

**KANSAS STATE BOARD OF HEALING ARTS  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612**

**BOARD MINUTES – Friday  
October 14, 2016**

FORMAT OF MINUTES – Prior to each motion there appears the names of two Board Members in parenthesis. The first made the motion, the latter seconded the motion. Ayes, nays, abstentions and recusals are recorded when requested.

**FRIDAY, OCTOBER 14, 2016**

**I. CALL TO ORDER - ROLL CALL**

The Kansas State Board of Healing Arts met at the Board Office, 800 Jackson, Lower Level-Suite A, Topeka, Kansas on Friday, August 12, 2016. The meeting was called to order at 8:30 a.m. by Garold Minns, M.D. and President.

|                                  |         |
|----------------------------------|---------|
| Michael Beezley, M.D.            | present |
| Jerry DeGrado, D.C.              | absent  |
| Robin Durrett, D.O.              | present |
| Steven Gould, D.C.               | present |
| Anne Hodgdon, public member      | absent  |
| David Laha, DPM                  | present |
| M. Myron Leinwetter, D.O.        | present |
| Richard A. Macias, public member | present |
| Douglas Milfeld, M.D.            | present |
| Garold O. Minns, M.D.            | present |
| John Settich, public member      | present |
| Kimberly Templeton, M.D.         | present |
| Terry L. Webb, D.C.              | present |
| Joel Hutchins, M.D.              | absent  |
| Ronald Varner, D.O.              | present |

Staff members present were Kathleen Selzler Lippert, Executive Director; Kelli Stevens, General Counsel; Stacy Bond, Assistant General Counsel; Reese Hays, Litigation Counsel; Jane Weiler, Susan Gering, Anne Barker Hall, Tracy Fredley and Joseph Behzadi, Associate Litigation Counsel; Dan Riley, Disciplinary Counsel; Joshana Offenbach, Associate Disciplinary Counsel; John Nichols, Licensing Administrator; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; Ivan Perez, Compliance Coordinator; Jennifer Cook, Legal Assistant to General Counsel; Ryan Hamilton, Law Clerk to General Counsel; Clifford Lee, Legal Extern to General Counsel; and Cathy Brown, Executive Assistant. The attached sign-in sheet indicates those people who were present during portions of the meeting.

Ksenija Zeltkalns, CSR, Appino and Biggs Reporting Service, took and recorded the administrative proceedings conducted.

**I. APPROVAL OF AGENDA**

(Hutchins/Gould) Approve agenda with the following changes: addition to the General Counsel staff report of Draft Regulations for Medical Record Copying Charges and Review of Policy #93-02 Practice of Midwifery in KS; deletion of Loseke and Gnoinski Admin Hearings and Sayeed settlement agreement. Carried.

**APPROVAL OF BOARD MEETING MINUTES**

(Hutchins/Gould) Approve minutes of August 12, 2016 regular meeting with no changes. Carried.

**II. OTHER BUSINESS**

**KSBHA Staff & Board Recognition**

Dr. Webb was presented with a plaque thanking him for his term as President of the Kansas State Board of Healing Arts.

**III. ADMINISTRATIVE PROCEEDINGS**

Board President, Garold Minns, M.D. recessed the board meeting to conduct administrative proceedings under the Kansas Administrative Procedures Act.

**ZACHARY BAKER, D.C., DOCKET #17-HA00010** – Conference Hearing on Petition for Discipline. Ms. Weiler appeared for the Board. Dr. Baker appeared in person, *pro se*.

Following are the members of the disciplinary panel and those members present at the board meeting recused themselves from the proceedings: Dr. Gould, Dr. Milfeld, Dr. Varner and Ms. Hodgdon.

Board Decision: The Board found that Dr. Baker violated the Healing Arts Act. Discipline imposed.

**QUYCHI HAN LE, M.D., DOCKET #16-HA00107** - Conference Hearing on Application. Ms. Fredley appeared for the Board. Dr. Le appeared in person *pro se*.

Following are the members of the disciplinary panel and those members present at the board meeting recused themselves from the proceedings: Dr. Laha, Dr. Durrett and Mr. Macias. Dr. Minns recused himself and Dr. Webb presided.

Board Decision: The Board allowed Dr. Le to withdraw her application for licensure.

**WALKER WYNKOOP, M.D., DOCKET #16-HA00108** - Conference Hearing on Application for Designation Change. Ms. Fredley appeared for the Board. Dr. Wynkoop appeared in person with counsel, Ms. Diane Belquist.

Following are the members of the disciplinary panel and those members present at the board meeting recused themselves from the proceedings: Dr. Templeton, Dr. Leinwetter, Dr. Webb and Mr. Settich.

Board Decision: The Board found that Dr. Wynkoop did not violate the Healing Arts Act. Application granted.

**SUBIR RAY, M.D., DOCKET #17-HA00005** - Conference Hearing on Application. Ms. Fredley appeared for the Board. Dr. Ray appeared in person *pro se*.

Following are the members of the disciplinary panel and those members present at the board meeting recused themselves from the proceedings: Dr. Laha, Dr. DeGrado, Dr. Durrett, Dr. Hutchins and Mr. Macias.

Board Decision: The Board allowed Dr. Ray to withdraw his application for licensure.

**ALEXANDER HEMME, D.C., DOCKET #16-HA00043** - Conference Hearing on Motion to Modify Consent Order. Ms. Weiler appeared for the Board. Dr. Hemme appeared in person with counsel, Ms. Diane Belquist.

Recusals: None

Board Decision: Modification of Consent Order granted.

**SARA BASKERVILLE-CROME, D.C., DOCKET #14-HA00102** - Conference Hearing on Request to Terminate Monitoring. Ms. Weiler appeared for the Board. Dr. Baskerville-Crome appeared in person *pro se*.

Recusals: None

Board Decision: Monitoring terminated.

**DAVID HUNDLEY, P.T.A., DOCKET #15-HA00045** - Conference Hearing on Request to Terminate Monitoring. Ms. Weiler appeared for the Board. Mr. Hundley appeared in person *pro se*.

Recusals: None

Board Decision: Monitoring terminated.

**THOMAS HEGARTY, M.D., DOCKET #14-HA00047** - Conference Hearing on Request to Terminate Consent Order. Ms. Weiler appeared for the Board. Dr. Hegarty appeared in person *pro se*.

Recusals: None

Board Decision: Monitoring terminated.

#### IV. SETTLEMENT AGREEMENT

**Billy Richardson Jr., M.D.,** - Review of Proposed Consent Order. Ms. Fredley appeared for the Board. Dr. Richardson appeared in person with counsel, Mr. Mark Stafford.

Recusals: None

Board Decision: Approve Consent Order with agreed upon modification.

**Bret A. Press, L.R.T.** - Review of Proposed Consent Order. Ms. Gering appeared for the Board. Mr. Press appeared in person with counsel, Mr. James Rumsey.

Recusals: None

Board Decision: Approve the Consent Order as written.

**Edward Stanton, M.D., Docket #17-00001** - Ratification of Consent Order. Ms. Fredley appeared for the Board. Dr. Stanton appeared in person *pro se*.

Recusals: None

Board Decision: Approve Consent Order as written.

**Krystin J. Provo, D.C., Docket #17-HA00012.** - Ratification of Consent Order. Ms. Fredley appeared for the Board. Dr. Provo appeared in person. His counsel, Ms. Teri Austenfeld, was unable to appear with him today.

Recusals: None

Board Decision: Approve Consent Order with agreed upon modification.

**Melissa Williams, P.T., Docket #17-HA00006** - Ratification of Consent Order. Ms. Fredley appeared for the Board. Ms. Williams appeared in person with counsel, Ms. Lisa McPherson.

Recusals: None

Board Decision: Approve the Consent Order with agreed upon modification.

Elizabeth F. Markowitz, O.T. - Review of Proposed Consent Order. Mr. Behzadi appeared for the Board. Ms. Markowitz appeared in person with counsel, Ms. Carol Ruth Bonebrake.

Recusals: None

Board Decision: Approve the Consent Order as written.

Gurpreet S. Randhawa, M.D. - Review of Proposed Consent Order. Mr. Behzadi appeared for the Board. Dr. Randhawa appeared in person with counsel, Ms. Carol Ruth Bonebrake.

Recusals: None

Board Decision: Approve Consent Order with agreed upon modification.

**V. OTHER BUSINESS (cont'd.)**

The Board President called the board meeting back to order.

**Review of Certified Nurse Midwife Advisory Council Recommendations on Regulations**

Draft CNM regulations were presented by Kelli Stevens, General Counsel, for the Board's review and recommendations. The draft regulations will need to go to the Nursing Board for review and content approval. Following questions and comments about the drafts by Board members, the Board heard comments from Dr. Elizabeth Wickstrom, MD, FACOG, a maternal-fetal medicine specialist.

Dr. Wickstrom presented her recommendation that certified nurse-midwives holding the new independent license not be required to use the distinct abbreviation "CNM-I" as it would create difficulties for facility electronic health record systems. She suggested an attestation statement/signature line at the end of treatment notes, etc. which would denote whether a practitioner was practicing under their independent license or their APRN license. She also provided her opinion that a trial of labor after a cesarean birth (referred to as a TOLAC) resulting in a vaginal birth after cesarean (VBAC) should be included in the scope of practice for the independent license in hospitals with immediate surgical availability or in accredited birth centers where there emergency transport availability to such a hospital within minutes. Finally, she discussed how physicians and nurse-midwives collaborate when a patient presents with a potential risk factor to pregnancy and delivery and recommended that the regulations not have strict lists of factors that require referral or transfer, but

instead allow for the independent certified nurse-midwife to use their professional judgment as to when and how to get a physician involved for a patient with risk factors. Board members asked questions of Dr. Wickstrom regarding the amount of time the standard of care would require to be able to do a cesarean delivery when a patient has a TOLAC.

Kent Bradley, M.D., FACOG, a physician member of the Certified Nurse Midwife Advisory Council, provided his opinion on whether a TOLAC resulting in a VBAC was within the statutory scope of practice for independent certified nurse-midwives. Dr. Bradley expressed this opinion that the lowest risk of uterine rupture is .05 percent, or 1 in 200 and noted that uterine rupture is often life-threatening for mother and baby. Dr. Bradley answered questions from the Board members.

The Board members expressed that in the draft “duty to transfer” regulation, there was language indicating a transfer could be made to a hospital ER. Ms. Stevens indicated that the Council had actually recommended changing that language so that it referral was to a hospital with an obstetrical unit. Board members also requested more clear language regarding the duty to communicate with a physician on transfer and also regarding the independent certified nurse-midwife’s ability to provide supervision and delegation of others.

Cara Busenhart, Ph.D., CNM, APRN, a member of the Council, also answered questions from the Board members regarding IV analgesia and sedation. She clarified that CNMs do IV analgesia, but not sedation.

The Board members discussed among themselves whether or not to include VBACs in the scope of practice with a timeframe requirement for availability of a cesarean delivery. The Board members noted that this necessitates balancing the risk with the rights of women who want to have a VBAC.

Dr. Chad Johanning, M.D., a member of the Council, provided his opinion that a prior cesarean birth is an inherently risky condition that excludes it from the limited scope of practice for this license, which is a “normal, uncomplicated pregnancy and delivery.” He opined that the timeframe for being able to convert to a cesarean delivery was not the issue, but rather was the condition within the statutory scope of practice. He said that in contrast, the CNM members of the Council viewed a prior cesarean as a condition that was acceptable if reasonably managed, and thus, the Council was unable to resolve the VBAC issue among themselves.

Dr. Wickstrom then stated that the 1 in 200 risk of uterine rupture encompassed all women with a previous uterine scar and referred to any opening of the scar, not necessarily a catastrophic one. She noted that accredited birth centers who do TOLACs have very strict criteria for who they will offer a TOLAC. She noted the American College of Obstetricians and Gynecologists’ 2010 Practice

Bulletin recommends that a TOLAC be undertaken where staff can immediately provide an emergency cesarean, but recognizes that those resources are not universally available. It is recommended that patients be made aware of the levels of risk and be informed about available resources and management alternatives. Dr. Wickstrom opined that if TOLACs are not available in hospitals and accredited birth centers under this license, they will happen at home.

The Board then recessed the Board meeting to resume administrative hearings. President Minns indicated if there was time to come back to the issue the Board would do so.

Following the last administrative hearing, the Board resumed discussion of the draft regulations. Ms. Stevens pointed out that if a prior cesarean and a TOLAC inherently were not a “normal, uncomplicated pregnancy and delivery,” the Board could not add it into the scope defined by the Legislature, even in an accredited birthing center or hospital. She noted that practitioners could still do VBACs under their APRN license. Stacy Bond, Assistant General Counsel, clarified that these regulations need to be written for the lowest common denominator and the Board can’t assume these new licensees will still maintain a collaborative agreement to practice under their APRN license.

(Durrett/Varner) Motion that based on the high complication rate of VBACs, they are not “uncomplicated.” Carried.

(Templeton/Webb) Motion to approve the designation of CNM-I for Certified Nurse Midwife-Independent Practice. Carried.

## VI. STAFF REPORTS

### Licensing Administrator:

#### **Approval of Licensee/Registrant List**

(Milfeld/Varner) Approve licensee/registrant list. Carried.

#### **Licensing Report**

Mr. Nichols introduced new licensing staff, Paige Miller, Jessica McFarland and Nichole Schlessener, to the Board Members.

### Litigation Counsel:

#### **Litigation Report**

Mr. Hays reviewed litigation department statistics for this reporting period.

**Disciplinary Counsel:**

**Disciplinary Report**

Mr. Riley introduced the board's newest investigator, Randy Webster and reported that the agency would soon be hiring 3 new investigators to fill positions left vacant by resignations and retirement.

Mr. Riley advised the board that the agency needs three members in order to form a Prescribing Review Committee and an anesthesiologist for M.D. Review Committee #2.

(Milfeld/Durrett) Appoint Dr. Gina Hendren, M.D., to M.D. Review Committee #2. Carried.

Animal Chiropractic Adjustments – Draft Standards for Chiropractic Treatment of Animals were distributed to board members for review. These standards will be discussed more at the December board meeting.

Mr. Riley also reviewed the statistical report for the disciplinary department for this period.

**General Counsel:**

**General Counsel Report**

Ms. Stevens reviewed the status of appellate cases involving the Board.

Medical Record Copying Charges – Draft regulation was distributed for the board's review. Staff will continue working on the appropriate amounts to charge for certain records. Board members approved staff moving forward with work on this regulation.

(Templeton/Webb) Repeal board policy #93-02, Practice of Midwifery in Kansas. Carried.

Following an explanation by Ms. Stevens, the Board declined to give a legal opinion regarding whether a proposed internet platform for physician-prescribing of Latisse was adequate to establish a physician-patient relationship.

**Executive Director:**

**Budget Update**

Ms. Selzler Lippert reported that the agency's FY2018 and FY2019 budget has been submitted to the Division of Budget.

## Misc. Items/Information for the Board

### Legislative Update

- Ms. Selzler Lippert expects hearings to be set regarding the combining of certain public health boards which may include but may not be limited to the Board of Healing Arts, the Board of Nursing, the Behavioral Sciences Regulatory Board, the Board of Pharmacy, the Emergency Services Board, and the Optometry Board.
- Draft NARCAN legislation was provided to board members for review.
- Board members were provided information on a Doctors and Sexual Abuse article published by the Atlanta Journal Constitution.

### HR Update

The members of the Employee Award and Recognition Subcommittee were updated for this new fiscal year. They are: Ms. Selzler Lippert, Dr. Minns, Dr. Laha, Dr. Webb and Dr. Gould who volunteered to fill the at-large position.

## VII. SETTLEMENT AGREEMENTS (cont'd.)

Marvin L. McIntosh, M.D., Docket #16-HA00095 - Review of Proposed Consent Order. Mr. Behzadi appeared for the Board. Dr. McIntosh appeared in person with counsel, Mr. Atif Abdel-Khaliq.

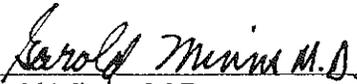
Recusals: None

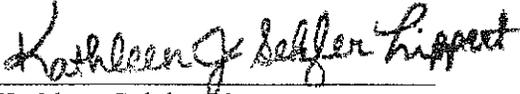
Board Decision: Approve the Consent Order.

## VIII. ADJOURNMENT

(Board President). This meeting is adjourned. Carried.

The meeting adjourned at 4:35 p.m.

  
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Garold Minns, M.D.  
President

  
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Kathleen Selzler Lippert  
Executive Director