

**FILED**

**AUG 18 1998**

**BEFORE THE BOARD OF THE HEALING ARTS  
OF THE STATE OF KANSAS**

**KANSAS STATE BOARD OF  
HEALING ARTS**

In the Matter of: )  
)  
**DILLIS L. HART, M.D.** )  
License No. 04- 13671 )  
\_\_\_\_\_ )

Case No. 97-00101,  
95-00193

**FINAL ORDER**

NOW ON THIS Fifteenth Day of August, 1998, comes before the State Board of Healing Arts Respondent's Petition for Review of Initial Order. Respondent appears through Thomas A. Wood, Attorney at Law. Petitioner appears through Stacy L. Cook, Associate Counsel.

Having the agency record before it, and after hearing arguments of Counsel, the Board accepts the Findings of Fact, Conclusions of Law and Order as stated in the Initial Order, and adopts those provisions by reference.

Petitioner moves that the costs of this proceeding be assessed against Respondent. The Board notes that Respondent participated in the proceeding throughout. Respondent did require that the Board litigate matters which might better have been resolved informally. For example, from the beginning Respondent would not concede that he had been sanctioned by a hospital for reasons constituting grounds for discipline under the healing arts act. Additionally, the vigor with which some issues was disputed was not necessarily warranted. Respondent's prior counsel continued to argue that Petitioner possessed additional expert witness reports, even though steps were taken to determine that no such reports existed. This assertion ultimately resulted in a delay of the proceeding for several months while Respondent employed substitute counsel. It is appropriate that costs as authorized by law be assessed. Items allowable as costs in this proceeding are set out in the Kansas statutes, specifically at K.S.A. 60-2003 and 65-2846. The

cost of court reporting transcripts are specifically authorized at K.S.A. 65-2846. The Board approves Petitioner's request for costs of court reporter fees in the amount of \$2107.00.

Expenses relating to obtaining medical records and to expert witness fees are not ordinarily allowed as costs, and no specific justification for allowing for those expenses as costs appears from the record. The request to assess those costs against Respondent is denied.

**IT IS, THEREFORE ORDERED,** that Respondent's license is limited as follows:

- a. Respondent is prohibited from performing any act of invasive surgery except in strict compliance with this order;
- b. Prior to performing any act of invasive surgery, Respondent must obtain a pre-surgical consult from a general surgeon who is licensed without limitation in the State of Kansas, who is Board certified in general surgery, and whose professional practice is performed at least 50% in the State of Kansas;
- c. Within seven days following discharge of any patient upon whom Respondent performs an act of invasive surgery, Respondent must obtain a post-surgical review from a general surgeon who is licensed without limitation in the State of Kansas, who is Board certified in general surgery, and whose professional practice is performed at least 50% in the State of Kansas;
- d. Respondent must maintain and provide a weekly log identifying each patient upon whom Respondent performed any act of surgery during that week, and provide a copy of the log to the Board before the end of the following week, whether or not any surgeries were actually performed;
- e. A copy of each pre-operative consultation and post-operative review must

be included as part of the patient's record maintained by Respondent in his office;

f. For purpose of this limitation, the term "invasive surgery" does not include laparoscopy for diagnostic purposes, thoroscopy for diagnostic purposes, endoscopy for diagnostic purposes, vascular access procedures, or plastic surgery to the skin and immediate subcutaneous tissues;

g. In case of a bona fide emergency creating an imminent danger to human life, Respondent may perform invasive surgery without a pre-surgical consult, but the details of the emergency must be reported to the Board within 72 hours following the invasive surgery, the fact of the emergency must be accurately documented in the patient record, and Respondent must maintain a record of post-operative review as with other invasive surgeries limited by this order;

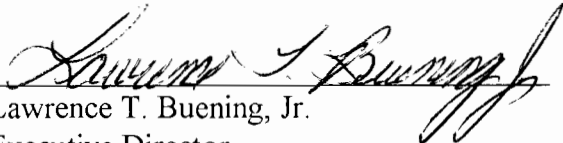
h. Respondent may request modification or termination of this limitation after eighteen months following the effective date of this order.

**IT IS FURTHER ORDERED** that an administrative fine of \$2000 is imposed against Respondent.

**IT IS FURTHER ORDERED** that costs of the proceeding in the amount of \$2107.00 are assessed against Respondent.

**IT IS FURTHER ORDERED** that the administrative fine and costs assessed by this order must be paid within thirty days following the effective date of this order.

**ORDERED THIS** 18<sup>th</sup> day of August, 1998.

  
Lawrence T. Buening, Jr.  
Executive Director

**Notice Regarding Relief**

Please take notice that this is a Final Order. A Final Order is effective upon service. Reconsideration is not a prerequisite to judicial review. However, a party may file a Petition for Reconsideration within 15 days after service of a Final Order. A party may file a Petition for Judicial Review with the District Court, serving a copy upon the Executive Director, 235 S. Topeka Blvd., Topeka, Kansas 66603 within 30 days following service of this order.

**Certificate of Service**

I certify that the foregoing Final Order was served this 18<sup>th</sup> day of August, 1998 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Mr. Thomas A. Wood  
Attorney at Law  
105 S. Broadway, Suite 540  
Wichita, Kansas 67202-4220

Dillis L. Hart, M.D.  
1515 S. Clifton, Suite 300 *MLH*  
Wichita, Kansas 67218

and a copy was hand-delivered to the office of:

Stacy L. Cook  
Associate Counsel  
235 S. Topeka Blvd.  
Topeka, Kansas 66603

A handwritten signature in cursive script, appearing to read "Mark W. Lippert", written over a horizontal line.

**BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS**

IN THE MATTER OF )  
 )  
DILLIS L. HART, M.D. )  
 )  
Kansas License # 014-13671 )

Case # 95-00193  
97-00101

**LICENSEE'S RESPONSE TO  
MOTION FOR APPROVAL OF ASSESSED COSTS**

Licensee submits that there is no legal basis for the assessment of costs against licensee because no final order has been entered in this proceeding. This matter is pending review of the initial order, the hearing for which is scheduled for August 15, 1998. Licensee submits that, unless the final order is adverse to Licensee, K.S.A. 65-2846 requires that the costs be paid from the healing arts fee fund.

Licensee further submits that if the final order is adverse to Licensee a hearing will be required to comply with the requirement of K.S.A. 65-2846 that the board consider all relevant circumstances. Licensee submits that, if the final order should be adverse to him, he is entitled to present a brief and be heard regarding these circumstances and that only if and when such final order is entered will it be possible for him to do so.

Respectfully submitted.



Thomas A. Wood #4851  
105 S. Broadway, Suite 540  
Wichita, KS 67202  
(316) 263-7228  
Attorney for licensee.


## CERTIFICATE OF SERVICE

The undersigned certifies that on July 30, 1998, he filed the original of the foregoing by mail to:

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, KS 66603-3068

and that on the same day he mailed a copy thereof to:

Stacy L. Cook  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, KS 66603-3068



Thomas A. Wood