

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

BOARD MINUTES – Friday, December 8, 2017

FRIDAY, DECEMBER 8, 2017

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 December 8, 2017. The meeting was called to order at 8:30 a.m. by David Laha, DPM. and President.

Jerry DeGrado, D.C.	present	
Robin Durrett, D.O.	present	
Thomas Estep,	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.		absent
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.	present	
Ronald Varner, D.O.	present	

Staff members present were Kathleen Selzler Lippert, Executive Director; Tucker Poling, General Counsel; Ryan Hamilton and Jay VanBlaricum, Assistant General Counsel; Reese Hays, Litigation Counsel; Susan Gering, Deputy Litigation Counsel; Anne Barker Hall, Jared Langford and Phoenix Anshutz, Associate Litigation Counsel; Courtney Manly, Law Clerk; Dan Riley, Disciplinary Counsel; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook, Legal Assistant to General Counsel; Beth Visocsky, Operations Manager and Cathy Brown, Executive Assistant. The attached sign-in sheet indicates those people who were present during portions of the meeting.

Cameron Preheim, CSR, Appino and Biggs Reporting Service, took and recorded the administrative proceedings conducted.

APPROVAL OF AGENDA

(Minns/Estep) Approve agenda with the following changes: NONE. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Estep/Minns) Approve minutes of December board meeting with the following changes: NONE. Carried.

(Minns/Varner) Motion to go into recess for attorney client consultation on administrative hearings. Carried.

(Minns/Seconded) Motion to return to open meeting. Carried.

Dr. Templeton and Mr. Settich arrived.

II. OTHER BUSINESS

Need to Appoint a Disciplinary Panel

Dr. DeGrado volunteered to be the D.C., still need a M.D., D.O., and a public member. This is for the DP starting in January 2018. Dr. Estep, Dr. Varner, and Mr. Settich volunteered to round out the DP. Mr. Hays will send a calendar invite to the DP with a proposed January 25th from 12:30 – 3p.m. first meeting.

III. ADMINISTRATIVE PROCEEDINGS

(Minns/Estep) Recess board meeting to conduct administrative proceedings under the Kansas Administrative Procedures Act. Carried.

AMY PUDERBAUGH, D.O., DOCKET #18-HA00024– Conference Hearing on Application for Licensure. Mr. Jared Langford appeared for the Board. Dr. Amy Puderbaugh appeared in person, with counsel Mary Christopher.

Recusals: Dr. Leinwetter, Dr. DeGrado, Mr. Settich

(Minns/DeGrado) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under [REDACTED] – K.S.A. 65-4925. Carried.

(Minns/DeGrado) Motion to go into recess for attorney client consultation. Carried.

(Minns/Gould) Motion to return to closed administrative proceeding. Carried.

(Templeton/Macias) Return to open hearing. Carried.

(Templeton/Minns) Motion to allow withdraw of application. Carried.

SPENCER TORRES, D.C., Docket #18-HA00025 – Conference Hearing on Application for Licensure. Ms. Courtney Manly appeared for the Board. Dr. Spencer Torres did not appear.

(Webb/Minns) Motion to deny license. Carried.

MICHAEL HART, M.D., DOCKET #18-HA00006 – Conference Hearing on Petition for Discipline. Ms. Susan Gering appeared for the Board. Dr. Michael Hart appeared via Skype (voice only), pro se.

Recusals: Dr. Leinwetter, Dr. DeGrado, Mr. Settich

(Minns/Varner) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under Peer Review - K.S.A. 65-4915 and 65-4925. Carried.

(Estep/Templeton) Motion to go into recess for attorney client consultation. Recusals: Dr. Leinwetter, Dr. DeGrado, Mr. Settich not in room for attorney client consultation. Carried.

(Estep/Varner) Motion to return to closed administrative proceeding. Carried.

(Templeton/Varner) Return to open hearing. Carried.

(Templeton/Varner) Motion to deny the petition. Carried.

EDWARD M. ASEBEDO, L.R.T., DOCKET #16-HA00042 – Conference Hearing on Request to Terminate Consent Order. Mr. Phoenix Anshutz appeared for the Board. Mr. Edward M. Asebedo appeared in person, pro se.

Recusals: Dr. Leinwetter, Dr. DeGrado, Mr. Settich

(Webb/Estep) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under [REDACTED] – K.S.A. 65-4925. Carried.

(Webb/Macias) Return to open hearing. Carried.

(Webb/Templeton) Motion to terminate consent order. Carried.

KIRK POTTER, D.O., DOCKET #17-HA00024 – Conference Hearing on Motion to Terminate Suspension and Reinstate License. Mr. Phoenix Anshutz appeared for the Board. Dr. Kirk Potter appeared in person, with counsel Patricia M. Dengler.

Recusals: Mr. Ryan Hamilton, Dr. Leinwetter, Dr. Durrett, Dr. Gould, Ms. Hodgdon, Dr. Milfeld, and Dr. Varner

(Hutchins/Estep) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under [REDACTED] - K.S.A. 65-4925. Carried.

(Templeton/Webb) Motion to go into recess for attorney client consultation. Recusals: Mr. Ryan Hamilton, Dr. Leinwetter, Dr. Durrett, Dr. Gould, Ms. Hodgdon, Dr. Milfeld, and Dr. Varner not in room for attorney client consultation. Carried.

(Estep/Templeton) Motion to return to closed administrative proceeding. Carried.

(Templeton/Macias) Return to open hearing. Carried.

(Templeton/Estep) Motion to terminate suspension and reinstate license with a Consent Order for 5 more years from the date of activation of the license. Carried.

IV. SETTLEMENT AGREEMENTS

LESLIE PAGE, D.O. – Review of Proposed Consent Order. Ms. Susan Gering appeared for the Board. Dr. Leslie Page did not appear in person, but her counsel Robert Eye did appear.

Recusals: Mr. Macias

(DeGrado/Varner) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under Investigation - K.S.A. 65-2839a(d). Carried

(Settich/DeGrado) Return to open hearing. Carried.

(Settich/Gould) Motion to approve Consent Order. Carried.

AMELIA C. RODROCK, D.C., DOCKET #18-HA00009 – Review of Proposed Consent Order. Mr. Phoenix Anshutz appeared for the Board. Dr. Amelia C Rodrock appeared in person, pro se.

Recusals: Dr. Hutchins, Dr. Durrett, Dr. DeGrado, Dr. Laha, and Mr. Macias

(Webb/Estep) Motion to adopt consent order. Carried.

RYAN NADOLSKI, D.C., DOCKET #18-HA00007 – Review of Proposed Consent Order. Mr. Phoenix Anshutz appeared for the Board. Dr. Ryan Nadolski appeared in person, with counsel Diane Bellquist.

Recusals: Dr. Hutchins, Dr. Durrett, Dr. DeGrado, Dr. Laha, and Mr. Macias

(Gould/Minns) Motion to adopt consent order. Carried.

KENNETH DOWNING, D.C., DOCKET #18-HA00008 – Review of Proposed Consent Order. Mr. Phoenix Anshutz appeared for the Board. Dr. Kenneth Downing appeared in person, with counsel Mathew Kentner.

Recusals: Dr. Hutchins, Dr. Durrett, Dr. DeGrado, Dr. Laha, and Mr. Macias

(Minns/Estep) Motion to adopt consent order. Carried.

(Estep/Gould) Motion to go into open meeting for discussion about laser for fat reduction and esthetics in the scope of work for a D.C. Question was raised as to whether there needs to be more education regarding the board's 2013 stance regarding this topic. Carried.

(Minns/Macias) Motion to go back into administrative hearings. Carried.

JAMES WHITAKER, M.D., DOCKET #18-HA00026 – Review of Proposed Consent Order. Mr. Jared Langford appeared for the Board. Dr. James Whitaker appeared in person, pro se.

Recusals: Dr. Leinwetter, Dr. DeGrado, Mr. Settich, Dr. Templeton

(Minns/Webb) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under Investigation - K.S.A. 65-2839a(d). Carried

(Estep/Varner) Motion to go into recess for attorney client consultation.

Recusals: Dr. Leinwetter, Dr. DeGrado, Mr. Settich, Dr. Templeton not in room for attorney client consultation. Carried.

(Minns/Varner) Motion to return to closed administrative proceeding. Carried.

(Minns/Varner) Return to open hearing. Carried.

(Minns/Varner) Motion to decline to ratify consent order and grant full licensure. Carried.

(Minns/Macias) Motion to go into closed session to confirm that the consent order for Dr. Whitaker was going to be declined and that he would be getting his full license reinstated and that there was no disciplinary action taken. Board directed General Counsel to draft letter to Dr. Whitaker including appropriate information. Carried.

(DeGrado/Varner) Motion to go out of closed session and back to administrative proceedings. Carried.

V. ADMINISTRATIVE PROCEEDING

BRET PRESS, L.R.T., DOCKET #17-HA00018 - Conference Hearing on Motion to Terminate Probation. Ms. Susan Gering appeared for the Board. Mr. Bret Press appeared in person, with counsel James Rumsey.

Recusals: Dr. Hutchins, Dr. Durrett, Dr. DeGrado, Dr. Laha, and Mr. Macias

(Minns/Varner) Motion to go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under [REDACTED] – K.S.A. 65-4925. Carried.

(Minns/Hutchins) Return to open hearing. Carried.

(Minns/Gould) Motion to terminate consent order. Carried.

(Leinwetter/Macias) Motion to recess into executive session for attorney client privilege pursuant to K.S.A. 75-4319(b)(2) to reconvene at 11:45 a.m. Carried

Break for lunch at 11:50 a.m. and reconvene at 12:45 p.m.

(Minns/Templeton) Motion to recess into executive session for attorney client privilege pursuant to K.S.A. 75-4319(b)(2) to reconvene at 1:15 p.m. Carried.

(Settich/Templeton) Motion to go back into open session. Carried.

VI. STAFF REPORTS

The Board President called the board meeting back to order.

Assistant General Counsel:

Approval of Independent Nurse Midwife Regulations

(Durrett/Minns) Motion to accept Nurse Midwife Regulations and let them move forward to the Board of Nursing. Carried. Dr. DeGrado abstained.

General Counsel:

An update of district and appellate cases involving the Board was included in the Board's packet of materials, for their review. There were no questions or discussion.

Scope of Naturopathic Medicine, Diagnostic Radiology

Alicia Johnson and Laura Rues spoke on behalf of the NDs and handed out a packet of information on educational requirements for NDs.

(Minns/Macias) Motion to go into attorney client privilege pursuant to K.S.A. 75-4319(b)(2) for 10 minutes. Carried.

(Minns/Gould) Motion to go back into open session. Carried.

(Gould/Minns) Motion to go into attorney client privilege pursuant to K.S.A. 75-4319(b)(2) for 10 minutes. Carried.

(Macias/Varner) Motion to go back into open session. Carried.

(Degrado/Macias) Motion to direct General Counsel to request clarification from the Attorney General on this matter. Carried.

Dr. Templeton and Dr. Estep left the meeting.

Adopt Acupuncture Regulations

Roll call vote to adopt K.A.R. 100-76-1 through 100-76-12, specifically that we are adopting those regulations that have been approved by the Kansas Department of Administration and the Kansas Attorney General's Office. Carried.

Dr. Laha – I, adopt
Dr. Durrett – yeah, adopt
Dr. DeGrado – I, adopt
Dr. Estep – not present
Dr. Gould – yes, adopt
Ms. Hodgdon – not present
Dr. Hutchins – yes, adopt
Dr. Leinwetter – yes, adopt
Mr. Macias – yey, adopt
Dr. Milfeld – not present
Dr. Minns – yey, adopt
Mr. Settich – yes, adopt
Dr. Templeton – not present
Dr. Varner – affirmative, adopt
Dr. Webb – yes, adopt

Mr. Macias took the floor and announced that he is resigning his position on the board because of his appointment as a District Court Judge in Sedgwick County.

Executive Director:

Fee Structure & Fee Funds

Discussion about fee fund balances and fee structure; determined that a committee should be established to address these issues. Dr. Hutchins, Dr. DeGrado, Dr. Minns, and Dr. Durrett are on the committee with Ms. Selzler Lippert. Committee has authority to make decisions on changes to the fee structure.

K-TRACS Funding Options

The Board will continue to stay neutral on this topic.

Awards & Recognition Committee

Ms. Selzler Lippert submitted a proposed adjustment to the policy. Dr. Minns indicated that he would get with Ms. Selzler Lippert on some clarification for the next board meeting.

Legislative Update & Pharmacy Association Proposed Legislation

The Board will continue to stay neutral on this topic.

Appointment of 2018 FSMB Delegate & Alternate

Dr. Laha – delegate and Dr. Durrett – alternate

Appointment of 2018 FCLB/NBCE Delegate & Alternate

Dr. Gould – delegate and Dr. Webb – alternate

Misc.

Showed example of new wall licenses that will be available to licensees soon.

Licensing Administrator:

Licensing Report

The statistical report for the Licensing Department was included in the Board's packet of materials, for their review. The following was discussed:
We now have 1 Acupuncture Licensee and have 25 licenses pending.

Litigation Counsel:

Litigation Report

The statistical report for the Litigation Department was included in the Board's packet of materials, for their review. The following was discussed:
Numbers are staying steady.

Disciplinary Counsel:

Disciplinary Report

The statistical report for the Disciplinary Department was included in the Board's packet of materials, for their review. The following was discussed:
Consistent numbers. Advised the Board of the status of the Assistant Disciplinary Counsel search.

Council Appointments

Advised the board of a vacancy on the Respiratory Council and that the Board needs to appoint a doctor to fill that vacancy.

General Counsel:

Executive Session for Attorney Client Discussions

(Minns/DeGrado) Go into closed executive session pursuant to K.S.A. 75-4319(b)(1) and (2) for privileged attorney-client communication and for discussion of non-elected personnel issues with Kathleen Selzler Lippert present. Reconvene the open meeting in 20 minutes in the boardroom. Carried.

(Durrett/Minns) Return to open hearing. Carried.

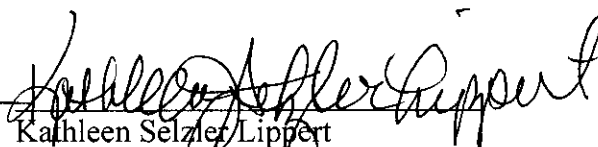
VII. ADJOURNMENT

(Macias). Motion to adjourn. Carried.

The meeting adjourned at 3:41 p.m.



David Laha, D.P.M.
President



Kathleen Selzler Lippert
Executive Director