

JAN 13 2020

KS State Board of Healing Arts

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

**In the Matter of  
Kezia Shine, D.C.**

**Kansas License No. 01-05327**

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**Docket No. 16-HA00031**

**FINAL ORDER ON APPLICATION TO STAY  
FINAL ORDER OF SEPTEMBER 6, 2019**

On January 13, 2020, the Kansas State Board of Healing Arts (“Board”) enters this Order on the Respondent’s Application to Stay Final Order of September 6, 2019.

**Procedural Filings**

1. On January 22, 2018, the Administrative Law Judge (“ALJ”) issued the Initial Order in the *Matter of Kezia Shine*, Kansas License No. 01-05327, OAH Docket No. 16-HA0004, KSBHA Docket No. 16-HA00031.
2. On May 10, 2018, the Kansas Board of Healing Arts (“Board”), after review of the Initial Order, issued the Final Order in this matter.
3. On September 4, 2018, Kezia Shine (“Respondent”) filed an Amended Petition for Judicial Review with the District Court of Johnson County (“Court”).
4. On April 11, 2019, the Court issued a Final Order regarding the license of Kezia Shine, D.C. (“Respondent”). *Kezia Shine, D.C., v. Kansas State Board of Healing Arts (“Shine”)*, Case No. 18CV2797, Chapter 60, Division 4. The Court’s Final Order reinstated: suspension of the Respondent’s license for 89 days; a \$5,000.00 fine; costs of \$93,324.65; and probation to be determined by the Board.
5. On June 19, 2019, the Court issued an order amending the Court’s April 11, 2019

order by reducing costs to \$14,630.75 and finding that the 89-day suspension had been served. The Court stated that its April 11, 2019, Findings of Fact and Conclusions of Law, was otherwise the Court's Final Order in this case.

6. On July 3, 2019, the Board appealed the Court's Final Order to the Kansas Court of Appeals, Court of Appeals Case No. 18-119631-A.
7. On September 6, 2019, the Board entered a Final Order establishing the terms of probation.
8. On October 2, 2019, the Respondent filed with the Board an Application to Stay Final Order of September 6, 2019 ("Application to Stay").
9. On October 17, 2019, Litigation Counsel for the Board filed a Response to Respondent's Application to Stay.
10. On November 8, 2019, a Notice of Hearing was filed and served, setting a hearing on Respondent's Application to Stay.
11. On November 8, 2019, the Board appointed Dr. Robin Durrett, D.O. as presiding officer for the hearing.
12. On December 4, 2019, the scheduled hearing was held by the Presiding Officer.
13. On January 3, 2020, the date to serve this Final Order was extended to January 10, 2020 by consent of the Board and the Respondent.
14. The Board was unable to serve the Final Order on January 10, 2020 due to the Governor's order to shut down the State Offices at noon because of inclement weather.

### **Findings of Fact**

1. The above stated Procedural Filings and Orders are incorporated herein as findings of fact.
2. The Respondent's Application to Stay requests a stay, pending judicial review, of the Board's September 6, 2019 Final Order implementing probation terms.
3. The Respondent's Application to Stay asserts: the probation terms create an extreme hardship and basically prevents the Respondent from practicing in Kansas; and there is no risk to the public if the Respondent continues to practice while probation is stayed.
4. The wrongful acts giving rise the ALJ's Initial Order occurred in 2014. Since that time the Respondent has treated thousands of patients and no additional complaints against the Respondent have been filed with the Board.

### **Probation Terms**

5. The Board's September 6, 2019 Final Order established the following probation terms:

1. AMI monitoring for a period of two years.

Licensee shall be monitored for a period of two years by Affiliated Monitoring, Inc. ("AMI"), or another professional monitoring program determined by the Board to be equivalent in substance and approved in advance by the Board. Licensee shall cause monthly monitoring reports to be submitted to the Board Compliance Coordinator at the address listed below.

On or before October 15, 2019, Licensee shall enter into a compliance contract with AMI or another professional monitoring program determined by the Board to be equivalent in substance and approved in advance by the Board. On or before October 15, 2019, Licensee shall notify the Compliance Coordinator in writing, that Licensee has entered into such contract.

2. Practice chaperone for a period of one year to be present during treatment of pregnant patients.

A practice chaperone licensed to practice chiropractic shall be physically present with Licensee at all times during all treatment rendered by Licensee to pregnant patients for a period of one year. The chaperone shall be approved in advance by Board member Jerry DeGrado, D.C. Licensee shall not treat any pregnant patient unless the approved chaperone is present. On or before October 1, 2019, Licensee shall submit the name and qualifications of the chaperone for approval by Dr. DeGrado to: [tucker.poling@ks.gov](mailto:tucker.poling@ks.gov).

3. PROBE ethics course.

Licensee shall successfully complete the PROBE ethics course offered by the Center for Personalized Education for Professionals, or another course determined by the Board to be equivalent in substance and approved in advance by the Board.

4. EBAS test.

Licensee shall complete and pass all five (5) topic areas of the Essay Examination of Ethics and Boundaries Assessment Services, LLC (EBAS) on or before December 31, 2019. The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee within ten (10) business days of Licensee receiving the test result. The results shall be sent to:

Compliance Coordinator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A,  
Topeka, Kansas 66612  
[KSBHA\\_compliancecoordinator@ks.gov](mailto:KSBHA_compliancecoordinator@ks.gov)

On or before October 15, 2019, Licensee shall notify the Compliance Coordinator in writing, that Licensee has registered with the EBAS to take the Essay Examination.

5. Miscellaneous Provisions.

Unless otherwise specified, Licensee shall provide proof of successful completion of any requirement of this order within 30 days of completing the requirement.

All costs associated with complying with this Final Order shall be the Licensee's.

Any continuing education hours completed to comply with this Final Order shall be in addition to those required for renewal of licensure.

Unless otherwise specific in this Order, proof of successful completion and all documentation and correspondence associated with this Final Order's requirements shall be submitted to the Compliance Coordinator.

#### **AMI Monitoring Program**

6. The AMI monitoring program requires payment of: an initial deposit of \$750.00; estimated monitoring costs for the first four months of review; and one quarterly report preparation fee (if there is one). AMI email to Respondent (September 10, 2019) - Respondent Exhibit No. 3, p. 2.
7. AMI charges \$475.00 per hour for monitoring costs. Exhibit No. 3, p. 2.
8. AMI communicated to the Respondent:

“It will be important to know how many records the Board wants us to review each time, as that will influence the amount of monitor time you will have to pay for – in our experience a review of 10 records generally requires between 2 and 3 hours of monitor time. **Please be aware that this is only an estimate – the actual costs will depend on a number of factors, including but not limited to how organized and how legible the patient records are;**” (bold in original text). Respondent Exhibit No. 3, p. 2.
9. AMI's understanding was that the Board required monthly monitoring reports and AMI communicated to the Respondent “In order to provide you with a more specific costs [*sic*] estimate and a contract for the monitoring services, we will need a fully signed copy of the Board's disciplinary order.” Respondent Exhibit No. 3, pp. 1-2.
10. Neither Respondent or counsel for the Respondent contacted the Board or the Board's Compliance Coordinator regarding the additional information AMI requested in order

to provide Respondent with a specific cost estimate and contract for monitoring services.

### **Practice Chaperone**

11. The Respondent treats four to five pregnant patients per week. When the Respondent treats pregnant patients Respondent's practice chaperone, Dr. Brandi Benson, is present. Respondent's practice chaperone is a doctor in the Respondent's practice and is paid on a salary basis.
12. The Respondent's estimated net loss is \$30.00 for each pregnant patient treated with the practice chaperone present.
13. The Respondent personally treats an average of 75 non-pregnant patients per week at an average fee of \$50.00 per patient.
14. The Respondent's chaperone, a doctor in the same practice, personally treats 60-70 patients per week at an average fee of \$80.00 to \$90.00.
15. Not including the Respondent, the Respondent's practice has three other doctors.

### **PROBE Ethics Course**

16. On October 31, 2019 Counsel for the Respondent emailed Tucker Poling, Interim Executive Director of the Board, asking if the Chirocredit ethics course could be substituted for the PROBE ethics course. Counsel also asked if the Chirocredit ethics course was determined not to be an acceptable substitute, would the Board would extend the deadline to complete the EBAS test until the end of March 2020 in order to allow the Respondent time to complete the PROBE ethics course before taking the EBAS test. Respondent Exhibit No. 4, p. 1.

### EBAS Test

17. On October 31, 2019 Counsel for the Respondent emailed Tucker Poling, Interim Executive Director of the Board, asking whether the Board would extend the deadline to complete the EBAS test until the end of March 2020 in order to allow the Respondent time to complete the PROBE ethics course before taking the EBAS test. Respondent Exhibit No. 4, p.1.
18. The Respondent stated she could have the EBAS test completed by April 1, 2020 if the test was offered during that time.

### Conclusions of Law

Under the Kansas Administrative Procedure Act (“KAPA”), K.S.A. 77-501 *et seq.*, action on a petition for stay is at the discretion of the presiding officer or agency head. K.S.A. 77-528. The party seeking the stay bears the burden of proof to establish that the stay is necessary. *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 368, 22 P.3d 124 (2001).

Under the Kansas Judicial Review Act (“KJRA”), K.S.A. 77-601 *et seq.* When a court is reviewing an agency action K.S.A. 77-616 provides that:

“(a) Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

(b) A party may file a motion in the reviewing court, during the pendency of judicial review, seeking interlocutory review of the agency's action on an application for stay or other temporary remedies.

(c) If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety or welfare, the court may not grant relief unless it finds that:

- (1) The applicant is likely to prevail when the court finally disposes of the matter;

- (2) without relief the applicant will suffer irreparable injury;
- (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and
- (4) the threat to the public health, safety or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances.

(d) If subsection (c) does not apply, the court shall grant relief if it finds, in its independent judgment, that the agency's action on the application for stay or other temporary remedies was unreasonable in the circumstances.

(e) If the court determines that relief should be granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on appropriate terms or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms or granting other temporary remedies. As used in this subsection, "appropriate terms" may include requirement of a bond.

(f) Except as otherwise authorized by rule of the supreme court, the court shall not issue any ex parte order pursuant to this section.

(g) This section shall not apply to proceedings under K.S.A. 66-118g through 66-118k, and amendments thereto."

### **District Court Final Order**

The Court's April 11, 2019 Final Order found there to be "a myriad of evidence to support the ALJ's conclusion of misconduct, professional incompetency, and gross negligence" in the Respondent's treatment of three pregnant patients. Court's Final Order, p. 20. The Court replaced the Board's revocation of the Respondent's license with sanctions ordering: (1) suspension of the Respondent's license for 89 days (completed); (2) a fine of \$5,000.00; (3) payment of costs of \$14,630.75; and (4) Respondent's reinstated license be limited as defined by the terms of probation as determined by the Board. Given the serious nature of the Respondent's violations in treating patients the Court was unwilling to reinstate the Respondent's license



outright, but instead included the additional safety net of probation to protect patients currently being treated by the Respondent.

### **Terms of Probation**

Probation is defined as “subjection of an individual to a period of testing and trial to ascertain fitness.” *Merriam-Webster.com*. 2019. <https://www.merriam-webster.com> (10 January 2019). The Court attached probation as a condition to the Respondent’s license and directed the Board to establish terms that allow the Board to assess the current fitness of the Respondent to treat patients.

The Board’s terms of probation focus on the same areas of patient treatment that resulted in the original violations by the Respondent: (1) review of recordkeeping of patient treatment; (2) observation by a chaperone when the Respondent’s treats pregnant patients; (3) and measurement of the Respondent’s understanding of the laws and ethics governing chiropractic practice and the treatment of patients. The terms of probation require third party monitoring, observation and testing in key areas as the Respondent currently treats patients. Third party reporting provides the Board with a documented assessment of the Respondent’s current fitness to treat patients and is essential to assure and protect the safety and health of her patients.

### **Stay of Probation Terms – Risk to Public**

As ordered by the Court, the Board has determined the terms of probation. The Respondent now seeks to stay application of the probation terms pending judicial review.

The Respondent argues the stay is necessary because there is no risk to the public since there have been no subsequent complaints against the Respondent filed with the Board. The Court acknowledged the lack of complaints against the Respondent, but held it was still

necessary to require the Respondent's reinstated license to be restricted by the terms of probation. The primary purpose of the Court's order of probation is to establish and document the Respondent's current fitness to treat patients safely. The Court reinstated the Respondents license subject to the terms of probation to protect patients and the Respondent. If probation is stayed the Respondent is upgraded to an unrestricted license and there is no assessment of the current fitness of the Respondent to treat patients. The result of granting a stay puts patients and the public directly at risk, an outcome the Court intentionally sought to avoid by attaching the condition of probation to the Respondent's reinstated license.

#### **Stay of Probation Terms – Extreme Hardship**

The Respondent asserts the stay is necessary to prevent extreme hardship and “basically prevent her from practicing in Kansas.”

The Respondent's main objection is to the estimated costs of the AMI monitoring, which according to AMI material vary based upon the monitoring requirements and frequency. The Respondent has not provided AMI with all requested information to set up her monitoring plan. The Respondent was unsure of the actual cost of her AMI monitoring plan and how the actual cost of the AMI plan would impact the financial aspects of her practice.

The Respondent has been complying with the chaperone requirement for pregnant patients at an estimated cost of \$150.00 per week.

The Respondent can comply with the terms of probation relating to the ethics courses and exams if the Board grants additional time.

Based on the evidence provided the Respondent has failed to demonstrate the probation terms impose extreme hardship or prevent the Respondent from practicing in Kansas.

## Conclusion

Protecting the health, safety, and welfare of patients treated by the Respondent is the essential purpose of the Court's order to reinstate the Respondent's license conditioned on probation to determine current fitness to treat patients. The costs to comply with the terms of probation add expense to the practice of the Respondent but are necessary to carry out this purpose and protect the public. To grant the stay would discard this protection and put patients at risk.

The Respondent's Application to Stay the Board's Final Order of September 6, 2019 is **DENIED**. Dates for compliance with the terms of probation in the Final Order of September 6, 2019 are amended as follows:

1. On or before February 15, 2020, Licensee shall enter into a compliance contract with AMI or another professional monitoring program determined by the Board to be equivalent in substance and approved in advance by the Board. On or before February 15, 2020, Licensee shall notify the Compliance Coordinator in writing, that Licensee has entered into such contract.
2. On or before February 15, 2020, Licensee shall notify the Compliance Coordinator in writing, that Licensee has registered with the EBAS to take the Essay Examination.
3. On or before April 1, 2020, Licensee shall successfully complete the PROBE ethics course offered by the Center for Personalized Education for Professionals, or another course determined by the Board to be equivalent in substance and approved in advance by the Board.
4. On or before April 1, 2020, Licensee shall complete and pass all five (5) topic areas

of the Essay Examination of Ethics and Boundaries Assessment Services, LLC (EBAS). The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee within ten (10) business days of Licensee receiving the test result. All other terms of the Board's September 6, 2019 Final Order remain unchanged.

**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**

/s/ Warran Wiebe, KS#13572, for  
Robin Durrett, D.O.  
Presiding Officer

## 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 Poling, Interim Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson St., Topeka, KS 66612.

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Order was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 3<sup>rd</sup> day of January 2020, addressed to:

Brian J. Niceswanger  
Stephanie A. Pruet  
Ryan R. Cox  
82 Corporate Woods, Suite 900  
10851 Mastin Boulevard  
Overland Park, KS 66210  
bniceswanger@evans-dixon.com  
*Attorneys for Licensee*

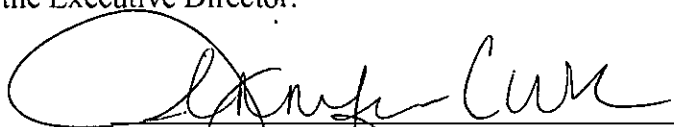
And copies were hand-delivered to:

J. Todd Hiatt  
Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson Lower Level, Ste A  
Topeka, KS 66612

And a copy was given to:

Robin Durrett, D.O.  
KSBHA Presiding Officer  
Kansas State Board of Healing Arts

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

  
Jennifer Cook, Paralegal