



IN THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA

In re: Enforcement of Administrative Subpoena Dated March 6, 2012, issued by the Oklahoma Board of Medical Licensure and Supervision:

STATE OF OKLAHOMA, *ex rel.* Oklahoma State Board of Medical Licensure and Supervision,

Petitioner,

vs.

AHS HILLCREST MEDICAL CENTER, LLC,

Respondent.

DISTRICT COURT FILED

APR - 2 2012

SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY

DAMAN CANTRELL

Case No. CV-2012-00418 Judge:

PETITION FOR ORDER TO COMPEL COMPLIANCE WITH ADMINISTRATIVE SUBPOENA AND REQUEST FOR INFORMATION

COMES NOW the Oklahoma State Board of Medical Licensure and Supervision, ("Board") by and through its attorney, Daniel B. Graves of the firm GRAVES MCLAIN PLLC, and pursuant to 75 O.S. §315(C)(1) and OAC 435:3-3-17 moves this Court to order compliance with a request for information in the form of an administrative subpoena, issued by the Board, and attached hereto as Exhibit A, as follows:

I. PROCEDURAL BACKGROUND

1. The Board is the State agency licensing physician Steven C. Anagnost, M.D. ("Dr. Anagnost").

2. On or about March 6, 2012, the Board issued *Subpoena Duces Tecum* (the "Subpoena") to Respondent AHS Hillcrest Medical Center, LLC ("Hillcrest"), requesting certain documentation relating to Dr. Anagnost.

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3. Pursuant to 63 O.S. §1-1709.1(B)(1) Hillcrest was required to provide notice of the Subpoena and request for peer review information to Dr. Anagnost.

4. On March 28, 2012, Hillcrest advised the Board that it had notified Dr. Anagnost of the Board's request and that he objected to the production of any and all documentation requested, including, but not limited to, peer review information.

5. The Board's undersigned counsel has been authorized by Hillcrest's counsel to represent that Hillcrest has no objection to the Subpoena, but that it awaits production pending the resolution of this matter between the Board and Dr. Anagnost.

6. To date, no objection to the Subpoena has been filed by Dr. Anagnost at the Board.

7. The Board's undersigned counsel has attempted to resolve this matter with Dr. Anagnost's counsel, but it appears that this matter cannot be resolved without Court intervention.

8. This action is authorized by the Secretary of the Board, Gerald C. Zumwalt, M.D.

II. MEMORANDUM BRIEF

The Board Subpoena requesting information arises from the investigation of certain complaints submitted to the Board. The Board's investigatory obligations are mandatory in that, "The Staff shall investigate all credible complaints over which the Board would reasonably have jurisdiction." See OAC 435:3-3-1. The substance of the investigation is confidential pursuant to OAC 435:3-3-2. During the course of its investigations the Board may request information of health care facilities, by subpoena or otherwise. The Board's subpoena power is set forth in the OAC's, as follows:

Subpoenas to compel the attendance of witnesses, *for the furnishing of information required by the Board*, and/or for the *production of evidence or records of any kind* may be issued by the Secretary, a Board member, or the Trial Examiner. Subpoenas shall be served and a return made, in any manner prescribed by general civil law. [Emphasis supplied]

See OAC 435:3-3-16. Hillcrest was served by agreement through Hillcrest's counsel. The information sought is within the subpoena power of the Board.

Dr. Anagnost apparently objects to the production of peer review documentation covering his patient care at Hillcrest. However, because the Board is the licensing agency for Dr. Anagnost, no peer review privilege applies to the Board's request and Hillcrest must propound the same upon giving notice to Dr. Anagnost. Oklahoma law provides, as follows:

Peer review information shall be private, confidential and privileged *except that a health care facility* or county medical society *shall be permitted to provide relevant peer review information to the state agency or board which licensed the health care professional* who provided the health care services being reviewed in a peer review process or who is the subject of a credentialing or recredentialing process, with notice to the health care professional. [Emphasis supplied]

See 63 O.S. §1-1709.1(B)(1). The information requested is relevant and necessary to conduct the Board's investigation of certain complaints and is not subject to any assertion of peer review privilege. Further, the information requested is subject to compulsory production by this Court.

Whenever an entity fails to provide relevant information, the Board's remedy is intervention by the District Courts, as follows:

Upon the failure of any person to obey a subpoena...the Secretary may institute appropriate judicial proceedings under the laws of the State for an order to compel compliance with the subpoena...

See OAC 435:3-3-17. The Oklahoma Administrative Procedures Act, provides, as follows:

In case of *disobedience to any subpoena* issued and served under this section or *to any lawful agency requirement for information*...the agency may apply to the district or superior court of the county of such person's residence or to any judge thereof for an *order to compel compliance with the subpoena or the furnishing of information* or the giving of testimony. [Emphasis supplied]

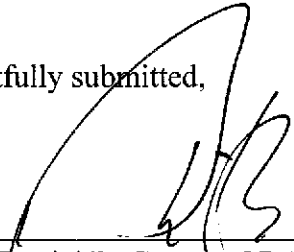
See 75 O.S. §315(C)(1). The Board is entitled to the peer review information, and all other information it requested. The Board respectfully requests an *Order to Compel* pursuant to 75 O.S. §315(C)(1), *supra*.

III. PRAYER FOR RELIEF

WHEREFORE, Petitioner, The State of Oklahoma *ex rel.*, the Oklahoma State Board of Medical Licensure and Supervision requests an *Order* compelling compliance with the Supboena as aforesaid, for costs, including reasonable attorneys fees, and for all other proper relief.

Respectfully submitted,

By: _____



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IN AND BEFORE THE OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE AND SUPERVISION

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE AND
SUPERVISION

Plaintiff,

v.

STEVEN C. ANAGNOST
MEDICAL LICENSE # 21194

Defendant.

CASE NO. 12-03-4509

SUBPOENA DUCES TECUM

TO: HILLCREST MEDICAL CENTER
ATTN: STEVE DOBBS, CEO
1120 S. UTICA AVENUE
TULSA, OK 74014

GREETINGS: You are hereby commanded to immediately deliver to an investigator of the Oklahoma State Board of Medical Licensure and Supervision the following documents:

1. All contracts, service agreements, and the like, between Hillcrest Medical Center and/or Ardent entities (both collectively referred to herein as "Hillcrest") and Neurolinks;
2. Acknowledgement and Release Agreement (believed to be with NeuroLinks), together with list of services from 2004 forward, showing approximately \$97,000.00 in services discussed in Board interview with Steve Dobbs on or about January 20, 2010;
3. All contracts, service agreements, and the like, between Hillcrest and Synaptic Resources, LLC;
4. All contracts, service agreements, and the like, between Hillcrest Medical Center and IOM.
5. All billing from Synaptic from January 1, 2004 through December 31, 2005 to Hillcrest;
6. All billing from Synaptic arising from services rendered to patients of Steven C. Anagnost, M.D. from January 1, 2004 through December 31, 2005;
7. All billing from NeuroLinks from January 1, 2004 through December 31, 2005;
8. All billing from NeuroLinks arising from services rendered to patients of Steven C. Anagnost, M.D. from January 1, 2004 through December 31, 2005;
9. All reports from Synaptic Resources, LLC arising from services to patients of Steven C. Anagnost, M.D. from January 1, 2004 through December 31, 2005;


EXHIBIT

A

10. All invoices, contracts, and the like, showing installation of DSL lines in Hillcrest operating rooms;
11. All invoices, contracts, and the like, showing installation of DSL lines in Hillcrest operating rooms Nos. 4 and 10;
12. All invoices, contracts, and the like, showing installation of internet access lines, other than DSL, in Hillcrest operating rooms;
13. All medical records belonging to patient, Tina Sterling;
14. All radiology film, including intraoperative film, belonging to Tina Sterling;
15. Any and all intraoperative video footage or still shots of surgery for Tina Sterling;
16. Dr. Anagnost's Credentialing File from the 27th of October, 2009 to present date;
17. Dr. Anagnost's Peer Review File from the 27th of October, 2009 to present date;
18. A copy of the Hillcrest by-laws, or such other document(s), which cover procedures for peer review proceedings;
19. Any and all reports, correspondence, preliminary analysis, e-mails, and the like arising from any outside medical review analyzing Steven C. Anagnost's cases, including, but not limited to, any and all such documents to or from the physician from Nashville, Tennessee, referred to in Steve Dobb's interview with the Board on or about January 20, 2010; and
20. Any and all documents pertaining to, and/or arising from, any summary suspension proceedings against Dr. Anagnost, including, but not limited to, correspondence, notices of hearings, tape recordings of proceedings, transcripts of proceedings, board minutes, and the like.

WHEREOF FAIL NOT UNDER PENALTY OF LAW

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Board of Medical Licensure and Supervision of the State of Oklahoma this 6th day of March, 2012
59 O.S. §§503, 504.



GERALD C. ZUMWALT, MD, SECRETARY
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION