and subsequent withdrawal, to reinstate his Wyoming physician license totaling more than \$7,410.00.

16. Given Petitioner's history of petitioning for reinstatement then withdrawing those petitions, the Board concludes Petitioner shall pay partial costs in the total amount of \$7,410.00, payable to "Wyoming Board of Medicine," to be paid within ninety (90) days of the effective date of this ORDER. However, the Board finds that staying payment of the partial costs is appropriate under the circumstances. If Petitioner seeks reinstatement in Wyoming, the stay shall be lifted and Petitioner shall pay the partial costs in the total amount of \$7,410.00, payable to "Wyoming Board of Medicine," to be paid within ninety (90) days of submission of a petition for reinstatement in Wyoming.

Principles and Rules of Law – Final Agency Decision

17. The Wyoming Medical Practice Act provides:

Final findings of fact, conclusions of law, orders of the board entered and any consent decree, stipulation or agreement to which the board is a party in any disciplinary docket of the board are public documents.

Wyo. Stat. Ann. § 33-26-408(c).

18. The Wyoming Medical Practice Act provides:

The board shall promptly report and provide all final orders entered by it to the chief of the medical staff and hospital administrator of each hospital in which the licensee has medical staff privileges and to all appropriate agencies including the federation of state medical boards, the national practitioner data bank and other state medical boards.

Wyo. Stat. Ann. § 33-26-408(d); *see also* BD. OF MED. RULES, Ch. 7, § 17, 052.0001.7.09102015.

19. The Wyoming Medical Practice Act provides for “[j]udicial review of the findings of the board may be obtained pursuant to the Wyoming Administrative Procedure Act.” Wyo. Stat. Ann. § 33-26-407(a).

20. The Wyoming Administrative Procedures Act provides:

[A]ny person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction resides or has its principal place of business.

Wyo. Stat. Ann. § 33-26-408(d); *See also* Wyo. R. App. P. 12.01.

21. Wyoming Rules of Appellate Procedure provides:

In a contested case, or in an uncontested case, even where a statute allows a different time limit on appeal, the petition for review shall be filed within 30 days after service upon all parties of the final decision of the agency or denial of the petition for a rehearing, or, if a rehearing is held, within 30 days after service upon all parties of the decision.

Wyo. R. App. P. 12.04(a).

Application of Principles and Rules of Law to Facts – Final Agency Decision

22. This ORDER is a final board action and is a public document.

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ORDER AND SIGNATORY PAGE FOLLOW.]

ORDER


IT IS HEREBY ORDERED, based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, that Petitioner's request to withdraw his petition for reinstatement of his Wyoming physician license is **ACCEPTED**.

IT IS FURTHER ORDERED Petitioner shall pay partial the costs of the proceeding in this matter in the amount of \$7,410.00, payable to "Wyoming Board of Medicine," to be paid within ninety (90) days of the effective date of this ORDER. However, payment of the partial costs shall be immediately **STAYED**. If Petitioner seeks reinstatement in Wyoming, the stay shall be lifted and Petitioner shall pay the partial costs in the total amount of \$7,410.00, payable to "Wyoming Board of Medicine," to be paid within ninety (90) days of submission of a petition for reinstatement in Wyoming.

IT IS FURTHER ORDERED this ORDER ALLOWING WITHDRAWAL OF THE PETITION FOR REINSTATEMENT shall constitute a final decision of the Board. Additionally, this ORDER ALLOWING WITHDRAWAL OF THE PETITION FOR REINSTATEMENT is a public document.

DATED this 25th day of January, 2019.

FOR THE BOARD:



Michael Jording, M.D.
Board President

APPROVED AS TO FORM:



Jessica Frint, Esq.
Board Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2019, a true and correct copy of the foregoing ORDER ALLOWING WITHDRAWAL OF THE PETITION FOR REINSTATEMENT was served as indicated below and addressed to the following:

Corrine E. Rutledge – Attorneys for Petitioner - **via Regular U.S. Mail**
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Connie Schepp
Wyoming Board of Medicine