

offered and agreed to which substitutes a demand for the records of a minor child, age three-years, **Confidential** rather than for the records of the minor's mother,

Confidential Additionally, Disciplinary Counsel agrees to modify the subpoena to exclude a demand for the records of patient **Confidential**

After hearing arguments of counsel and having the record before him, the Presiding Officer makes the following findings of fact, conclusions of law and order:

Findings of Fact

1. The Board issued subpoena number 2060 on June 18, 1996, directing Licensee to appear in person before Disciplinary Counsel for the Board and to bring with him certain records in his possession.
2. The subpoena was calculated to reveal evidence relating to the Board's investigation of Licensee's reported use of a biofeedback resonator, to his billing practices, and to his failure to diagnose cancer in patient **Confidential** Though not evident in the subpoena, the Board's investigation includes Licensee's alleged representations of his ability to cure cancer and AIDS. The source of any complaint or information initiating the investigation was not revealed.
3. The scope of the investigation and of the subpoena is limited to information relating to practices which may be grounds for disciplinary action by the Board against Licensee.

Conclusions of Law

4. The Board is authorized by K.S.A. 65-2839a(a) to access records or other physical evidence relating to grounds for disciplinary action when such evidence is maintained and possessed by a licensee. Licensee in this case was compelled to release evidence relating to the Board's investigation even without the subpoena.

5. The Board was additionally authorized by K.S.A. 65-2839a(b) to compel Licensee's attendance to an appropriate investigative inquiry. Whether the inquiry is conducted in the presence of a review committee appointed pursuant to K.S.A. 65-2840c does not impact upon Licensee's duty to attend the interview and to answer the questions under oath. Such review committee has no authority in this case to function beyond assisting in the investigation process by giving expert consultation to Disciplinary Counsel.

6. An administrative agency may investigate upon mere suspicion that the law is being violated, or even just to be assured that the law is not being violated. Licensee is not entitled to a probable cause threshold before being subject to investigation and subpoena.

7. An administrative agency's subpoena generally is valid if it is authorized by law, not too indefinite, and reasonably relevant to the inquiry.

8. Pursuant to K.S.A. 65-2839a(b), the Board must revoke, limit or modify a subpoena if the evidence required does not relate to practices which may be

grounds for disciplinary action or to the subject matter of the investigation, or if the subpoena does not describe the items to be produced with sufficient particularity. Licensee has failed to meet his burden that the subpoena he challenges is invalid.

IT IS THEREFORE ORDERED THAT Licensee appear before the Chiropractic Review Committee on August 15, 1996 at 11:00 a.m. at the Board office, 235 S. Topeka Blvd., Topeka, Kansas, then and there to answer, under oath, questions propounded by Disciplinary Counsel and the members of the committee.

IT IS FURTHER ORDERED THAT Licensee bring with him the complete patient records as identified by the subpoena, as modified, and additionally to bring with him all scientific information in his possession regarding the biofeedback resonator and to explain his use of the equipment to diagnose or treat patients.

ENTERED THIS 22 DAY OF JULY, 1996.

STATE BOARD OF HEALING ARTS

Lance E. Malmstrom D.C.

Lance E. Malmstrom. D.C.

Presiding Officer

Notice Regarding Relief From Final Order

This is a Final Order. It is effective upon service. An aggrieved party may seek relief from this order by filing a petition for judicial review with the District Court. Such petition is not timely unless filed within 30 days after service of this order.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Final Order was served this 22nd day of July, 1996 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Andrea S. Stubblefield
700 SW Jackson, Jayhawk Tower
Roof Garden Suite
Topeka, Kansas 66603

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

Lori Miskel McNett
235 S. Topeka Blvd.
Topeka, Kansas 66603

