

**EFFECTIVE AS A  
FINAL ORDER**

DATE: 5/28/14

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

**FILED**  
MAY 06 2014 *CA*  
KS State Board of Healing Arts

In the Matter of )  
 )  
Stewart R. Grote, D.O. )  
Kansas License No. 05-22108 )  
\_\_\_\_\_ )

KSBHA Docket No. 14-HA 00139

**SUMMARY ORDER**

NOW ON THIS 5<sup>th</sup> day of May, 2014, 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 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for 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. Stewart R. Grote, D.O, ("Licensee") was originally issued license number 05-22108 to practice osteopathic medicine and surgery in the state of Kansas on December 4, 1987. Licensee's current license designation is active, and such license was last renewed on or about September 30, 2013.

2. Licensee's last known mailing address to the Board is: 712 1<sup>st</sup> Terrace, Lansing, Kansas, 66043.

3. Licensee was a Director and an Officer of Associates in Family HealthCare, P.A., located at 712 1<sup>st</sup> Terrace, Lansing, Kansas 66043, at all times relevant to the allegations set forth below and since its incorporation on December 4, 1995.

4. Missy Medill was an employee of Associates in Family HealthCare at all times relevant to the allegations set forth below, and worked under the direction and supervision of Licensee. Ms. Medill was also the business records custodian for Associates in Family HealthCare at all times relevant to the allegations set forth below, at the time the subpoenas were served.

5. On or about July 26, 2010, Peter Massey, Special Investigator II for the Board, mailed a Subpoena Duces Tecum #12904 by United States mail, certified mail, postage prepaid, to Licensee's most recent mailing address as provided by the Board. The subpoena requested medical records for Patient J.P.

6. On or about August 4, 2010, Ms. Medill swore an oath in the Affidavit of Custodian of Business Records that the records provided to the Board in response to Subpoena Duces Tecem #12904 were a "true copy of the records described in the subpoena or otherwise requested by an authorized investigator for the Kansas Board of Healing Arts."

7. Respondent failed to move the Board to revoke, limit or modify Subpoena Duces Tecum #12904 pursuant to K.S.A. 65-2839a(b)(1).

8. On or about July 26, 2010, Mr. Massey mailed Subpoena Duces Tecum #12906 by the United States mail, certified mail, postage prepaid, to Licensee's most recent mailing address as provided to the Board. The subpoena requested medical records for Patient J.L.

9. On or about August 4, 2010, Ms. Medill swore an oath in the Affidavit of Custodian of Business Records that the records provided to the Board in response to Subpoena

Duces Tecum #12906 were a “true copy of the records described in the subpoena or otherwise requested by an authorized investigator for the Kansas Board of Healing Arts.”

10. Respondent failed to move the Board to revoke, limit or modify Subpoena Duces Tecum #12906 pursuant to K.S.A. 65-2839a(b)(1).

11. On or about October 26, 2010, Jacque Anderson, Special Investigator II for the Board, mailed Subpoena Duces Tecum #13124 by United States mail, certified mail, postage prepaid, to Licensee’s most recent mailing address as provided to the Board. The subpoena requested medical records for Patient M.B.

12. On or about November 4, 2010, Ms. Medill swore an oath in the Affidavit of Custodian of Business Records that the records provided to the Board in response to Subpoena Duces Tecum #13124 were a “true copy of the records described in the subpoena or otherwise requested by an authorized investigator for the Kansas Board of Healing Arts.”

13. Respondent failed to move the Board to revoke, limit or modify Subpoena Duces Tecum #13124 pursuant to K.S.A. 65-2839a(b)(1).

14. On or about July 1, 2011, Ms. Anderson mailed a Subpoena Duces Tecum #13646 by United States mail, certified mail, postage prepaid, to Licensee’s most recent mailing address as provided to the Board. The subpoena requested medical records for Patient N.L.

15. On or about July 12, 2011, Ms. Medill swore an oath in the Affidavit of Custodian of Business Records that the records provided to the Board in response to Subpoena Duces Tecum #13646 were a “true copy of the records described in the subpoena or otherwise requested by an authorized investigator for the Kansas Board of Healing Arts.”

16. Respondent failed to move the Board to revoke, limit or modify Subpoena Duces Tecum #13646 pursuant to K.S.A. 65-2839a(b)(1).

17. On or about October 10, 2011, Ms. Anderson mailed Subpoena Duces Tecum #13883 by United States mail, certified mail, postage prepaid, to Licensee's most recent mailing address as provided to the Board. The subpoena requested additional medical records for the following patients: Patient F.B.; Patient T.R.; Patient P.P.; Patient S.B.; Patient S.B; Patient J.D; Patient O.H; Patient W.T.; Patient D.V.; and Patient J.V. The Subpoena requested documents from 2007 through the present date of October 10, 2011.

18. On or about October 18, 2011, Ms. Medill swore an oath in the Affidavit of Custodian of Business Records that the records provided to the Board in response to Subpoena Duces Tecum #13883 were a "true copy of the records described in the subpoena or otherwise requested by an authorized investigator for the Kansas Board of Healing Arts."

19. Respondent failed to move the Board to revoke, limit or modify Subpoena Duces Tecum #13883 pursuant to K.S.A. 65-2839a(b)(1).

20. On or about October 12, 2011, Ms. Anderson mailed a Subpoena Duces Tecum #13886 by United States mail, postage prepaid, certified mail to Licensee's most recent mailing address as provided to the Board. The subpoena requested additional medical records for Patient M.B.

21. On or about October 18, 2011, Ms. Medill swore an oath in the Affidavit of Custodian of Business Records that the records provided to the Board in response to Subpoena Duces Tecum #13886 were a "true copy of the records described in the subpoena or otherwise requested by an authorized investigator for the Kansas Board of Healing Arts."

22. Respondent failed to move the Board to revoke, limit or modify Subpoena Duces Tecum #13886 pursuant to K.S.A. 65-2839a(b)(1).

23. Licensee timely produced approximately 2,485 pages of records in response to Subpoena Duces Tecum #12904, #12906, #13124, #13646, #13883, and #13886.

24. The Board hired an expert to review the records for the fourteen (14) above-mentioned patients to determine whether Licensee's care and treatment for each patient met the appropriate standard of care and whether Licensee's documentation with each patient's charts was adequate.

25. After an in-depth review regarding each of the fourteen (14) patients, the expert found that Licensee failed to meet the appropriate standard of care for each of the fourteen (14) patients, and that Licensee's documentation was lacking.

26. Based on the approximately 2,485 pages of records produced by Licensee and the Board's expert review, the Board filed a Petition alleging multiple violations of the Kansas Healing Arts Act on July 26, 2013.

27. On or about December 17, 2013, Licensee produced an additional approximately 2,036 pages that he alleged fell within the purview of the original subpoenas as follows:

- (a) An additional 17 pages for patient J.P. pursuant to Subpoena Duces Tecum #12904;
- (b) An additional 34 pages for patient J.L. pursuant to Subpoena Duces Tecum #12906;
- (c) An additional 281 pages for patient M.B. pursuant to Subpoena Duces Tecum #13124;
- (d) An additional 8 pages for patient N.L. pursuant to Subpoena Duces Tecum #13646;

- (e) An additional 1678 pages for patients: F.B.; T.R.; P.P.; S.B.; S.B; J.D; O.H; W.T.; D.V.; and J.V. pursuant to Subpoena Duces Tecum #13883;
- (f) An additional 18 pages for patient M.B. pursuant to Subpoena Duces Tecum #13886;

28. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board's Disciplinary Panel's Appointed Member. The Disciplinary Panel Appointed Member authorized and directed the issuance of this Summary Order and the specific disciplinary sanctions.

#### **Applicable Law**

29. K.S.A. 65-2836 of the Kansas Healing Arts Act 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:

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

#### **Conclusions of Law**

30. The Board finds that Licensee violated K.S.A. 65-2836(r) when he failed to provide the Board with all of documents legally requested in Subpoena Duces Tecum #12904, #12906, #13124, #13646, #13883, and #13886 in the manner as proscribed by the subpoenas.

31. Furthermore, the Board finds that the documents submitted on December 17, 2013, were three (3) to four (4) years after the original subpoenas were issued, and after formal disciplinary proceedings were initiated against his license in KSBHA Docket No. 14-HA00014. A failure to respond to a subpoena for three (3) to four (4) years is contrary to public protections

and efficient regulation. Such a delay does not benefit public protection or efficient regulation, and can only benefit Licensee.

32. Based on the facts and circumstances set forth herein, 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 person other than Licensee.

33. The action of public censure is within the scope of The Board of Healing Arts of the State of Kansas Guidelines for Imposition of Disciplinary Sanctions for the violations set forth above.

**IT IS, THEREFORE, ORDERED** that Licensee is **PUBLICLY CENSURED** for violating K.S.A. 65-2836(r) of the Kansas Healing Arts Act.

**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 5 day of May, 2014.

**KANSAS STATE BOARD OF HEALING ARTS**

  
Kathleen Selzler Lippert,  
Executive Director

## **FINAL ORDER 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 Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 28<sup>th</sup> day of May, 2014 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Stewart R. Grote, DO  
712 1<sup>st</sup> Terrace  
Lansing, KS 66043

Mark Lynch  
Holbrook & Osborn, PA  
7400 W. 110<sup>th</sup> St. #600  
Overland Park, KS 66210  
*Attorney for Licensee*

And a copy was hand-delivered to:

Seth K. Brackman  
Anne Barker Hall  
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

Office of the General 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.

  
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Cathy Brown, Executive Assistant