

**FILED**

**OCT 21 2008**

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

**KS State Board of Healing Arts**

In the Matter of	)	
	)	Docket No. 09-HA-00055
Kansas State Board of Healing Arts	)	
Subpoena Duces Tecum No. 11284	)	
Investigative Case No. 07-00322	)	

**PROTECTIVE ORDER JOURNAL ENTRY**

NOW on this the *21<sup>st</sup>* day of October, 2008, comes on before Board, the Motion For Clarification Or Modification Of Subpoena Duces Tecum Or In The Alternative Objection To Subpoena Duces Tecum Or In The Alternative Motion For Protective Order For Documents Produced Under The Subpoena Duces Tecum Or In The Alternative Motion For Stay Of Board Of Healing Arts Inquiry Based On Board Subpoena request by Licensee. The parties, Kansas Board of Healing Arts Disciplinary Panel and Licensee / Movant Physician, have mutually agreed to a protective order to resolve the issue. After reviewing the motion and otherwise being fully advised in the premises, the Board finds that a protective order is necessary and appropriate.

**Protective Order**

1. A protective order is hereby entered to protect the identity of all patients, referred to in this proceeding, case or investigation. Records that identify a patient shall not be disclosed to any third person except as authorized by statute, by this order or by further order of a Presiding Officer. Prior to any disclosure as permitted by this Protective Order, such as "by further order of a Presiding Officer" except as to paragraphs 3, 4 and/or 5, all parties will be given an opportunity to address such anticipated disclosure to the Presiding Officer either through oral arguments and/or

written briefs. To the extent practicable, patients shall be referred to in arguments, testimony and pleadings solely by a patient number, their initials or in a manner agreed upon by the parties.

2. A protective order is hereby entered to prevent public disclosure of documents that are subject to the peer review privilege as provided in K.S.A. 65-4915. Records that identify the actions, conclusions, deliberations or mental processes of a peer review committee shall not be disclosed to any third person except as authorized by further order of a Presiding Officer. Any presentation of evidence that includes peer review or risk management information covered by this protective order shall be in closed session, as prescribed by K.S.A. 65-4915(c). Any party that has in its possession such peer review documents or believes such documents encompass peer review documents shall clearly mark such document with "PEER REVIEW DOCUMENT" or a similar marking as agreed to by the parties. Any party may challenge such other party's designation before the assigned Presiding Officer.
3. A protective order is hereby entered to prevent the disclosure of any information made confidential or privileged by 42 C.F.R. Part II and K.S.A. 65-2836(i), 65-2839a(d) and (e), 65-4924, and 65-5602.
4. A protective order shall not prohibit a party from disclosing such information to a person who has been engaged as an expert witness, or from otherwise using the information in preparation or presentation of evidence in this proceeding or in any subsequent review. Any party, prior to disclosure to an expert or a party's legal counsel staff, shall inform such person of the protective order and provide a copy of this protective order to such person.

5. A protective order shall not prohibit a party from disclosing such information authorized under K.S.A. 65-2898a. However, with respect to K.S.A. 65-2898a(4), the portion which states, "to an agency with jurisdiction over acts or conduct similar to acts or conduct which would constitute grounds for action under this act", no information shall be released which identifies any patient by name or other personal identifier.

**IT IS SO ORDERED.**

Dated this 21<sup>st</sup> day of October, 2008.

KANSAS STATE BOARD OF HEALING ARTS

Jack Confer by  

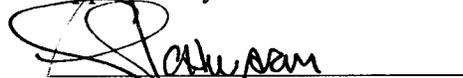

Prepared by:

  
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ATTORNEY FOR BOARD OF HEALING ARTS DISCIPLINARY PANEL

Approved by:

  
Steve A. Schwarm, #13232  
Attorney for Licensee

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555 Kansas Avenue, Suite 101  
Topeka, Kansas 66603-3443

ATTORNEY FOR LICENSEE / MOVANT PHYSICIAN

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served a true and correct copy of the **PROTECTIVE ORDER JOURNAL ENTRY**, by United States mail, Postage prepaid, on this 22 day of October 2008 to the following:

Steve A. Schwarm,  
Attorney for Licensee  
Polsinelli, Shalton, Flanigan Suelthaus PC  
555 Kansas Avenue, Suite 101  
Topeka, Kansas 66603-3443

And a copy was hand-delivered to:

Kathleen Selzler Lippert, #17957  
Litigation Counsel  
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And the original was hand-delivered for filing to:

Jack Confer  
Acting Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

  
Cathy A. Brown