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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 Craig I. Schwartz, D.O. Kansas License No. 05-30131)))))	KSBHA Docket No. 20-HA00009
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JOURNAL ENTRY SUSTAINING SUMMARY ORDER

On February 14, 2020, the parties appeared before the Kansas Board of Healing Arts ("Board") for a Conference Hearing on the Summary Order filed August 14, 2019, in the above captioned matter. Katie Baylie, Associate Litigation Counsel, appeared on behalf of the Board. Craig I. Schwartz, D.O., ("Licensee") appeared in person, and through counsel, Mark Stafford of Forbes Law Group, LLC.

Board members Dr. Balderston, Dr. Hutchins, and Mr. Kelly, recused themselves from participating in the Board deliberations and decision in this matter, as these members served on the Disciplinary Panel.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, 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 enters this Final Order in the above-captioned matter. After reviewing Summary Order, the agency record, hearing the arguments of the parties, and being duly advised in the premises, the Board **SUSTAINS** the Summary Order indefinitely suspending Licensee until he provides the legally requested information in KSBHA Investigative Case No. 19-00678, as the final order of the Board as amended herein. The Board amends the Final Order by adding the following additional applicable law:

Journal Entry Sustaining Summary Order
In the Matter of Craig I. Schwartz, D.O.; KSBHA Docket No. 20-HA00009

1. In *Wolgast v. Schurle*, the Kansas Court of Appeals affirmed a lower court's decision which "found that fishing expeditions are a legitimate administrative investigatory tool ... " *State ex rel. Wolgast v. Schurle*, 11 Kan. App. 2d 390, 392 (Kan. App. 1986).
2. The United States Supreme Court has stated on agency investigations "... in matters relevant to purposes for which the agency is authorized, the agency may investigate "merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Powell*, 379 U.S. 48, 57, 85 S.Ct. 248, 254, 13 L.Ed.2d 112 (1964), quoting from *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43, 70 S.Ct. 357, 364, 94 L.Ed.2d 401 (1950).

IT IS SO ORDERED this 24th day of February 2020.

KANSAS STATE BOARD OF HEALING ARTS



Tucker L. Poling, Interim Executive Director

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. A copy of any petition for judicial review must be served upon Tucker L. Poling, Interim Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson St., Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the above and foregoing **Journal Entry Sustaining Summary Order**, by depositing the same in the United States mail, postage prepaid, on this 24th day of February 2020, addressed and emailed to:

Craig Schwartz, D.O.
CONFIDENTIAL


Licensee

Mark W. Stafford
Forbes Law Group, LLC
6900 College Blvd., Ste. 840
Overland Park, KS 66211
mstafford@forbeslawgroup.com
Attorney for Licensee

and a copy hand delivered to the office of:

Katie Baylie, Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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


Jennifer Cook
Paralegal

FILED *Bill*

AUG 14 2019

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of)

CRAIG I. SCHWARTZ, D.O.)
Kansas License No. 05-30131)

KSBHA Docket No. 20-HA 00009

SUMMARY ORDER

NOW ON THIS 14 day of Aug, 2019, 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.

Pursuant to K.S.A 77-537 and K.S.A. 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within fifteen (15) days of service. 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. Craig I. Schwartz, D.O. ("Licensee") was originally issued license number 05-30131 to practice osteopathic medicine in Kansas on or about April 26, 2003. Licensee last renewed his license to practice osteopathic medicine on or about September 25, 2018. Licensee's current license designation is Active.

2. Licensee's last known mailing address to the Board is: **CONFIDENTIAL**,

CONFIDENTIAL.

3. During all times relevant to the facts set forth in this Summary Order, Licensee held an Active license to practice osteopathic medicine in Kansas.

4. At all times relevant hereto, Licensee was the owner of Premier Vein & Body by Schwartz ("Premier Vein & Body"), located in Leawood, Kansas.
5. On or about March 12, 2019, the Board received a complaint from a former employee of Licensee at Premier Vein & Body, alleging unprofessional conduct, including, in part, that Licensee improperly maintained and disposed biohazardous waste.
6. On or about April 12, 2019, following receipt of the complaint, Board Investigator Heather Shire sent a letter to Licensee requesting a response to the allegations in the complaint, including requesting copies of all contractual agreements for the disposal of biohazardous medical waste dating back to 2014.
7. On or about May 24, 2019, Licensee responded to the Board's request for a response to the allegations in a letter submitted by Licensee's attorney, but Licensee did not respond to the allegation of improper waste disposal. Licensee's attorney provided a copy of K.A.R. 100-25-2, entitled "Office Sanitation and Safety Requirements," which outlined the separation of biohazardous waste from general waste, specifying biohazardous waste must be placed in secured and identified containers and stored out of reach of children.
8. On or about May 28, 2019, Investigator Shire asked a second time for copies of all contractual agreements for the disposal of biohazardous medical waste, this time dating back to 2011.
9. On or about May 31, 2019, Licensee's attorney provided a supplemental response to Investigator Shire's inquiry. The supplemental response stated Licensee does not have a written contract for medical waste disposal and indicated the waste gets incinerated in an industrial incinerator.

10. On or about May 31, 2019, Investigator Shire asked for information via email regarding whether the industrial incinerator was at an off-site location.

11. On or about June 7, 2019, Investigator Shire sent a follow-up request regarding the May 31, 2019 email, as Licensee's attorney did not respond.

12. On or about June 7, 2019, Licensee's attorney responded on behalf of Licensee and stated, "I hesitate to disclose the company because board contact with the company will likely lead to suspicion and may very well damage the relationship [Licensee] has with that company." He also indicated the company was owned by a relative of Licensee and indicated he did not believe there was a compelling need for this information.

13. On or about June 10, 2019, Disciplinary Counsel Reese Hays sent an email to Licensee's attorney reminding him Licensee could be disciplined for failing to provide information requested by the Board for the purposes of the investigation and gave him a deadline for providing the information as close of business on June 12, 2019. The email further stated a failure to respond to the deadline would be taken as refusal to provide the information.

14. To date, Licensee has not responded and has not provided the requested information.

Applicable Law

15. Under K.S.A. 65-2836, a license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, upon a finding of the existence of any of the following grounds:

- (r) The Licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

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(r), in that Licensee has failed and/or refused to respond to the request for information regarding the contact information of the owner of industrial incinerator used to dispose of bodily waste.

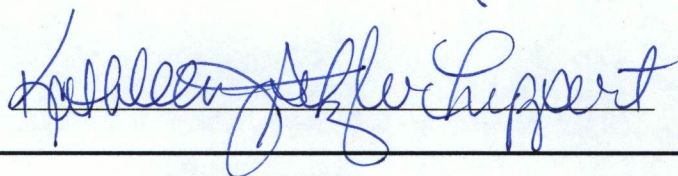
18. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons other than Licensee, Craig I. Schwartz, D.O.

IT IS, THEREFORE, ORDERED that Licensee's license to practice osteopathic medicine in Kansas is **INDEFINITELY SUSPENDED** for violating the Kansas Healing Art Act. Licensee's license shall be Indefinitely Suspended until such time as he provides the legally requested information pursuant to the requests regarding KSBHA Investigative Case No. 19-00678.

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 14 day of Aug, 2019.

KANSAS STATE BOARD OF HEALING ARTS



Craig I. Schwartz, D.O.
License No. 05-30131
Summary Order

Kathleen Selzler Lippert
Executive Director
NOTICE OF RIGHTS
(Pursuant to K.S.A. 77-542)

Licensee is entitled to a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542 of the Kansas Administrative Procedure Act ("KAPA"). If Licensee desires a hearing, within fifteen (15) days from the date of service of this Order, Licensee must file a written request for a hearing with the office of the Executive Director at:

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

If Licensee requests a hearing, the Kansas State Board of Healing Arts will notify the Licensee of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing before commencement of the same. If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing pursuant to K.S.A. 77-542. Pursuant to K.S.A. 77-613(e), the Executive Director is the agency officer designated to receive service of petition for judicial review on behalf of the agency.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing Summary Order was served this 14th day of August, 2019, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Mark Stafford
Attorney for Licensee
Forbes Law Group, LLC
6900 College Blvd., Suite 840
Overland Park, KS 66211

And a copy was hand-delivered to:

Tucker Poling
General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level, Suite A
Topeka, Kansas 66612

M. Katie Baylie
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level, Suite A
Topeka, Kansas 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, Suite A
Topeka, Kansas 66612

Susan Gile