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

KS State Board of Healing Arts

In the Matter of)
GREGORY H. MEARS, D.O.)
)
Kansas License No. 05-21870)
_____)

KSBHA Docket No. 13-HA00014

**JOURNAL ENTRY OF FINAL ORDER AND
SATISFACTION OF SUMMARY ORDER**

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through its Executive Director, Kathleen Selzler Lippert, a duly authorized representative of the Board, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, as amended, and upon due consideration of the agency record and applicable statutes and being otherwise duly advised in the premises, finds as follows:

1. On or about September 20, 2012, in accordance with K.S.A. 2011 Supp. 77-514, and as authorized by K.S.A. 2011 Supp. 65-5510, a Summary Order was issued ordering a public censure and civil fine against the license of Gregory H. Mears, D.O. (“Licensee”) for failure to furnish patient records to a patient’s authorized representative within 30 days of the receipt of the authorization.

2. Pursuant to K.S.A. 77-542, the Summary Order notified Licensee that if a written request for hearing was not filed within 15 days following service of the Summary Order the Summary Order would become effective as a Final Order of the Board upon expiration of the time for requesting a hearing.

3. Licensee did not request a hearing on the Summary Order.

4. Pursuant to K.S.A. 77-526 and 77-530, the Summary Order became effective as a Final Order on October 5, 2012.

5. On or about October 12, 2012 Licensee remitted full payment in the amount of \$500.00 to the Kansas State Board of Healing Arts.

6. Licensee has satisfied all requirements of the Summary Order and has no further obligation for compliance.

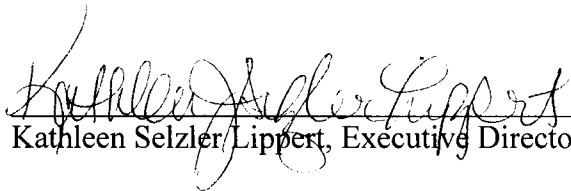
IT IS THEREFORE ORDERED that the Summary Order filed in the above-captioned matter on September 20, 2011 became effective as a Final Order on October 5, 2012.

IT IS FURTHER ORDERED that Licensee has satisfied all requirements of the Summary Order, and is hereby discharged from all requirements of the Summary Order.

IT IS SO ORDERED.

Dated this 3rd day of Jan, 2012.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lippert, Executive Director

CERTIFICATE OF SERVICE

I, the undersigned, hereby certifies that on this 30th day of January, 2013, a true and correct copy of the above and foregoing **JOURNAL ENTRY OF FINAL ORDER AND SATISFACTION OF SUMMARY ORDER**, was served by depositing the same in the United States mail, postage prepaid, addressed to:

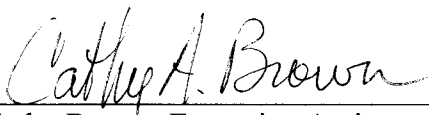
Gergory H. Mears, D.O.
200 Arco Place, # 333
P.O. Box 825
Independence, KS 67301

and a copy was hand-delivered to:

Brandy O. Snead, Associate Litigation Counsel
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, KS 66612

and the original was filed with the office of the Executive Director.



Cathy Brown, Executive Assistant

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KS State Board of Healing Arts

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

In the Matter of)
GREGORY H. MEARS, D.O.)
)
Kansas License No. 05-21870)
_____)

Docket No. 13-HA 00014

SUMMARY ORDER

NOW ON THIS 19th day of September, 2012, this matter comes before Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts (“Board”), in summary proceedings pursuant to K.S.A 77-537. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A 77-542.

Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Gregory H. Mears, D.O. (“Licensee”) was originally issued license number 05-21870 to practice osteopathic medicine and surgery in the State of Kansas on June 19, 1987. Licensee’s current license designation is active, and such license was last renewed on or about October 1, 2011.

2. Licensee's last known mailing address is 200 Arco Place, #333, Independence, Kansas 67301.

3. In January 2011, Mr. Sean Brennan with Kink, Brennan & Albin was retained by a patient of Licensee.

4. On January 25, 2011, Mr. Brennan's client executed a proper medical release that allowed Licensee to provide Licensee's patient records for the patient to Mr. Brennan.

5. On behalf of his client, and pursuant to the medical release, Mr. Brennan requested Licensee's patient records and bills that were in the possession of Licensee, in writing, on three separate occasions: April 21, 2011, May 23, 2011 and June 13, 2011.

6. The first written request to Licensee from Mr. Brennan on April 21, 2011, included the appropriate medical release signed by the patient, allowing Licensee to provide records to Mr. Brennan.

7. Numerous telephone calls were also made to the Mears Medical Enterprises Office from various personnel at King, Brennan & Albin, LLC, verbally requesting the records. However, Mr. Brennan's office was repeatedly told that the record dictation tapes were misplaced and that the doctor was in the process of re-dictating.

8. On November 2, 2011, a letter was sent to Licensee from the Board apprising him of the pending complaint and requesting documentation.

9. On December 2011, Licensee responded to the Board's request for information.

- a. In that response, Licensee blames the problem on his inability to find and hire more transcriptionists and on his current transcriptionists being overloaded with work.
- b. Licensee stated that they were “unable to locate the tape that contained the notes for this patient.” He also noted that he could “reproduce the visits and re-transcribe a new tape, with the appropriate annotations to that effect, but he [was] loath to do so.”
- c. Licensee mentions the use of a new office visit sheet in an effort to prevent data loss, but admits that until they “revise these sheets to make them more pertinent to [his] practice, they are not completely adequate.”

10. On January 25, 2012, the Board received an updated letter from Licensee stating that he had taken care of the matter because he had already sent a copy of the records to the attorney requesting them.

11. The first request for records was on April 21, 2011, and the request was not complied with until January 2012, approximately nine (9) months after the initial request.

Applicable Law

12. K.S.A. 65-2836 states in pertinent part:

A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions...upon a finding of the existence of any of the following grounds.

The grounds are listed in K.S.A. 65-2836, and are further defined or used in K.S.A. 65-2837, which outlines both professional incompetency and

unprofessional conduct.

13. Fines are also allowed pursuant to K.S.A. 65-2863a, which states:

The state board of healing arts, in addition to any other penalty prescribed under the Kansas healing arts act, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the Kansas healing arts acts in an amount **not to exceed \$5,000 for the first violation**, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. (Emphasis added).

14. K.S.A. 65-2836(b) states that dishonorable conduct is a violation of the Healing Arts Act. Dishonorable conduct is further defined by K.A.R. 100-22-1, which states in pertinent part:

- (a) Unless otherwise prohibited by law, each licensee shall, upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to a patient's legally designated representative.
- (c) Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836(b), and any amendments thereto.

15. K.S.A 65-4971 was repealed on July 1, 2011, but is applicable for a portion of the time frame involved in this case. Specifically, the statute discusses copies of health care records, authorization, and health care provider withholding. It states in pertinent part the following:

- (a) Subject to applicable law, copies of health care records shall be furnished to a patient, a patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's

authorized representative of the reasons why copies are not available.

Conclusions of Law

16. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

17. The Board finds that Licensee violated K.S.A. 65-2836(b), further defined by K.A.R. 100-22-1, by failing to furnish a copy of the patient record to the patient's legally designated representative upon receipt of a signed release from the patient.

18. The Board finds that Licensee violated K.S.A. 65-4971(a) from the date of the first written request by Mr. Brennan on April 21, 2011, through the date the repeal became effective on July 1, 2011, by not providing patient records to a patient's authorized representative within 30 days of the receipt of the authorization. As noted, since K.S.A. 65-4971 was not repealed until July 1, 2011, it applies for a portion of the time that records were requested and not received.

19. While Licensee eventually complied, Licensee failed to produce the patient's records in a timely manner.

20. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of the law and the protection of the public interest

does not require the Board to give notice and opportunity to participate to persons other than Licensee, Gregory Mears, D.O.

IT IS, THEREFORE, ORDERED that Licensee shall pay a **CIVIL FINE OF FIVE HUNDRED DOLLARS (\$500.00)**, pursuant to K.S.A. 65-2863a, for the above referenced violations of the Healing Art Act. The full amount of the fine shall be due and payable on or before Oct 31st 2012.

Licensee shall make his payment payable to the Kansas State Board of Healing Arts and send the payment to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

IT IS FURTHER ORDERED that Licensee's license is hereby **PUBLICLY CENSURED** for violations of the Healing Arts Act.


NOTICE AND OPPORTUNITY FOR HEARING

PLEASE TAKE NOTICE that this is a Summary Order. A party to whom a Summary Order is issued may file a written request for a hearing pursuant to K.S.A. 77-542 within 15 days following service of the Summary Order. Such written request shall also state the legal and/or factual basis upon which the party opposes this Order. If a hearing is not requested, the Summary Order shall become effective as a Final Order of the Board upon expiration of the time for requesting a hearing. A written request for hearing must be addressed and mailed to Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson Lower Level, Ste A, Topeka, KS 66612.

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 19th day of Sept, 2012.

Kansas State Board of Healing Arts


Kathleen Selzler Lippert
Executive Director

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing SUMMARY ORDER was served this 20 day of September, 2012, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Gregory H. Mears, D.O.
200 Arco Place #333
Independence, KS 67301

and a copies were hand-delivered to:

Katy Lenahan
Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson Lower Level, Ste A
Topeka, KS 66612

Melissa Massey
Public Service Administrator
Kansas State Board of Healing Arts
800 SW Jackson Lower Level, Ste A
Topeka, KS 66612

Brandy O. Snead
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson Lower Level, Ste A
Topeka, KS 66612

and the original was filed with the office of the Executive Director:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson Lower Level, Ste A
Topeka, KS 66612



Cathy Brown
Executive Assistant