

FILED

CRP

OCT 15 2010

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

KS State Board of Healing Arts

In the Matter of)	
)	
RUSSELL L. REITZ, M.D.)	Docket No. 09-HA-00189
Kansas License No. 04-26214)	
_____)	

AMENDED FINAL ORDER

NOW on this Eighth Day of October, 2010, the above-captioned matter comes before the Kansas State Board of Healing Arts (Board), following an order remanding the matter for further proceedings. The petitioner appears by and through Kelli J. Stevens, Litigation Counsel. The respondent appears by and through Mark W. Stafford of Holbrook and Osborn, P.A. There are no other appearances.

The Parties advise the Board that the following facts are stipulated in lieu of the findings of fact adopted by the Board on October 23, 2010, and the following conclusions of law are modified accordingly. Having the agency record before it, the Board finds, concludes and orders and supersedes its prior Final Order as follows:

FINDINGS OF FACT

1. Respondent was issued license number 04-26214 to practice medicine and surgery by the Board on April 27, 1996. Respondent last renewed his license on June 30, 2009.
2. Respondent is a radiation oncologist practicing in Manhattan, Kansas. (Tr. page 98, lines 19-25, page 99, lines 1-25, page 100, lines 1-14).
3. Respondent graduated from the University of Missouri School of Medicine-Columbia in 1994. (Tr. page 97, line 25, page 98, line 1, page 98, lines 11-13).

4. Following his medical school training, Respondent completed an internship in internal medicine at K.D. Medical Center, as well as at the Veteran's Administration in Leavenworth, Kansas. Respondent then completed a residency program in radiation oncology at K.D. Medical Center from 1994 through 1998. (Tr. page 98, lines 2-10, page 98, lines 14-18).

5. On May 17, 2008 an incident involving the Respondent and David Lehman occurred in Manhattan, Riley County, Kansas at the home of Renee Slick, Respondent's ex-wife. (Tr. Page 22, lines 3-6).

6. On June 20, 2008, a felony warrant for the arrest of Russell Reitz, M.D. was issued by the District Court, Riley County, Kansas Criminal Department. Respondent was arrested on the felony warrant and released after he posted a \$20,750 cash/surety bond in Riley County District Court case number 08-CR-514. The court ordered that conditions of bond include no contact with witnesses, no possession of fire arms and no use of alcohol or drugs. The court ordered bond conditions specifically directed Respondent not to engage in any of the following: (Petitioner's Exhibit 11)

- a. No contact directly or indirectly with any State's endorsed witnesses in the above captioned matter, except for police officers and the State's Investigators. Specifically the defendant is to have NO CONTACT with David Lehman, Renee \ Slick, Eric Slick or Jarrod Slick. **This includes intentionally putting yourself in a situation whereby contact with said individuals is reasonably likely. It also includes contact by telephone, letter, email, text messages or contact through a third person;** (Emphasis added by the court).
- b. Respondent shall not own or possess any FIREARMS OR AMMUNITION; and
- c. Respondent shall not use or consume any illegal DRUGS OR ALCOHOL.

7. The felony criminal case of *State of Kansas v. Russell Reitz*, went to trial on April 28, 2009 and ended on April 30, 2009.

8. On April 30, 2009, Respondent was found guilty by a jury of his peers for aggravated battery in a manner whereby great bodily harm, disfigurement or death can be inflicted. This is a severity level 7 person felony. (Petitioner's Exhibit 1). On April 30, 2009, the Court ordered a pre-sentence investigation (PSI) and scheduled sentencing for Monday, June 29, 2009 at 10:30 a.m. in Riley County felony criminal case 08-CR-514. (Petitioner's Exhibit 3).

9. On June 29, 2009, Respondent was sentenced to twelve (12) months in the custody of the Secretary of Corrections which was suspended and he was placed on twenty-four (24) months probation with specific terms and conditions. (Petitioner's Exhibit 4, Journal Entry of Judgment).

CONCLUSIONS OF LAW

1. Russell Reitz, M.D. was convicted by a jury of his peers for aggravated battery in a manner whereby great bodily harm, disfigurement or death can be inflicted. This is a severity level 7 person felony.

2. K.S.A. 65-2836(a) states in pertinent part: **Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied.** A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

...

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

.....

3. The Board must prove by a preponderance of the evidence the licensee, in this case Russell Reitz, M.D., has been convicted of a felony.

4. In all civil actions, the party asserting the affirmative of an issue is entitled to prevail upon the production by him of a preponderance of evidence. This preponderance, however, need not be great; it is sufficient if it just barely preponderates." *People's Bank of Minneapolis v. Reid*, 86 Kan. 245, 120 P. 339 (1912).

5. The Board has met its burden of proof that Respondent has been convicted of a felony.

6. Once the Board has met its burden of proof the Board *shall revoke* the medical license of Russell Reitz *unless* Russell Reitz proves by a 2/3 majority of the Board members present and voting by clear and convincing evidence the "licensee will not pose a threat to the public in such person's capacity as a licensee *and* that such person has been sufficiently rehabilitated to warrant the public trust."

7. "To be clear and convincing, evidence must establish the truth of the facts asserted is 'highly probable.' *In re B.D.-Y*, 286 Kan. 686, Syl. Par. 3, 187 P.3d 594 (2008)." *In re Rost*, _ P.3d_, 2009 WL 2059441 (Kan., July 17, 2009).

8. The burden of proof is upon Russell Reitz to prove to a 2/3 majority of the

Board members present and voting that Russell Reitz will not pose a threat to the public in such person's capacity as a licensee. In addition, Russell Reitz must also prove to a 2/3 majority of the Board members present and voting that Russell Reitz has been sufficiently rehabilitated to warrant the public trust. K. S.A. 65-2836(c).

9. The Respondent has proven to the Board, by clear and convincing evidence, that he does not "pose a threat to the public in such person's capacity as a licensee."

10. The Board finds, by clear and convincing evidence, that Russell Reitz, M.D. will not pose a threat to the public in his capacity as a licensee and has been rehabilitated sufficiently to warrant the public trust pursuant to K.S.A. 65-2836(c).

11. The Respondent has committed a felony in violation of K.S.A. 65-2836(c). While Dr. Reitz's conviction of a felony does not warrant revocation of his license to practice medicine and surgery, it does warrant discipline of some kind which may allow the respondent to continue to practice medicine and surgery at a later time.

12. The Presiding Officer concludes the public interest will be furthered by the Board maintaining jurisdiction over the respondent.

13. The Presiding Officer finds the respondent's license to practice medicine and surgery shall be **SUSPENDED** for an indefinite period of time beginning October 16, 2009 with the Respondent ineligible to reapply for a license to practice medicine and surgery for a minimum of six months.

14. As a prerequisite for the Respondent to have the suspension of the license to practice medicine and surgery lifted, the Respondent shall:

a. (confidential)

(confidential)

b. (confidential)

(confidential)

c. (confidential)

(confidential)

d. Pay costs in this matter in the amount of \$2,371.20.

15. The lifting of the suspension to practice medicine and surgery is not self-executing. Dr. Russell Reitz is required to petition the Board to lift the suspension to practice medicine and surgery which has been placed on his license. If the Board finds Dr. Reitz has successfully followed the Board's order, the Board has the discretion to remove the suspension that has been placed upon Dr. Reitz license and to make any further orders that it deems necessary to protect the public interest.

16. The Respondent is immediately placed on **INDEFINITE PROBATION** by the Board, effective October 16, 2009. Any violation of any order of the Board or the laws of the State of Kansas will be grounds for immediate revocation of the Respondent's license to practice medicine and surgery.

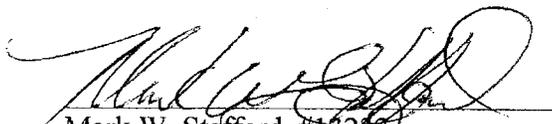
17. These findings of facts and conclusions of law constitute the Amended Final Order of the Board and they amend and supersede the findings of fact and conclusions of law stated in Final Order dated October 23, 2009.

IT IS SO ORDERED.

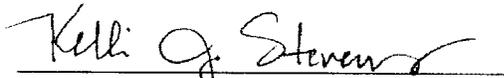
STATE BOARD OF HEALING ARTS


ON BEHALF OF THE
KANSAS STATE BD. OF HEALING ARTS

Approved by:



Mark W. Stafford, #15283
HOLBROOK & OSBORN, P.A.
800 S.W. Jackson, Suite 900
Topeka, KS 66603
(785) 232-6200



Kelli J. Stevens, #16032
Litigation Counsel
235 S. Topeka Blvd.
Topeka, KS 66603
(785) 296-7413

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the foregoing Amended Final Order was served this 15th day of OCTOBER, 2010 by depositing the same in the United States Mail, first-class postage prepaid and addressed to:

Mark W. Stafford
Holbrook & Osborn, P.A.
800 S.W. Jackson, Suite 900
Topeka, Kansas 66612

Dr. Russell Reitz
(confidential)
Topeka, Kansas 66615

And a copy was hand delivered to the office of:

Kelli J. Stevens, Litigation Counsel
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Kansas 66603

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Kansas 66603

Melissa Massey, Compliance Coordinator
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Kansas 66603

The original filed with:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603



Zachary J.C. Anshutz
Associate General Counsel

FILED CAB

001 15 2010

K.S. State Board of Healing Arts

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

In the Matter of)
Russell Reitz, M.D.)
License No. 04-26214)
_____)

Docket No. 09-HA00189

FINAL ORDER
(Pursuant to K.S.A. 77-501 et seq.)

Pursuant to the authority granted to the Kansas State Board of Healing Arts (“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 Board hereby enters this Final Order in the above-captioned matter. Members of the Board serving on the Disciplinary Panel for this matter were recused from participation.

I. Findings of Fact

The Board has been shown the following facts:

1. Dr. Russell Reitz, M.D. (“Licensee”), (confidential) Topeka, Kansas 66615 is licensed in the State of Kansas, License No. 04-20377, and was originally licensed on or about April 27, 1996.
2. On April 30, 2009, Licensee was found guilty of aggravated battery as a result of an incident which occurred between Licensee and a companion of Licensee’s ex-wife.
3. The aggravated battery was a level 7 person felony.
4. Pursuant to K.S.A. 65-2836, the Board filed an action seeking to revoke Licensee’s license to practice as a result of the felony conviction.
5. The Board found in the Amended Final Order (“Final Order”) issued October 15, 2010 that Licensee had committed a felony pursuant to K.S.A. 65-2836.

6. Pursuant to K.S.A. 65-2836(c), Licensee was required to prove to a 2/3 majority of the Board that Licensee did not pose a threat to the public in his capacity as a Licensee and that Licensee had been sufficiently rehabilitated to warrant public trust.
7. The Board found the Licensee had proven by clear and convincing evidence, that he did not “pose a threat to the public in such person’s capacity as a licensee”.
8. Further, the Board found Licensee had been rehabilitated sufficiently to warrant the public trust pursuant to K.S.A. 65-2836(c).
9. The Board ordered the Licensee’s license suspended indefinitely and ordered the following:

a.

(confidential)

b.

(confidential)

c.

(confidential)

d. Licensee pay costs in the matter in the amount of
\$2,371.20.

10. Licensee was also placed on indefinite probation effective October 16, 2009.

11. The lifting of the terms of Licensee's suspension and probation was not self-executing. Licensee was required to petition the Board to remove the suspension and probationary terms set forth in the Final Order.
12. On July 27, 2010, Licensee filed a Petition for Termination of Suspension and Probation.
13. Documentation provided to the Board indicates Licensee has complied with the terms of Final Order.

II. Applicable Law

- a. K.S.A. 65-2801
- b. K.S.A. 65-2836

III. Policy Statement

The public policy of regulating the practice of healing arts in the State of Kansas is set forth in K.S.A. 65-2801:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

IV. Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #13, the Applicable Law and the Policy Statement set forth above:

THE BOARD HEREBY CONCLUDES AS FOLLOWS:

14. Licensee was convicted of felony aggravated battery on April 30, 2009.

15. The Board took action placing Licensee on indefinite probation and suspending Licensee's license after Licensee proved he did not pose a threat to the public and had been sufficiently rehabilitated.
16. The Final Order set forth requirements Licensee was required to complete prior to petition the Board for termination of his probation and suspension.
17. Documentation provided to the Board indicates Licensee has successfully complied with the requirements set forth in the Final Order.
18. Licensee filed a Petition for Termination of Suspension and Probation on July 27, 2010.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS:

19. Licensee's probation and suspension are hereby **TERMINATED**.
20. The Board shall maintain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

IT IS SO ORDERED THIS 15th DAY OF OCTOBER, 2010, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


ON BEHALF OF THE KANSAS STATE
Dr. Carolina Soria, D.O. BOARD OF HEALING
Kansas State Board of Healing Arts ARTS

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. 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 – Motion to Terminate Probation and Suspension

In the Matter of Dr. Russell Reitz, M.D.

KSBHA Docket No. 10-HA00011

Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 235 SW Topeka Blvd., Topeka, KS 66603.

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the foregoing Final Order was served this 15th day of OCTOBER, 2010 by depositing the same in the United States Mail, first-class postage prepaid and addressed to:

Mark W. Stafford
Holbrook & Osborn, P.A.
800 S.W. Jackson, Suite 900
Topeka, Kansas 66612

Dr. Russell Reitz
(confidential)
Topeka, Kansas 66615

And a copy was hand delivered to the office of:

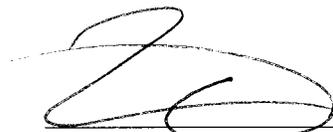
Kelli J. Stevens, Litigation Counsel
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Kansas 66603

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Kansas 66603

Melissa Massey, Compliance Coordinator
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Kansas 66603

The original filed with:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603



Zachary J.C. Anshutz
Associate General Counsel

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

FILED *AB*

OCT 23 2009

In the Matter)
)
 of)
)
 Russell L. Reitz, M.D.)
 Kansas License No. 04-26214)
 _____)

KS State Board of Healing Arts

KSBHA Docket No. 09-HA00189

FINAL ORDER

Now on this 16th day of October, 2009, the above-reference matter comes before the Board of Healing Arts for review of the Initial Order issued on July 29, 2009.

Petitioner appears by Kathleen Selzler-Lippert, Litigation Counsel for the Board of Healing Arts. Respondent appears in person and by counsel Mark W. Stafford, Holbrook and Osborne, and Robert L. Pottroff.

Board member Michael Beezley, M.D., having served as the Presiding Officer who issued the Initial Order, recuses himself from reviewing the Initial Order. Additionally, Board members Myron Leinwetter, D.C. and Gary Counselman, D.C., having served as members of the Board's Disciplinary Panel, recuse themselves from reviewing the Initial Order.¹ Thus the following Board members present serve as the Review Panel in the review the Initial Order: Betty McBride serving as chair, Ray Conley, D.C., Sue Ice, Garold O. Minns, M.D., Carolina Soria, D.O., Terry Webb, D.C. and Ronald Whitmer, D.O. Assistant Attorney General Camille Nohe serves as general counsel to the Review Panel.

The Review Panel initially goes into closed session with counsel for 20 minutes

¹Board members Kimberly Templeton, M.D., and Myra Christopher who also served on the Disciplinary Panel, while not present or participating, previously recused themselves.

(confidential)

and

then resumes the hearing in open session.

Having previously determined to review only the Initial Order's Conclusions of Law and discipline, and having received Petitioner's Brief on Review of Initial Order and Respondent's Brief on Review of Initial Order, the Review Panel indicates it will hear 15 minutes oral arguments from each attorney.

Respondent and Petitioner both present oral argument.

Whereupon the Review Panel deliberates in private, following which the Review Panel makes the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

Having determined, pursuant to K.S.A. 2008 Supp. 77-527(a)(2)(A), as amended by L. 2009, ch. 109, sec. 13, not to review the Findings of Fact in the Initial Order, those Findings of Fact #1 through # 52 are hereby incorporated by express reference.

Conclusions of Law

After due deliberation and consideration, and pursuant to K.S.A. 2008 Supp.77-527(h), as amended by L. 2009, ch. 109, sec. 13, the Review Panel incorporates by express reference and hereby affirms Conclusions of Law # 1 through #36 in the Initial Order.

Disciplinary Order

After due deliberation and consideration, the Review Panel incorporates by express reference, and pursuant to K.S.A. 2008 Supp.77-529(h), as amended by L. 2009, ch. 109, sec. 15, and hereby affirms by 2/3 majority of Board members present and voting, the discipline imposed in Conclusions of Laws #37 through #40 in the Initial

Order.

By affirming discipline less severe than revocation of Respondent's license to practice medicine, the Review Panel impliedly affirms that Respondent has been convicted of a felony; is not currently a threat to the public in his capacity as a licensee; and that he is sufficiently rehabilitated to warrant the public trust, in so far as revocation of his license is considered too severe a sanction under the circumstances as reflected in the Findings of Fact and Conclusions of Law. K.S.A. 65-2835.

IT IS SO ORDERED.



Betty McBride, Chair
Board of Healing Arts Review Panel

NOTICE OF RELIEF FROM THIS ORDER

Pursuant to K.S.A. 2008 Supp. 77-514(g), as amended by L. 2009, ch. 109, sec. 7, this is a Final Order. It is effective upon the date indicated in the below Certificate of Service unless a stay is granted pursuant to K.S.A. 77-528. Within 15 days after service of the Final Order, any party may file a petition for reconsideration with the Kansas Healing Arts Board. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. Judicial review may be had by filing a petition for judicial review with the appropriate district court as provided in the Kansas Act for Judicial Review, K.S.A. 77-601 *et seq.* The agency officer who may receive service of a petition for judicial review on behalf of the agency is Jack Confer, Executive Director, Kansas Healing Arts Board, 235 Kansas, Topeka, Kansas 66603.

Certificate of Service

This is to certify that on the 21st day of October 2009, a true and correct copy of the above FINAL ORDER was deposited in the U.S. mail, first class postage prepaid, addressed to:

Mark Stafford
Holbrook & Osborn, P.A.
214 SW 6th Street, suite 306
Topeka, Kansas 66604

and

Kathleen Selzler Lippert
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

A handwritten signature in black ink that reads "Camille Nohe". The signature is written in a cursive, flowing style.

Camille Nohe
Assistant Attorney General and General
Counsel to the Review Panel

S:\Logic\CNohe\KAPA\FINAL\healing-arts-reitz.wpd

Certificate of Service

I certify that a true copy of the foregoing Final Order was served this 23rd day of October, 2009, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Russell Reitz, M.D.
1133 College Ave., Bldg. E. #140
Manhattan, KS 66502

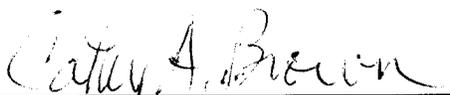
Mark Stafford, Holbrook & Osborn, P.A.
214 S.W. 6th Street, Suite 306
Topeka, KS 66603

Camille Nohe
State of Kansas, Office of Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

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

Kathleen Selzler Lippert
Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603-3068

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



Cathy A. Brown
Executive Assistant

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

JUL 29 2009

shey

KS State Board of Healing Arts

In the Matter of)
)
RUSSELL L. REITZ, M.D.)
Kansas License No. 04-26214)
_____)

KSBHA Docket No. 09-HA00189

INITIAL ORDER

NOW this July 10, 2009 the above captioned matter comes before the Kansas State Board of Healing Arts (Board), Michael Beezley, M.D., presiding on the Board's petition to revoke the license to practice medicine and surgery held by Russell L. Reitz, M.D. The petitioner appears by and through Kathleen Selzler-Lippert, Litigation Counsel. The respondent appears by and through Mark W. Stafford of Holbrook and Osborne. There are no other appearances. The Presiding Officer after review of the agency record, after conducting a hearing in this matter, hearing the arguments of counsel and being generally apprised of its premises finds and concludes as follows:

FINDINGS OF FACT

1. Respondent was issued license number 04-26214 to practice medicine and surgery by the Board on April 27, 1996. Respondent last renewed his license on June 30, 2009.
2. Respondent is a radiation oncologist practicing in Manhattan, Kansas. (Tr. page 98, lines 19-25, page 99, lines 1-25, page 100, lines 1-14).
3. Respondent graduated from the University of Missouri School of Medicine-Columbia in 1994. (Tr. page 97, line 25, page 98, line 1, page 98, lines 11-13).
4. Following his medical school training, Respondent completed an internship in internal medicine at K.U. Medical Center, as well as at the Veteran's

Administration in Leavenworth, Kansas. Respondent then completed a residency program in radiation oncology at K.U. Medical Center from 1994 through 1998. (Tr. page 98, lines 2-10, page 98, lines 14-18).

5. Petitioner married Renee Slick in July, 2006. (Tr. P. 66-68; Respondent's Exhibit 1.)

6. The marriage between Respondent and Renee Slick ended in divorce in June, 2007. (Tr. Page 17, lines 3-23.)

6. In January, 2008 Renee Slick and David Lehman began a romantic relationship which made the respondent jealous. (Tr. P. 68-69).

7. Between January, 2008 and May, 2008 the respondent stalked David Lehman. David Lehman filed suit to stop the stalking. The Respondent did not appear and defaulted. *David Lehman, Plaintiff vs. Russell Reitz, Defendant*, 08 DM 266 (Riley County, Kansas, 2008). Russell Reitz was found to have stalked David Lehman. The Riley County District Court enjoined Russell Reitz from having further contact with David Lehman. (Petitioner's Exhibit 8).

8. On May 17, 2008 an incident involving the Respondent and David Lehman occurred in Manhattan, Riley County, Kansas at Renee Slick's home. (Tr. Page 22, lines 3-6).

9. The Respondent came rushing towards Lehman in a threatening way and got right in his face and started saying things like "you look old and weak." At one point Respondent said David Lehman reminded him of his father and that Lehman looked like he was 70 years old. (Tr. of Jury Trial page 40, line 25, page 41, lines 1-24; Petitioner's

Exhibit 3; Tr. of Jury Trial page 131, lines 1-25, page 132, lines 1-18; Petitioner's Exhibit 3).

10. After Respondent rushed at Lehman and made degrading comments to him, Mr. Lehman did not do anything and did not say a word. Dr. Reitz and David Lehman were face to face at this point and Respondent grabbed both of Lehman's arms and squeezed really hard and shook him. Respondent then took both of his hands and began hitting Lehman really hard in the ears and then ran his hands down his face clawing at his cheeks and neck hard enough that it drew blood. (Tr. of Jury Trial page 41, line 25, page 42, lines 1-25, page 43, lines 1-20; Petitioner's Exhibit 3).

11. Photographs taken at the scene of Mr. Lehman reveal a series of scratches on his neck consistent with the injuries caused by the Respondent. (Petitioner's Exhibit 7a, 7b, 7c).

12. David Lehman was insulted and physically touched by the Respondent, but did not raise his fists or fight back at all. (Tr. of Jury Trial page 43, lines 21-24; Petitioner's Exhibit 3).

13. Mr. Lehman has a physical problem with his right arm that happened due to an accident when he was seventeen years of age, where he accidentally hit a glass shower door. As a result he suffered damage to his right arm, including cutting fifteen tendons, both arteries and the main nerve, or median nerve. As a result, David Lehman has limited range of motion in his right arm. (Tr. of Jury Trial page 43, line 25, page 44, lines 1-23; Petitioner's Exhibit 3).

14. David Lehman told Respondent "Russell, I don't want to fight you." This statement seemed to annoy Dr. Reitz and he turned around as if he was walking away and

then took about two steps away from David Lehman. Dr. Reitz spun around and hit Lehman in the nose with his fist. (Tr. of Jury Trial page 44, line 25, page 45, lines 1-20; Petitioner's Exhibit 3; Tr. of Jury Trial page 131, lines 1-25, page 132, lines 1-18; Petitioner's Exhibit 3).

15. After Respondent punched David Lehman in the face Lehman felt stunned. Lehman did not put his hands up or do anything to defend himself. (Tr. of Jury Trial page 45, lines 21-25, page 46, lines 1-2; Petitioner's Exhibit 3).

16. After being hit in the face by Dr. Reitz, David Lehman was not very steady and was dazed from the punch. Reitz then came lunging at Lehman with both fists punching and knocked him back. David Lehman fell backward with Dr. Reitz on top of Lehman hitting him. Lehman's head hit something hard, either the curb or the brick-like-lamp post and David Lehman was unconscious for a period of time. (Tr. of Jury Trial page 46, lines 3-15; Petitioner's Exhibit 3). Russell Reitz kicked David Lehman a couple of time. (Tr. of Jury Trial page 102, lines 1-8; Petitioner's Exhibit 3.)

17. After blacking out, the next thing David Lehman recalled was waking up face down with Respondent hitting him really hard on the back of his head and on the top of his neck with both fists. (Tr. of Jury Trial page 46, lines 16-22; Petitioner's Exhibit 3).

18. Following this incident, the Russell Reitz seemed really proud of himself and said "I should have done that a long time ago." (Tr. of Jury Trial page 47, lines 15-18; Petitioner's Exhibit 3.)

19. After the attack, David Lehman wasn't thinking very clearly. Lehman got up and walked over to his truck thinking he still had to tie limbs down and could not leave the way it was. (Tr. of Jury Trial page 47, lines 18-24; Petitioner's Exhibit 3).

20. Mr. Lehman was trying to pull out the stuff from the back of his truck to use to tie down the load and asked Respondent “why did you do that.” Lehman remembers asking several times and Respondent kept saying “why don’t you hit me? Next time why don’t you get a lesbian girlfriend to do your fighting for you?” (Tr. of Jury Trial page 47, lines 24-25, page 48, lines 1-14; Petitioner’s Exhibit 3).

21. (confidential)
(confidential)

22. (confidential)
(confidential)

23. (confidential)
(confidential)

24. (confidential)
(confidential)

25. (confidential)
(confidential)

26. (confidential)
(confidential)

(confidential)

27. (confidential)

(confidential)

28. (confidential)

(confidential)

(confidential)

28. Dr. Russell Reitz had a lot of contact with Renee Slick between May 17, 2008 and September 26, 2008. (Tr., pages 174-177, lines, 14-3).

29. (confidential)
(confidential)

30. (confidential)
(confidential)

31. (confidential)
(confidential)

32. (confidential)

(confidential)

33. (confidential)

(confidential)

34. (confidential)

(confidential)

35. On April 30, 2009, Respondent was found guilty by a jury of his peers for aggravated battery in a manner whereby great bodily harm, disfigurement or death can be inflicted. This is a severity level 7 person felony. (Petitioner's Exhibit 1, File Stamped Jury Verdict Form Signed by the Jury Foreman; Petitioner's Exhibit 3, Jury Trial

Transcript, page 377, lines 9-16; Petitioner's Exhibit 5, Pre-Sentence Investigation; Petitioner's Exhibit 4, Journal Entry of Judgment).

36. On April 30, 2009, the Court polled each of the jurors who individually affirmed that the verdict read was their verdict. (Petitioner's Exhibit 3, Jury Trial Transcript pages 377-379).

37. On April 30, 2009, the Court approved the verdict and entered a judgment of guilty against Respondent in Riley County felony criminal case 08-CR-514. (Petitioner's Exhibit 3, Jury Trial Transcript page 380, lines 7-10).

38. On April 30, 2009, the Court ordered a pre-sentence investigation (PSI) and scheduled sentencing for Monday, June 29, 2009 at 10:30 a.m. in Riley County felony criminal case 08-CR-514. (Petitioner's Exhibit 3, Jury Trial Transcript page 380, lines 18-25).

39. On June 29, 2009, Respondent was sentenced to twelve (12) months in the custody of the Secretary of Correction which was suspended and he was placed on twenty-four (24) months probation with specific terms and conditions. (Petitioner's Exhibit 4, Journal Entry of Judgment).

40. As of July 10, 2009, the KSBHA hearing date in the above captioned matter, Respondent did not know whether or not he had been convicted of a felony. (Tr. page 133, lines 17-25, page 134, lines 1-14).

41. (confidential)

(confidential)

(confidential)

42. (confidential)

(confidential)

43. (confidential)

44. Respondent is skilled in his profession. (Tr. P. 103).

45. Russell Reitz is competent to practice medicine and surgery. Dr. Reitz has support among his colleagues. (Tr. 105, R. Exhibit 24).

46. Respondent practices Radiation Oncology. His specialty practice serves a large portion of the state, and the absence of his practice would create a burden on patients. (Tr. P. 100-101.)

47. Respondent has no prior history with the board. (Tr. P. 106.)

48. There have been many letters of support by colleagues, patients and members of the community. These letters suggest the public does not feel a need to be protected from Dr. Reitz. (R. Ex. 17, 24.)

49. (confidential)

(confidential)

50. (confidential)

(confidential)

51. The Riley County District Court has placed the Respondent on two years supervised probation. (Tr. Page 29, lines 8-13.)

52. The Respondent is the subject of a civil lawsuit. (Tr. Page 129, lines 17-22).

CONCLUSIONS OF LAW

1. Russell Reitz, M.D. was convicted by a jury of his peers for aggravated battery in a manner whereby great bodily harm, disfigurement or death can be inflicted. This is a severity level 7 person felony.

2. K.S.A. 65-2836(a) states in pertinent part:

Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds: . . .

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. . .

3. The Board must prove by a preponderance of the evidence the licensee, in this case Russell Reitz, M.D., has been convicted of a felony.

4. In all civil actions, the party asserting the affirmative of an issue is entitled to prevail upon the production by him of a **preponderance of evidence**. "This

preponderance of the **evidence**, however, need not be great; it is sufficient if it just barely preponderates.” *People’s Bank of Minneapolis v. Reid*, 86 Kan. 245, 120 P. 339 (1912).

5. Russell Reitz has been convicted of a felony. The jury has rendered its verdict. On April 30, 2009 the District Court entered a judgment of guilty.

6. A judgment of conviction is final when the tribunal in which it is rendered gets done with it. *In re Casebier*, 129 Kan. 853, 284 P. 611 (1930). The Respondent admits the District Court is done with the case. (Tr. Page 95, lines 9-14.)

7. The Board has met its burden of proof that Respondent has been convicted of a felony.

8. Once the Board has met its burden of proof the Board *shall revoke* the medical license of Russell Reitz *unless* Russell Reitz proves by a 2/3 majority of the Board members present and voting by clear and convincing evidence the “licensee will not pose a threat to the public in such person’s capacity as a licensee *and* that such person has been sufficiently rehabilitated to warrant the public trust.”

9. “To be clear and convincing, evidence must establish the truth of the facts asserted is ‘highly probable.’ *In re B.D.-Y.*, 286 Kan. 686, Syl. ¶ 3, 187 P.3d 594 (2008).” *In re Rost*, ___ P.3d ___, 2009 WL 2059441 (Kan., July 17, 2009).

10. The burden of proof is upon Russell Reitz to prove to a 2/3 majority of the Board members present and voting that Russell Reitz will not pose a threat to the public in such person’s capacity as a licensee. In addition, Russell Reitz must also prove to a 2/3 majority of the Board members present and voting that Russell Reitz has been sufficiently rehabilitated to warrant the public trust. K.S.A. 65-2836(c).

11. Russell Reitz was convicted of aggravated battery against David Lehman.

12. Neither side has advanced any evidence to show that Russell Reitz ever served as David Lehman's doctor.

13. The aggravated battery of David Lehman by Russell Reitz was committed during a bout of jealous rage outside of the bounds of Dr. Reitz medical practice.

14. The Manhattan medical community has rallied behind Dr. Reitz and his ability to practice medicine.

15. Dr. Reitz patients have come to Dr. Reitz defense.

16. All evidence presented to the Presiding Officer indicates the Respondent is both a gifted physician and humanitarian who does not pose a threat to the public as a licensee.

17. The Respondent has proven to the Presiding Officer, by clear and convincing evidence, that he does not "pose a threat to the public in such person's capacity as a licensee."

18. However, the Board's inquiry does not stop here. The Respondent must prove to 2/3 of the Board member's voting by clear and convincing evidence the licensee has been rehabilitated to warrant the public trust. K.S.A. 65-2836(c).

19. Respondent's counsel contends the rehabilitation process began after the May 17, 2008 incident where Russell Reitz attacked David Lehman in a fit of jealous rage over the love of Renee Slick.

20. *In the Matter of Gates*, 273 Kan. 1025, 46 P.3d 1206 (2002) the Kansas Supreme Court determined that a former real estate agent had been sufficiently rehabilitated to regain a real estate license. In 1992, at age 22, Timothy S. Gates

committed the federal offense of possession of 560 pounds of marijuana with intent to sell. After committing the offense Gates gave up the drug trafficking business. Gates obtained a real estate license and began participating in the family real estate business. Gates life of crime caught up with him and in March, 1996 he pled guilty to possession of marijuana with intent to distribute. Gates took an inactive real estate license in March, 1996 and allowed his license to expire on June 30, 1997. After serving time in federal prison, Gates was placed on a five year supervised release. Gates followed all the rules while on supervised release. Gates' caseworker made the statement he believed Gates had been successfully rehabilitated. Gates was considered a classic case of rehabilitation and the Kansas Supreme Court reversed a Kansas Real Estate Commission Order which denied Gates the opportunity to obtain a real estate license.

21. In its Order, the Kansas Real Estate Commission only considered one of the eight elements in *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589, 808 P.2d 1355 (1991). The Supreme Court determined KREC must consider all *Vakas* factors. The high court reversed the KREC decision and remanded the matter back to the real estate commission for further review.

22. In *Vakas, id.* the Supreme Court "approved several factors to consider in determining whether a person convicted of a felony is rehabilitated." *Gates, supra.* The factors to be considered "include: (1) the present moral fitness of the petitioner; (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession; (3) the extent of petitioner's rehabilitation; (4) the nature and seriousness of the original misconduct; (5) the conduct subsequent to discipline; (6) the time elapsed since the original discipline; (7) the petitioner's character, maturity, and

experience at the time of the original revocation; and (8) the petitioner's present competence in medical skills.” *Vakas v. Kansas State Board of Healing Arts, syl. 2.*

23. The first factor to be considered is “the present moral fitness of the petitioner.” Dr. Reitz’ crime was a crime of passion. Dr. Reitz stalked and battered a male friend of one of his ex-wives. Further, the evidence infers the Respondent’s ex-wife arranged to have both the Respondent and David Lehman at her home at the same time.
(confidential)

(confidential) Based on the circumstances it is unclear whether Dr. Reitz is morally unfit to practice medicine. The first *Vakas* factor is a wash.

24. The second *Vakas* factor to be considered is “the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession.” Russell Reitz was convicted by a jury of his peers of aggravated battery. The conviction is on appeal. The Respondent has never acknowledged the fact that attacking David Lehman in a fit of jealous rage is wrong. Reitz was found to have been stalking David Lehman. Reitz has not apologized to the victim. The Respondent has only acknowledged that he is sorry for allowing a *femme fatale* to involve him in a “toxic relationship.” The Respondent is sorry for being involved in the relationship with Renee Slick and not sorry for attacking the victim. Reitz has minimized his criminal involvement. In contrast, Timothy Gates pled guilty to the crime of trafficking drugs

with the intent to distribute. Gates owned up to his criminal activity, Reitz has not. Reitz fails the second *Vakas* factor.

25. The third *Vakas* factor is the extent of the rehabilitation. The respondent was sentenced on June 29, 2009. The respondent has just met with his Court Services Officer. (confidential)

(confidential)

(confidential)

The third *Vakas* factor has not been attained by Dr. Reitz. However, with additional time and effort by Dr. Reitz he could present evidence of rehabilitation.

26. The fourth *Vakas* factor is the “nature and seriousness of the misconduct.” The Respondent was charged with aggravated battery, a Level 3 person felony. The jury convicted the Respondent of a lesser offense, aggravated battery, a Level 7 person felony. The Court sentenced the Respondent to 12 months in the custody of the Secretary of Corrections with two years of supervised probation. Reitz was also found to have stalked his victim. A felony is a serious crime. However, the crime Dr. Reitz has been convicted of did not produce prison time *provided* Dr. Reitz follows the terms of probation.

Contrast Dr. Reitz Level 7 crime of aggravated battery with Timothy Gates crime of possession of 526 pound of marijuana with intent to distribute where Mr. Gates received two years in prison and five years of supervised probation. Russell Reitz crime is not so serious. The fourth *Vakas* factor favors Reitz.

27. The fifth *Vakas* factor is “conduct subsequent to the misconduct.” The Respondent was ordered by the Riley County District Court not to have any contact with the witnesses, including Renee Slick, after June 6, 2008. The Respondent concedes that he had a lot of contact with Renee Slick between May 17, 2008 and October 9, 2008. The Riley County District Court admonished the Respondent for his contact with Renee Slick between June 26, 2008 and September 26, 2008 and ordered no further contact between the Respondent and the Slick witness. The Respondent violated the Court’s Order when he had contact with Renee Slick on October 8, 2008. The Respondent was arrested for violating the Court’s no-contact Order. The Respondent was required to post additional bond to remain out of jail. The Board requires that its orders be followed. The Respondent has a proven record of failing to follow the direction of authority. Russell Reitz “conduct subsequent to the May 17, misconduct” indicates that Reitz has not been rehabilitated. Reitz clearly fails the fifth prong of the *Vakas* test.

28. The sixth *Vakas* factor is “the amount of time that has elapsed since the misconduct.” Russell Reitz stalked David Lehman between January, 2008 and the attack upon him on May 17, 2008. Dr. Reitz’ bond was raised from \$20,000 to \$100,000 on October 8, 2008 when the District Court found Reitz was not following its orders. Reitz was convicted on April 20, 2009. He was sentenced on June 29, 2009. Approximately one month has passed since Dr. Reitz began to pay his debt to society for his actions.

Compare Timothy Gates situation with Russell Reitz'. Gates spent twenty months in federal prison and almost five years on supervised probation before he was allowed the chance to regain his real estate license. Gates took the time to make a solid record of rehabilitation. Russell Reitz has not. The sixth *Vakas* factor does not favor Dr. Reitz. However, given the proper amount of time to develop a record of rehabilitation, Dr. Reitz could succeed.

29. The seventh *Vakas* factor is Reitz "character and maturity at the time of the misconduct." Dr. Reitz was born on November 13, 1962. He was 45 years old during the chain of events that led to David Lehman getting battered on May 17, 2008. Dr. Fajen stated: "Russell tests more as a teen than as a highly educated, highly respected, and highly successful self-employed individual." On the other hand, Timothy Gates was 22 years old when he was involved in drug-trafficking. Gates quit the life of crime before he was arrested. Gates paid his debt to society and generally cleaned up his life before the age of thirty years. Russell Reitz should have known better when he stalked and then attacked David Lehman. The seventh *Vakas* factor weighs against allowing Russell Reitz to continue practicing medicine.

30. The final *Vakas* factor is the licensee's "current professional competence." Dr. Russell Reitz is clearly a competent physician. As shown by the letters written by his peers, the Manhattan medical community has rallied to Dr. Reitz's side. Dr. Reitz' patients have come out in his favor as well. There is clearly a need for Dr. Reitz' services. He is the only radiological oncologist between Topeka and Salina. The loss of Dr. Reitz to the practice of medicine in the Flint Hills region will clearly impact patient care. Further, as discussed above, the incident involving David Lehman and Renee Slick

did not occur while the Respondent was exercising his privilege to practice medicine. The Respondent has never been before the Board for disciplinary reasons. The final *Vakas* factor heavily favors the Respondent.

31. Of the eight *Vakas* factors, five close calls weigh against finding that Dr. Rietz has rehabilitated. With time two of the five close calls may favor Dr. Rietz. Two *Vakas* factors conclude that Dr. Reitz is rehabilitated, including factor number 8 which weighs heavily in favor of Dr. Reitz. One *Vakas* factor is a wash and does not assist in determining whether or not Dr. Reitz has been rehabilitated.

32. As previously stated, the final *Vakas* factor weighs so heavily in favor of finding Russell Reitz has been rehabilitated to warrant the public trust it is controlling. The incident giving rise to the felony did not occur while Dr. Reitz was practicing medicine. The medical community has shown that Russell Reitz' is a talented physician. Dr. Reitz' patients have come forth and shown their need for his services. Dr. Reitz has not previously been before the Board.

33. The Presiding Officer finds, by clear and convincing evidence, that Russell Reitz, M.D. will not pose a threat to the public in his capacity as a licensee and has been rehabilitated sufficiently to warrant the public trust pursuant to K.S.A. 65-2836(c).

34. K.S.A. 65-2836 requires the Board to discipline a licensee who has violated the law.

35. The Respondent has committed a felony in violation of K.S.A. 65-2836(c). While Dr. Reitz conviction of a felony does not warrant revocation of his license to

practice medicine and surgery, it does warrant discipline of some kind which may allow the respondent to continue to practice medicine and surgery at a later time.

36. The Presiding Officer concludes the public interest will be furthered by the Board maintaining jurisdiction over the respondent.

37. The Presiding Officer finds the respondent's license to practice medicine and surgery shall be **SUSPENDED** for an indefinite period of time with the Respondent ineligible to reapply for a license to practice medicine and surgery for a minimum of six months.

38. As a prerequisite for the Respondent to have the suspension of the license to practice medicine and surgery lifted, the Respondent shall:

(confidential)

(confidential)

(confidential)

- d. have no contact with Renee Slick and her family, specifically:
 - i. The Respondent shall not follow, harass, telephone, contact or otherwise communicate with Ms. Slick and her family. This means no contact with them directly or indirectly, by the Respondent or by someone at the Respondent's direction or request;
 - ii. The Respondent shall not abuse, molest, or interfere with the privacy rights of Slick and her family, wherever they might be;
 - iii. The Respondent shall not enter upon or in Ms. Slick's residence or the immediate vicinity

thereof. Nor shall Respondent enter Ms. Slick's workplace or the immediate vicinity thereof.

iv. The immediate vicinity thereof means 100 feet or less.

v. The Respondent may be in Court or other tribunals at the same time as Ms. Slick.

e. have no contact with David Lehman and his family, specifically:

i. The Respondent shall not follow, harass, telephone, contact or otherwise communicate with Mr. Lehman and his family. This means no contact with them directly or indirectly, by the Respondent or by someone at the Respondent's direction or request;

ii. The Respondent shall not abuse, molest, or interfere with the privacy rights of Lehman and his family, wherever they might be;

iii. The Respondent shall not enter upon or in Mr. Lehman's residence or the immediate vicinity thereof. Nor shall Respondent enter Mr. Lehman's workplace or the immediate vicinity thereof. This includes Calvin Hall, Ackert Hall, Umberge Hall, KSU Union or Kedzie Hall.

iv. The immediate vicinity thereof means 100 feet or less.

v. The Respondent may be in Court or other tribunals at the same time as Mr. Lehman.

f. Pay costs in this matter in the amount of \$2,371.20.

39. The lifting of the suspension to practice medicine and surgery is not self-executing. Dr. Russell Reitz is required to petition the Board to lift the suspension to practice medicine and surgery which has been placed on his license. If the Board finds Dr. Reitz has successfully followed the Board's order, the Board has the discretion to remove the suspension that has been placed upon Dr. Reitz license and to make any further orders that it deems necessary to protect the public interest.

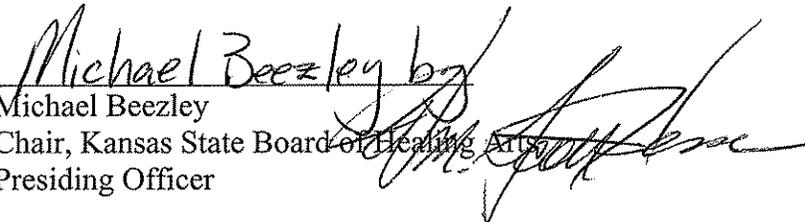
40. The Respondent is immediately placed on **INDEFINITE PROBATION** by the Board. Any violation of any order of the Board or the laws of the State of Kansas

will be grounds for immediate revocation of the Respondent's license to practice medicine and surgery.

IT IS SO ORDERED.

Appeal rights

Pursuant to K.S.A. 77-527, either party may appeal this initial order. A petition for review must be filed within 15 days from the date of this initial order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this initial order becomes final and binding on the 30th day following its mailing. Petition for review shall be mailed or personally delivered to: Jack Confer, Acting Executive Director, Kansas Board of Healing Arts, 235 SW Topeka Blvd., Topeka, KS 66603.


Michael Beezley
Chair, Kansas State Board of Healing Arts
Presiding Officer

CERTIFICATE OF SERVICE

I, hereby certify that I served a true and correct copy of the above and foregoing INITIAL ORDER on the 29th day of July, 2009, via United States mail, first class postage pre-paid, hand-delivery and e-mail to the following:

Mark Stafford
Holbrook & Osborn, P.A.
214 S.W. 6th Street, Suite 306
Topeka, Kansas 66603
MStafford@holbrookosborn.com

Kathleen Selzler Lippert, #17957
Litigation Counsel
Kansas State Board of Healing Arts

235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

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