

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS** KS State Board of Healing Arts

In the Matter of)	
Jacqueline C. Du Bois, MD.)	KSBHA Docket No. 11-HA00111
)	
Kansas License No. 04-32450)	
_____)	

**FINAL ORDER ON RECONSIDERATION
AND PROTECTIVE ORDER**

NOW on this 7th day of November 2011, comes on for hearing before Presiding Officer, M. Myron Leinwetter, D.O., the reconsideration of the Journal Entry of Final Order filed on July 11, 2011. Jacqueline C. Du Bois, M.D. (“Licensee”) appears in person, and by and through her counsel, Mark W. Stafford of Holbrook & Osborn, P.A. Jessica A. Bryson, Associate Litigation Counsel, appears on behalf of the Board.

Pursuant to the authority granted to Board by K.S.A. 65-2801 *et seq.* and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, the Presiding Officer hereby enters this Final Order on Reconsideration in the above-captioned matter. After reviewing the file, hearing the testimony of Licensee and arguments of both counsel, and being otherwise duly advised in the premises, the Presiding Officer makes the following findings, conclusions and order:

Procedural History

1. Jacqueline C. Du Bois, M.D. (“Licensee”), is licensed to engage in the practice of medicine and surgery in the State of Kansas, License No. 04-32450, and has been so licensed since approximately June 8, 2007.

2. On June 8, 2011, Executive Director Selzler Lippert, in accordance with K.S.A. 2010 Supp. 77-514, and as authorized by K.S.A. 2010 Supp. 65-2836 and K.S.A. 65-2863a,

issued a Summary Order publicly censuring and suspending Licensee's license, and assessing a civil fine of \$500.00 based upon Licensee's failure to provide the Board with lawfully requested information, in violation of K.S.A. 2010 Supp. 65-2836(r).

3. Pursuant to K.S.A. 77-526 and 77-530, the Summary Order became effective as a final order on June 27, 2011, upon expiration of time for Licensee to request a hearing.

4. On or about July 6, 2011, Licensee submitted an untimely written response to the Summary Order and a request for a hearing on the Summary Order.

5. While Licensee's July 6, 2011 response letter did not formally and specifically request reconsideration of a final order, the letter was liberally construed by the Board as a request for reconsideration, and the matter was considered appropriate for reconsideration by the Board under K.S.A. 77-529.

6. On or about July 11, 2011, Executive Director Lippert filed a Journal Entry of Final Order and Grant of Petition for Reconsideration ("Journal Entry") which set forth the date the Summary Order became effective as a final order; granted Licensee's request for reconsideration of the Final Order; and ordered the stay of disciplinary sanctions, including the suspension of Licensee's license, pending the outcome of the hearing on reconsideration.

7. A hearing on reconsideration of the Journal Entry was conducted by the Board appointed presiding officer, M. Myron Leinwetter, D.O. on November 7, 2011.

Findings and Conclusions

8. On or about June 30, 2010, Licensee submitted an online application to renew her license to practice medicine and surgery in Kansas.

9. In her June 30, 2010, renewal application, Licensee answered "yes" to Disciplinary Question [REDACTED] and Disciplinary Question G. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Disciplinary Question G asks, "In the past 12 months do you know of any investigation by or any allegations, complaints, or charges concerning you made to any licensing agency or state or government agency?"

10. Based on the "yes" answers to the disciplinary questions, Licensee would have been electronically prompted to fill out the disciplinary questionnaire, which would have provided further information to the Board regarding the factual basis for and details related to her "yes" answers.

11. Licensee did not complete a disciplinary questionnaire after submitting the online renewal application.

12. At the time of her renewal on June 30, 2010, Licensee was the subject of two Board investigations, one of which concerned her resignation from Geary County Hospital ("GCH").

13. Licensee also holds medical licensure in the State of Texas. Licensure in another state carries with it the possibility that the license holder may be the subject of investigations or other action related to their practice in that state.

14. One Board investigation was closed on July 2, 2010, and a closure letter was sent to Licensee on the same date. The second Board investigation was closed on August 23, 2010, and a closure letter was sent to Licensee on the same date.

15. On August 5, 2010, Dan Riley, Disciplinary Counsel for the Kansas State Board of Healing Arts, sent Licensee a letter requesting that she provide the Board with information regarding the factual basis for and details related to her "yes" answers to the Disciplinary

Question [REDACTED] on her online renewal application. Licensee was asked to provide the following information: [REDACTED]

[REDACTED] Licensee was asked to provide that information within fourteen (14) days from the date of the letter.

16. A separate letter was also sent by Disciplinary Counsel for the Board on August 5, 2010, requesting that Licensee provide information regarding the factual basis for and details related to her "yes" answers to Disciplinary Question G. Licensee was asked to provide the following information: (1) to whom the allegations, complaints or charges were made or by whom initiated the investigation; (2) who made the allegations, complaints, or charges; (3) what the allegations, complaints, or charges were; (4) when she first learned of them; (5) when the act or acts occurred that gave rise to allegations, complaints, charges, or initiation of investigation(s); (6) where the act or act(s) occurred that gave rise to allegations, complaints, charges, or initiation of investigation(s); (7) her explanation of the facts and circumstances surrounding the allegations, complaints, charges, or initiation of investigation(s); (8) the status or outcome; and (9) the name of her attorney if she was represented by one. Again, Licensee was asked to provide the information within fourteen (14) days.

17. Licensee failed to respond to both of the Board's letters of August 5, 2010.

18. On August 23, 2010, Disciplinary Counsel for the Board sent another letter to Licensee regarding her "yes" answers to the disciplinary questions on her renewal application. Licensee was informed that she had not yet responded to the previous Board's request for

information and that her failure to provide legally requested information may subject her to disciplinary action by the Board. Licensee was further informed that an investigation into her failure to respond would be initiated if the Board did not receive the requested information within fourteen (14) days and that, once an investigation was opened, it could be referred to a disciplinary panel, which had the authority to initiate disciplinary action against her license to practice medicine in Kansas.

19. Licensee did not respond to the Board's letter of August 23, 2010.

20. Petitioner alleges that on September 20, 2010, Joshana Offenbach, Associate Disciplinary Counsel for the Board, called Licensee requesting that Licensee send the filled out questionnaire as well as any supporting documents to the Board, in order to determine whether the investigation and peer review concerns were the same matter as were investigated in the previous two Board investigations. Petitioner alleges that Licensee confirmed that she would send the requested information.

21. On October 19, 2010, the Board received a letter from Licensee. In that letter, Licensee alleged that she was called out of a patient's room by a Board attorney who demanded information regarding the complaint. Licensee stated that the attorney would have to get the information [REDACTED] and that she had been cleared by the Board [REDACTED]
[REDACTED]

22. On December 20, 2010, Jacque Anderson, a Special Investigator II for the Board, sent a letter to Licensee advising her that an investigation had been opened due to her failure to respond to the previous letters and provide the necessary information requested by the Board. Licensee was also asked to complete the disciplinary questionnaire that had been previously sent to her.

23. Licensee failed to respond to Special Investigator Anderson's December 20, 2010, letter.

24. Licensee's mother died on December 21, 2010, and had been ill since July of that year. Licensee testified that she had been distracted by providing assistance to her mother during that timeframe.

25. Due to the lack of response and to verify whether the [REDACTED] referenced in Licensee's October 2010 letter was the same matter that had already been investigated, Special Investigator Anderson placed calls to Licensee on February 23, 2011, and March 31, 2011, to obtain additional information from Licensee. SI Anderson left messages identifying herself as an Investigator with the Board and that she needed to speak with Licensee about the investigation.

26. Licensee failed to respond to the two calls or provide any documents requested by Special Investigator Anderson.

27. On or about July 6, 2011, and after receipt of the Summary Order, Licensee submitted disciplinary questionnaire responses for Disciplinary Questions G and [REDACTED] in correlation to her June 30, 2010 renewal application "yes" answers.

28. The Presiding Officer finds that Licensee experienced confusion due to the overlapping nature and timing of the renewal disciplinary questions inquiry, recently closed investigations and new investigation.

29. The Presiding Officer finds that Licensee's lack of responsiveness was due in part to her confusion regarding the Board's multiple inquiries and investigations and her distraction by events in her personal life. The Presiding Officer determines that these are mitigating factors but do not excuse Licensee from her responsibility to appropriately provide requested information to the Board.

30. The Presiding officer finds no evidence to support the likelihood of Licensee misleading the public by her conduct in this matter, and as such, this is a mitigating factor.

31. The Presiding Officer concludes that Licensee violated K.S.A. 2010 Supp. 65-2836(r) of the Healing Arts Act by failing to provide information to the Board which was legally requested.

32. In determining the appropriate sanction for Licensee's conduct, the Presiding Officer gives regard to the importance of the Board's reliance on its licensees' fulfillment of their responsibility to report required and requested information which assists the Board in its role of protecting the public. Inherently, licensees are also obligated to obtain clarification from Board staff when doubt or confusion arises regarding the scope or contents.

33. The Presiding Officer concludes that a lesser sanction in the form of a civil fine in the amount of \$250.00 is warranted in the circumstances.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that the public censure and suspension of Licensee's license to practice medicine and surgery in the State of Kansas are hereby VACATED.

IT IS FURTHER ORDERED that the \$500.00 civil fine assessed against Licensee in the Journal Entry of Final Order filed July 11, 2011, in this matter is AMENDED to an amount of \$250.00, which is **immediately due and owing** to the Board. Payment in the form of a money order, or a check made out to "Kansas State Board of Healing Arts," shall be sent to the following: **Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.**

IT IS FURTHER ORDERED that a **PROTECTIVE ORDER** is hereby entered pursuant to K.S.A. 65-2839a(d), K.S.A. 65-2898a and K.S.A. 65-4915(c) to protect all information containing patient identification, the substance of Board investigations, and peer review decision-making processes, conclusions or final decisions. Such information shall not be disclosed to any third person except as authorized by this order or by further order of the Presiding Officer or the Board.

IT IS FURTHER ORDERED that the Board shall maintain jurisdiction over this matter to issue any future order(s) deemed necessary and appropriate related to Licensee's compliance.

IT IS SO ORDERED THIS 7th **DAY OF** December, 2011, **IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

M. Myron Leinwetter, D.O. by KJS
M. Myron Leinwetter, D.O., Presiding Officer
Kansas State Board of Healing Arts

Prepared by:

Kelli J. Stevens
Kelli J. Stevens, #16032
General Counsel

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER ON RECONSIDERATION AND PROTECTIVE ORDER** was served this 8th day of December, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Jacqueline C. Du Bois, M.D.

[REDACTED]
Junction City, KS 66441

Licensee

Mark W. Stafford

Holbrook & Osborn, P.A.

107 SW 6th Avenue, Suite 210

Topeka, Kansas 66604

Attorney for Licensee

And a copy was hand-delivered to:

Jessica A. Bryson, Associate Litigation Counsel

Kansas State Board of Healing Arts

800 SW Jackson, Lower Level-Suite A

Topeka, Kansas 66612

Katy Lenahan, Licensing Administrator

Kansas State Board of Healing Arts

800 SW Jackson, Lower Level-Suite A

Topeka, Kansas 66612

Melissa Massey, Compliance Coordinator

Kansas State Board of Healing Arts

800 SW Jackson, Lower Level-Suite A

Topeka, Kansas 66612

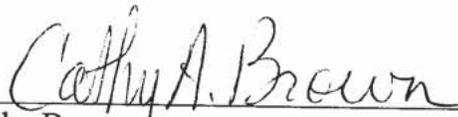
The original was filed with the office of:

Kathleen Selzler Lippert, Executive Director

Kansas State Board of Healing Arts

800 SW Jackson, Lower Level-Suite A

Topeka, Kansas 66612



Cathy Brown
Executive Assistant