

DEC 19 2018

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 19-HA <i>0004/6</i>
Allen L. McLain, D.O.)	
Kansas License No. 05-18985)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Susan R. Gering, Deputy Litigation Counsel (“Petitioner”), and Allen L. McLain, D.O. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice osteopathic medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: 210 S. Vermont Ave., Ransom, Kansas 67572.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-18985 on approximately December 5, 1980. Currently, and at all times prior Licensee has held an Active license, having last renewed his license on September 5, 2018.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of osteopathic medicine and surgery. K.S.A. 65-2801 *et seq.*, and K.S.A. 65-2870.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided

Consent Order
Allen L. McLain, D.O.

by K.S.A. 77-505 and K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

7. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

8. The Board has received information and investigated the same, and has reason to believe that there may be grounds to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

9. This Consent Order resolves two (2) separate Board Investigations: 17-00448 and 18-00247.

10. Investigation 17-00448 was initiated after the Board received [REDACTED]
[REDACTED]
alleging Licensee's care of a 20-year-old female patient who presented to the Emergency Department [REDACTED].

- a. Specifically, Patient 1 presented [REDACTED] with complaints of cramping, abdominal pain, nausea and dizziness at approximately 13 weeks pregnant.
- b. At approximately 2057, Licensee was notified that Patient 1 was in the Emergency Department.
- c. At approximately 2106, Licensee arrived in the Emergency Department to examine Patient 1 and documented Patient 1 was:

having abdominal cramping and back pain since 2 p.m. today. Nausea but no vomiting. Ate tacos at noon today. Feels dizzy and light-headed. Has not taken any medication as 3 months pregnant – has had 2 miscarriages in past[.] Pain is 10/10 in abdomen and back. FHT 142 in lower abdomen. Abdomen mildly tender to palpation. No guarding or rigidity.
- d. Licensee's plan included: ordering Zofran 4mg IV and Zantac 50mg IV; noting Patient 1 may need to return for additional treatment with Zofran and Zantac; noting Patient 1 should have a complete blood count in the morning; and discharging her home.
- e. Prior to Patient 1 being discharged from the Emergency Department, Licensee was contacted and told Patient 1 had slight nausea but was better. Also, Patient 1 continued to have abdominal cramping with a 7/10 pain level that Licensee stated may continue for "a while yet."

- f. Patient 1 was discharged with instructions to return in the morning for lab testing and could return in 8 hours for IV medications for nausea.
11. During his care and treatment of Patient 1, Licensee did not consult an OB/GYN; did not perform and/or order a sonogram; and discharged Patient 1 with a pain rating of 7/10.
12. No documented rationale is found in Licensee's patient record for Patient 1 for why Licensee did not consult an OB/GYN, did not perform and/or order a sonogram; and discharged Patient 1 home with a pain rating of 7/10.
13. Licensee provided a response to Investigation 17-00448 stating in part:
- a. He was not concerned Patient 1's pregnancy was at risk as fetal heart tones were 142 in the lower abdomen and there was no vaginal bleeding.
 - b. Further, he did obtain an OB/GYN consult as his 20 years of experience told him the pregnancy was not at risk.
 - c. Finally, Licensee believed the problem that needed to be treated "was a gastrointestinal one not a pregnancy related problem."
14. Investigation 18-00247 was initiated after the Board received [REDACTED] [REDACTED] alleging Licensee's care and treatment, as well as his documentation, of a 67-year old male ("Patient 2") who presented to the Emergency Department was below the standard of care. Specifically:
- a. Patient 2 presented [REDACTED] with a two (2) to three (3) day history of nausea, diarrhea, anorexia, fevers, chills, and cough.

b. Patient 2's temperature was 102.2, he had a heart rate of 108, respiratory rate of 20, a blood urine nitrogen of 38, a Creatinine of 1.8, and a white blood cell count ("WBC") of 18.1 with left shift.

c. Patient 2 met the criteria for sepsis; however, no lactate level was drawn, no blood cultures were drawn, no antibiotics were given, and no aggressive intravenous fluids were given.

d. No chest x-ray was taken for Patient 2 despite a report of shortness of breath and documentation showing Patient 2 had pursed lips breathing with short diminished sounds.

e. Instead, Licensee documented an Impression and Plan for diagnosis of gastroenteritis and dehydration for Patient 2 and ordered he be admitted for outpatient observation with:

i. IV 1000ml ½ NS 125 ml/hr;

ii. Ranitidine 50 mg IV every 8 hrs;

iii. Zofran 4mg IV every 6hrs prn Nausea or vomiting; and

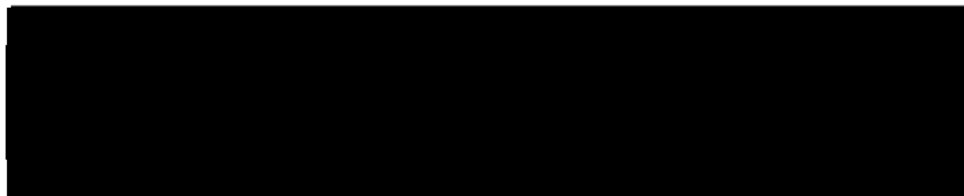
iv. Oxygen 2 l/min via nasal cannula during the night.

f. The following day, Patient 2 was discharged despite being hypoxic, with Zantac and Zofran and with diagnoses of gastroenteritis, dehydration, and COPD. Patient 2 was instructed to return to GMH Ransom Clinic only if needed.

g. Three (3) days following discharge, on or about July 9, 2017, Patient 2 was found dead. A death certificate indicated: "[Patient 2] tripped and pulled his oxygen cannula off accidentally. He had been ill for several days but refused to be hospitalized. Apparently was unable to retrieve his oxygen tubing after tripping."

15. In his response to the Board for Investigation 18-00247 Licensee stated in part:
- a. Patient 2 met the criteria for systemic inflammatory response syndrome (“SIRS”) and possibly mild sepsis, but he was not considering sepsis and instead treated Patient 2 for gastroenteritis.
 - b. As he did not consider sepsis, Licensee did not order lactate to determine whether it was present.
 - c. He was not able to convince Patient 2 to stay as he was adamant about going home.
 - d. Licensee stated as far as his documentation was concerned, “I continue to try to improve my documentation. I realize that I need to work on my documentation skills more.”
16. Based on concerns raised with his care and treatment of Patients 1 and 2, Licensee was requested to complete a competency evaluation with the Center for Personalized Education for Professionals (“CPEP”).
17. Licensee agreed to a CPEP evaluation and from June 11-12, and 14, 2018, Licensee was evaluated on his practice of family medicine in the outpatient, inpatient, and emergency room settings.
18. On or about September 7, 2018, the Board received a copy of the report with recommendations from CPEP. CPEP recommended in part the following:

B. Assessment Findings



[REDACTED]

Educational Recommendations . . .

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

19. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove Licensee has violated the Kansas Healing Arts Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

20. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-2836(i), K.S.A. 65-4915, K.S.A. 65-2898a, and K.S.A. 65-4925.

21. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836(b);

22. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(2), in that Licensee has repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board;

23. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(3), in that Licensee has exhibited a pattern of practice of behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts;

24. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), in that Licensee's conduct is likely to harm the public;

25. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(24), in that Licensee had a repeated failure to practice the healing arts with that level of care, skill and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

26. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records that accurately describe the services rendered to Patients 1 and 2, including patient histories, pertinent findings, examination results and test results; and/or

27. Licensee, if proven, violated K.S.A. 65-2836(k), as further defined in K.A.R. 100-24-1 in that Licensee failed to maintain an adequate record for Patients 1 and 2.

28. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

29. According to K.S.A.65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

30. All pending investigation materials in KSBHA Investigation Nos. 17-00448 and 18-00247 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 33 or its appointed Disciplinary Panel member. Disciplinary Panel No. 33 through its appointed member authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

31. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice osteopathic medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

32. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or

unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Kansas Healing Arts Act.

33. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

34. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.

35. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

36. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct

further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

37. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

38. Licensee acknowledges he has read this Consent Order and fully understands the contents.

39. Licensee acknowledges this Consent Order has been entered into freely and voluntarily.

40. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

41. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

42. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or any conviction for any traffic or criminal offense.

43. Licensee shall immediately notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

44. Licensee shall at all times keep Board staff informed of his current practice locations addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

45. This Consent Order constitutes **public disciplinary action**.

46. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

47. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of osteopathic medicine and surgery:

LIMITATION: IN-PATIENT CARE AND EMERGENCY ROOM CARE

SUPERVISION

48. Licensee shall not practice in-patient care and/or emergent care until such time as he completes a clinical experience [REDACTED]. If Licensee returns or is currently engaged in in-patient care and/or emergency room care (“emergent care”), he shall have 100% direct supervision by a family medicine physician with experience in outpatient, inpatient, and emergency room settings, an emergency room physician, or a hospitalist for a term of at least 90 days. Licensee may have more than one (1) supervising physician to fulfill the terms of this provision.

49. Following at least 90 days of 100% direct supervision of emergent care, Licensee may request the direct supervision be lessened. Such request must be considered and approved by the full Board. Likewise, Licensee may request the supervision of his in-patient care be lessened after 90 days of 100% direct supervision. If the Board determines the 100% supervision requirement shall remain in effect, Licensee shall not request termination until such time as designated by the Board.

50. All subsequent requests for modification or termination of this supervision requirement shall be considered and approved by the full Board.

51. The Family Medicine Physician, Emergency Room Physician, and/or Hospitalist shall be a Kansas-licensed physician. Such individual(s) shall be pre-approved by the Board and shall have no prior board actions. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the individual(s) proposed by Licensee.

a. Before the Licensee's commencement of his return to practice of in-patient care and/or emergent care, Licensee shall submit the curriculum vitae of the individual(s) he proposes to supervise him for the term of this agreement for approval.

b. During Licensee's term of supervision, the individual(s) approved by the Board, shall complete weekly reports that will be submitted on a monthly basis. These weekly reports will address Licensee's interaction with his Board-approved supervisor during the term of his agreement to include number of patients' treated, review of patient care, review of charting for patients, educational areas discussed during that week, any concerns raised and/or discussed with Licensee, and any additional information necessary to provide support required to return to the

practice of in-patient care and/or emergent care. The reports shall be on a form provided by the Board. The form shall be completed in full and provide all requested information and opinions.

c. Following the completion of 90 days, Licensee's last weekly report from his supervisor(s) shall contain, in addition to the information required to be provided in the previous reports, information regarding Licensee's identified strengths and weaknesses and whether in the individual(s)'s opinion Licensee has received sufficient instruction and experience to return to providing independent and/or lessened supervision for in-patient and/or emergent care.

d. Licensee is responsible for the timely submission of the weekly reports for each month. The weekly reports for the preceding month, shall be submitted by the 15th of the following month.

e. Licensee is responsible for ensuring the supervisor(s) timely submission of the report each month.

52. All foreseen and unforeseen costs associated with the aforementioned supervision in this section shall be at Licensee's own expense.

53. Licensee's completion of supervision for in-patient care does not automatically terminate his requirement for emergent care supervision. Both requirements for supervision are separate and distinct.

54. All reports required pursuant to this Consent Order shall be submitted to the following:

**Kansas State Board of Healing Arts
Attention: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A.**

EDUCATIONAL PRECEPTOR

55. Within thirty (30) days of the approval of this Consent Order, Licensee agrees to formally enter into an educational program designed to incorporate the educational needs

[REDACTED] Licensee shall have a minimum of twelve (12) months to complete the designed education program, unless otherwise approved

56. The educational program may be developed by the following institution, unless otherwise approved by the Board:

- a. CPEP located in Denver, Colorado.

57. Licensee shall submit a copy of the developed educational program to the Compliance Coordinator within sixty (60) days of the Board's approval of this Consent Order.

58. Licensee shall have an educational preceptor who specializes in family medicine with experience in outpatient, inpatient, and emergency room settings, who shall serve as a mentor and ensure his progression and successful completion of the educational program developed for Licensee.

59. Licensee shall submit the initial request for approval of his educational preceptor within twenty (20) days of signing this Consent Order to be approved by the Board. The Board hereby designates the Disciplinary Panel's Appointed Member to approve or disapprove the proposed educational preceptor(s). Further, Licensee shall submit each subsequent request for approval of a new or substitute educational preceptor prior to the

departure of the previously Board-approved educational preceptor or unless otherwise approved by the Board. Licensee will be responsible for submitting the Board with the proposed supervisor's Curriculum Vitae prior to his approval.

60. The Educational Preceptor shall be a Kansas licensed physician who actively practices medicine and surgery or actively practices osteopathic medicine and surgery in the State of Kansas.

61. The Educational Preceptor may be the individual(s) identified by Licensee who are approved to serve as Licensee's supervising physicians.

62. Licensee and his Educational Preceptor shall initially review a robust selection of patients seen in the outpatient setting on at a minimum, a weekly basis, to discuss patient evaluations, treatment planning, and documentation as recommended in Licensee CPEP Assessment Report.

63. The educational preceptor shall submit monthly reports regarding Licensee's compliance with the terms of his educational program until such time as he has successfully completed the educational program. The educational preceptor shall submit a monthly report to the Board which is due on the 15th day of the following month.

64. All reports required pursuant to this Consent Order shall be submitted to the following:

Kansas State Board of Healing Arts
Attention: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A.
Topeka, Kansas 66612
KSBHA_ComplianceCoordinator@ks.gov

MEDICAL RECORD KEEPING COURSE

65. On or before March 1, 2019, unless otherwise approved, Licensee shall attend and successfully complete the “Medical Record Keeping Seminar” put on by CPEP.
66. On or before December 31, 2018, Licensee shall notify the Compliance Coordinator in writing of the date in which he is signed up to take the record keeping course.
67. Licensee shall provide proof of successful completion of the above course(s)/seminar(s) to the Compliance Coordinator within thirty (30) calendar days of successfully completing both the above seminars.
68. These hours shall be in addition to those continuing education hours required for renewal of licensure.
69. All foreseen and unforeseen costs associated with the aforementioned course(s)/seminar(s) shall be at Licensee’s own expense to include, but not be limited to, the cost of the course(s)/seminar travel, lodging, program fee, meals, etc.
70. All correspondence pursuant to this Consent Order shall be submitted to the following:

Kansas State Board of Healing Arts
Attention: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A.
Topeka, Kansas 66612
KSBHA_ComplianceCoordinator@ks.gov

TIMEFRAMES

71. The above supervision provision is not self-terminating. After the period of at least 90 days of 100% supervision, Licensee may request modification or termination of the remaining above supervision provisions. For any time Licensee is not actively practicing

osteopathic medicine and surgery in the State of Kansas, the supervision provisions will remain in effect, but will be tolled and not counted towards reducing the 90-day timeframe.

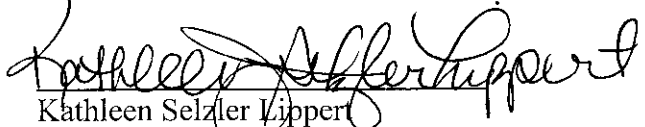
72. The above educational preceptorship provision is not self-terminating. After successful completion of the requirements of his educational program, Licensee may request modification or termination of the above educational preceptorship provision.

73. This Consent Order is not self-terminating. Any request for termination of this Consent Order in its entirety shall be considered by the full Board.

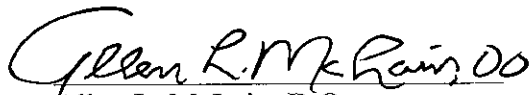
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board. *And, as modified by Journal Entry of 12/19/18*

IT IS SO ORDERED on this 19 day of Dec, 2018.

**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**

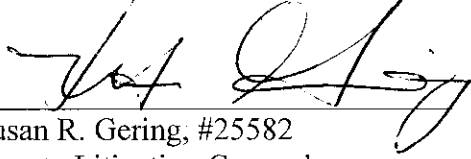

Kathleen Selzler Lipper
Executive Director

12/19/18
Date


Allen L. McLain, D.O.
Licensee

10/25/2018
Date

PREPARED AND APPROVED BY:



Susan R. Gering, #25582
Deputy Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Phone: 785-368-8212
Fax: 785-368-8210
susan.gering@ks.gov

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 19th day of December, 2018, to the following:

Allen L. McLain, D.O.
Licensee
210 S. Vermont Ave.
Ransom, Kansas 67572

And the original was hand-filed with:

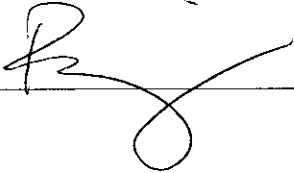
Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Susan R. Gering, Deputy Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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



A handwritten signature in black ink, appearing to be 'A. McLain', is written over a horizontal line.