

**EFFECTIVE AS A
FINAL ORDER**

DATE: 9/30/13

FILED
AUG 30 2013
CAB

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

KS State Board of Healing Arts

**In the Matter of
Henry Michael Borra, M.D.
Kansas License No. 04-24115**

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KSBHA Docket No. 13-HA00061

PROPOSED DEFAULT ORDER AND INITIAL ORDER REVOKING LICENSURE

NOW on this 19th day of August, 2013, comes on for hearing before the Presiding Officer (P.O.), Kimberly Templeton, M.D., Kansas State Board of Healing Arts ("Board") the Petition for Discipline of Henry M. Borra, M.D. ("Licensee"). Jane Weiler, Associate Litigation Counsel, appears on behalf of the Petitioner Board. Licensee fails to appear.

Pursuant to the authority granted to the 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 P.O. hereby enters this Proposed Default Order and Initial Order in the above-captioned matter.

Having the agency record before it, the P.O. finds, concludes and orders as follows:

1. Licensee's mailing address as provided to the Board is: **Confidential** Colorado Springs, Colorado 80904.
2. Licensee obtained his original Kansas Active License to practice medicine and surgery on or about August 15, 1992. Prior to obtaining an active license, he obtained a postgraduate permit in 1991. Licensee changed his Kansas licensure status to Exempt in 2008 and last renewed such license on approximately June 18, 2012.
3. Licensee failed to renew his Exempt license during the regular renewal cycle ending June 30, 2013 and failed to renew during the late renewal cycle ending July 31, 2013. Licensee's license was cancelled by operation of law on August 1, 2013.

4. At all times relevant to the allegations in the Petition for Discipline, Licensee held an exempt license to engage in the practice of medicine and surgery in the State of Kansas.

5. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the privilege and practice of the healing arts, specifically the practice of medicine and surgery. The Board has the sole and exclusive jurisdiction over the privilege to practice medicine and surgery in Kansas. K.S.A. 65-2801 *et seq.* and K.S.A. 65-2869.

PROCEDURAL HISTORY

6. A telephone Status Conference on the Petition for Discipline was noticed for 1:30 p.m. CDT on Monday, April 22, 2013 at the offices of the Kansas State Board of Healing Arts.

7. Pursuant to K.S.A. 2012 Supp. 77-531, Licensee was served with a Notice of telephone Status Conference Hearing to Licensee's mailing address of record with the agency via United States Mail, first-class postage prepaid, on or about April 4, 2013.

8. Licensee did not initially appear by telephone for the April 22, 2013 Status Conference. However, after calling him to verify if he would attend, Licensee did call into the April 22, 2013 telephone Status Conference.

9. Licensee explained that he had been traveling and not read his mail at his regular mailing address; therefore, was previously unaware of the Status Conference Hearing.

10. During the telephone Status Conference, pursuant to Licensee's request for an August date, a Conference hearing was scheduled for August 19, 2013.

11. A letter memorandum and order providing a deadline to exchange discovery and notice of conference hearing to be held on August 19, 2013 at 1:30 pm was mailed to all parties on July 12, 2013. The letter memorandum and order was mailed to Licensee's last known mailing address he provided to the Board.

12. Licensee faxed a request for continuance on August, 19, 2013 for the Conference Hearing scheduled later the same day. In the continuance request, Licensee asserted “that the hearing was ‘unexpected’”, that he had “not secured representation”, that he had “focused too much time on matters of ID theft or fraudulent profiling”, and other issues. Additionally, Licensee indicated that he “considered surrender of his licensure” but asserted that “some content was inaccurate or conjecture”. Further, Licensee indicated that he “had no intention to engage the material as written”. Licensee’s faxed request was concluded with a signature block which included a telephone number (316-650-1805).

13. Board staff called the telephone number Licensee provided in his faxed continuance request and advised Licensee that the Presiding Officer was not available prior to the scheduled hearing to consider the request for continuance; therefore, he should consider that the hearing would be held as previously scheduled.

14. A conference hearing on the Petition for Discipline was held on August 19, 2013 at 1:30 p.m.

15. Licensee failed to appear at the Conference Hearing held on August 19, 2013 at 1:30 p.m. Board staff advised the Presiding Officer that Licensee had called and stated he was running about 15 minutes late. The Presiding Officer recessed from 1:30 p.m. until 1:45 p.m.

16. Licensee did not appear at 1:45 p.m. Board staff called the number Licensee provided on his faxed request for continuance to ascertain whether he was still in route and / or his expected estimated time of arrival. However, the call was not answered and Board staff left a voice mail message for Licensee.

17. Presiding Officer called the cases scheduled and asked for appearances, heard the argument of Petitioner, admitted Petitioner's exhibit 1 and 2, and took notice of the agency record.

18. Licensee still had not appeared when the hearing concluded at 2:12 p.m.

FINDINGS AND CONCLUSIONS

19. The statutory responsibility of the agency is public protection which is effectuated through licensure and discipline. K.S.A. 65-2801 *et seq.*

20. Licensee has been subject to prior Board orders, monitoring, or oversight in various forms since 2005. Licensee was required to comply with monitoring terms of a Consent Order in KSBHA Docket No. 05-HA00048. Licensee was disciplined in KSBHA Docket No. 08-HA00155 for violating Board conditions set forth in the 2005 Board action. The 2008 Board action limited Licensee's license and required Licensee to comply with monitoring and

Confidential

21. A fundamental purpose of Board orders, monitoring, or oversight is to ensure public protection through safeguards deemed necessary to ensure patient safety or that a practitioner is able to practice with reasonable skill and safety. The Board's ability to fulfill its statutory mission of public protection hinges on licensees strict compliance with Board orders, monitoring, or oversight.

22. Licensee failed to appear for a hearing on the disciplinary petition even though he participated and agreed to the hearing date in April 2013; almost 4 months prior to the hearing. The last minute request for continuance of the hearing does not engender confidence that Licensee is willing or able to comply with Board orders.

23. The Presiding Officer accepts the allegations in the Petition for Discipline as undisputed.

24. Evidence set forth in the Petition for Discipline, Board Exhibits 1 and 2, and presented at hearing reveals that Licensee was ordered to comply with numerous terms of a

Confidential but did not adhere to those requirements. Violations **Confidential**

Confidential include:

a. **Confidential**

b.

Confidential

Confidential

25. Licensee's history Confidential

combined with Licensee's present failure to strictly comply with the 2008 Kansas Board Order and Confidential supports a conclusion that the Board is not able to adequately monitor Licensee to ensure patient safety, public protection or that he is able to practice with reasonable skill and safety.

26. In addition to the conclusion that the Board is unable to adequately monitor Licensee, there is evidence of an inability to maintain appropriate professional boundaries.

27. Professional boundaries are a hallmark of professionalism and required to ensure public protection and patient safety.

28. Licensee sent pictures of himself in various stages of undress and / or without clothing and partially clothed while sitting on top of a barn to an individual responsible for Confidential and compliance with his 2008 Consent Order. While Licensee purports that the pictures were to illustrate Confidential or his ability to work, the claim is without merit. The Presiding Officer, a licensed physician, does not accept this assertion as credible.

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Confidential Physicians are regularly required to submit documentation to employers or others designating a patient's ability to work or describing required treatments and modalities. As a physician, Licensee should recognize that submitting a self-photograph in various stages of undress does not qualify Confidential

Confidential

29. Additionally, the Licensee submitted the photographs in response to requests for information about prescriptions he was taking, who prescribed for him, and other particulars related to his failure to comply with **Confidential** The stated purpose of the photographs is not supported by the evidence. The only reasonable conclusion is that Licensee's act of sending the pictures represent a failure to recognize and adhere to professional boundaries.

30. Licensee has demonstrated a pattern of practice and repeated failure to comply with Board orders. Historically, this is demonstrated with Licensee's violation of the 2005 Board order that resulted in the 2008 Consent Order. Presently, this is demonstrated with Licensee's failure to comply with all aspects of **Confidential** **Confidential** his failure to provide supplemental material or additional information to explain variances from **Confidential** **Confidential**

31. The Board looks to the agency's "Guidelines for the Imposition of Disciplinary Actions" for guidance in exercising its discretion to determine the appropriate sanction in this matter. The Board concludes that a violation of a Board order which is intended to safeguard the public constitutes misconduct that is potentially harmful to patients and is disruptive to Board processes. The sanctioning goals for such an offense are to protect the public and punish the Licensee. The Presiding Officer determines the aggravating circumstances outweigh possible mitigating factors in this case. Relevant aggravating factors include: Licensee's previous violations of Board Orders for monitoring, the gravity and duration of Licensee's current non-compliance, Licensee's failure to respond to repeated attempts to obtain information relevant to

monitoring terms, the potential for injury should licensure be continued. The appropriate sanction for Licensee's violation of the Consent Order is revocation of licensure.

32. Pursuant to K.S.A. 2012 Supp. 77-520, Licensee was in default for his failure to appear at the conference hearing on August 19, 2013. Upon review of the agency record and after being fully advised, the P.O. finds and concludes that the facts and allegations set forth in the Petition for Discipline were deemed undisputed.

IT IS THEREFORE ORDERED, that Licensee is hereby held in DEFAULT pursuant to 2012 Supp. K.S.A. 77-520.

IT IS FURTHER ORDERED that Licensee's Kansas license and privilege to practice medicine and surgery is hereby **REVOKED**.

IT IS SO ORDERED THIS 29th DAY OF August, 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

Kimberly Templeton, M.D.
Kimberly Templeton, M.D.
Presiding Officer
Kansas State Board of Healing Arts
Shirley Sapp

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Proposed Default Order. Pursuant to K.S.A. 2012 Supp. K.S.A. 77-520, this order will become effective as an Initial Order of the Board ten (10) calendar days (7 days plus 3 days for mailing) following service of this order, as indicated in

the attached Certificate of Service, unless within that ten (10) day period Licensee files a written request to vacate this order and states the grounds relied upon, subject to P.O. granting the request. Any such request shall be sent to the attention of Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612, and must be received by the close of business on the tenth (10th) day.

PLEASE TAKE NOTICE that once this order becomes effective as an Initial Order, either party may request review by the full Board pursuant to K.S.A. 2012 Supp. 77-527. A petition for review must be filed within 18 days from the date this order becomes effective as an Initial order (15 days plus 3 days for mailing). If neither party timely requests a review, this Initial Order shall become effective as a Final Order.

Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **PROPOSED DEFAULT ORDER** was served this 30th day of August, 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

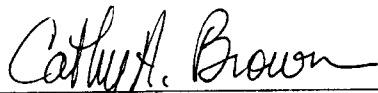
Henry Borra, M.D.
Confidential
Colorado Springs, CO 80904

And a copy was hand-delivered to the office of:

Jessica Bryson, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

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



Cathy Brown
Executive Assistant

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 REVOKING LICENSURE** was served this 1st day of Oct., 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Henry Borra, M.D.

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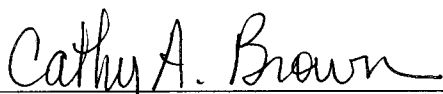
Colorado Springs, CO 80904

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Cathy Brown, Executive Assistant