

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

**BOARD MINUTES – Friday
February 10, 2017**

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, FEBRUARY 10, 2017

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, February 10, 2017. 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.	present
Robin Durrett, D.O.	present
Steven Gould, D.C.	present
Anne Hodgdon, public member	present
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.	present
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 and Joseph Behzadi, Associate Litigation Counsel; Dan Riley, Disciplinary Counsel; Joshana Offenbach, Associate Disciplinary Counsel; Theresa Massey, Licensing Analyst; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook and Marsha Sonner, Legal Assistants 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

(Laha/DeGrado) Approve the agenda.

APPROVAL OF BOARD MEETING MINUTES

(Laha/DeGrado) Approve minutes of December 9, 2016 regular meeting with the following changes: two consecutive executive sessions took place at 11:30 a.m., the President then called the board meeting back to order, and the lunch break followed; Dr. Webb was listed as present and he was absent from the meeting. Carried.

I. ADMINISTRATIVE PROCEEDINGS

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

(President) Go into attorney-client consultation with Board member presiding officers on administrative hearings. Carried.

KIMBERLY KERCHER, P.T., DOCKET #15-HA00103 – Review of Initial Order. Ms. Weiler appeared for the Board. Ms. Kercher appeared in person, with counsel Mr. Timothy D. Resner.

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

Board Decision: The Board reversed the initial order in its entirety.

JANICE JEFFERSON, R.T., DOCKET #16-HA00070 - Conference Hearing on Petition for Discipline. Ms. Weiler appeared for the Board. Ms. Jefferson 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. Milfeld, Mr. Varner, Dr. Gould and Ms. Hodgdon. Ms. Bond and Ms. Stevens were also recused from the proceedings.

Board Decision: The petition was denied and the consent order was terminated.

JOE FOUST, P.A., DOCKET #17-HA00038 and #14-HA00154- Conference Hearing on Petition and on Request to Terminate Consent Order (consolidated). Ms. Weiler appeared for the Board. Mr. Foust 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. Templeton and Dr. Leinwetter.

Board Decision: License revoked.

ANDREA CHIAVARINI, M.D., DOCKET #17-HA00032 - Conference Hearing on Application. Mr. Hays appeared for the Board. Dr. Chiavarini appeared in person with counsel, Mr. Robert Eye

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

Board Decision: Continued to April board meeting.

JAMES HUTTON, R.T., DOCKET #17-HA00032 - Conference Hearing on Application. Ms. Gering appeared for the Board. Mr. Hutton 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. Milfeld, Dr. Varner, Dr. Gould and Ms. Hodgdon.

Licensee's Exhibit #1 [REDACTED] was admitted into the record.

Board Decision: License granted without restrictions or limitations.

ANDREW KELLY, D.C., DOCKET #17-HA00033 - Conference Hearing on Application. Ms. Gering appeared for the Board. Dr. Kelly did not appear.

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: Continued to April board meeting.

DONGHYUA XIE, M.D., DOCKET #17-HA00034 - Conference Hearing on Application. Mr. Hays appeared for the Board. Dr. Xie 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: Application withdrawn.

JESSICA DIVILBISS, A.T., DOCKET #17-HA00035 - Conference Hearing on Application for Active License. Ms. Gering appeared for the Board. Ms. Divilbiss did not appear.

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: Continued to April board meeting.

DAVID PROTO, R.T., DOCKET #17-HA00036 - Conference Hearing on Application. Mr. Behzadi appeared for the Board. Mr. Proto 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: Consent Order Denied. Mr. Settich was appointed as presiding officer to issue a final order.

SHAN TISHA PORTER, O.T.A., DOCKET #16-HA00025 - Conference Hearing on Motion to Terminate Consent Order. Ms. Weiler appeared for the Board. Ms. Porter 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: Consent Order terminated.

DAVID MATHENY, D.C., DOCKET #16-HA00018 - Conference Hearing on Motion to Terminate Consent Order. Ms. Weiler appeared for the Board. Dr. Matheny appeared in person with counsel, Ms. Megan L. Moseley.

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

Board Decision: Consent Order terminated.

STEVEN WILKINSON, M.D., DOCKET #16-HA00078 - Conference Hearing on Motion for Reconsideration. Mr. Behzadi appeared for the Board. Dr. Wilkinson appeared in person with counsel, Mr. Christopher Molzen.

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

Board Decision: Vacate previous order.

TRENT SIMS, D.O., DOCKET #16-HA00068 – Oral Arguments on Motion to Dismiss Proceedings as Moot. Mr. Hays appeared for the board and Dr. Sims did not appear in person. Dr. Sims' counsel, Mr. Keynen J. Wall, appeared on Dr. Sims behalf.

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

Board Decision: Application withdrawn.

II. SETTLEMENT AGREEMENT

Jerald Leisy, M.D. - Review of Proposed Consent Order. Mr. Behzadi and Ms. Gering appeared for the Board. Dr. Leisy appeared in person with counsel, Mr. Brian Wright.

Recusals: None

Board Decision: Approve Consent Order.

NOTE: Dr. Laha left the meeting at this point (2:30 p.m.).

Nizar Kibar, M.D., Docket – Review of Proposed Consent Order. Mr. Behzadi appeared for the Board. Dr. Kibar appeared in person *pro se*.

Recusals: Dr. Leinwetter and Dr. Milfeld.

Board Decision: Table until April board meeting.

DeVon Bryant, A.T., Docket #17-HA00029. – Ratification of Consent Order. Mr. Behzadi appeared for the Board. Mr. Bryant appeared in person *pro se*.

Recusals: None

Board Decision: Approve Consent Order.

Benjamin Dodson, L.R.T. – Ratification of Consent Order. Mr. Behzadi appeared for the Board. Mr. Dodson appeared in person *pro se*.

Recusals: None

Board Decision: Ratify Consent Order.

Bryan Burns, M.D. – Review of Proposed Consent Order. Ms. Gering appeared for the Board. Dr. Burns appeared in person with counsel, Ms. Diane Bellquist.

Recusals: Dr. Beezley

Board Decision: Decline Consent Order.

Malik Hamid, M.D. – Review of Proposed Consent Order. Mr. Behzadi appeared for the Board. Dr. Hamid appeared in person *pro se*.

Recusals: None

Board Decision: Approve Consent Order.

III. STAFF REPORTS

The Board President called the board meeting back to order.

Licensing Administrator:

Approval of Licensee/Registrant List

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

Minutes of Committee/Council Meetings

Minutes of council meetings held since last board meeting were provided to the board in their packet of materials. There were no questions.

(Varner/Webb) Approve minutes of council meetings held since last board meeting. Carried.

Licensing Report

Ms. Selzer Lippert presented the licensing report for Mr. John Nichols, Licensing Administrator, who is on leave to study for law school finals and the Kansas bar examination.

The Licensing Dept. has moved to a new area. Our landlord has loaned the agency the cubicles for this area for the duration of our lease. Associated costs were for taking the cubicles apart, moving them to the new space, and reassembling them.

The department is moving forward with plans to go paperless.

Stacy Bond was recognized by Ms. Selzler Lippert for handling licensure issues while John Nichols is on leave.

Litigation Counsel:

Litigation Report

Mr. Hays presented the statistical report for the department.

Disciplinary Counsel:

Disciplinary Report

Mr. Riley reviewed the statistical report for the department, which was included in the board's packet of materials for the meeting.

Dr. Degrado provided an update on Chiropractic on Animals.

(Webb/Durrett) Assemble chiropractic on animals information and incorporate it into the existing information that chiropractic licensees receive. Provide this information to the Kansas Chiropractic Association for posting on their website. Carried.

Appointment to Naturopathic Advisory Council

Dr. Gould knows two naturopathic practitioners that he would like to recommend for the council. He will approach the two practitioners and email their response to Ms. Offenbach.

The board needs someone who practices emergency medicine to serve on one of the MD review committees.

General Counsel:

General Counsel Report

Ms. Stevens presented an update on appellate cases involving the Board.

Regulation Update

Independent CNM - Language was amended to permit prenatal care of women with prior cesarean sections.

Acupuncture – These regulations will be completed and considered for adoption at the June board meeting.

(Durrett/Varner) Following final review by councils, move the proposed regulations forward in the adoption process. Carried.

Neuhaus District Court Decision

Mr. Mark Ferguson will return in June to advise the Board on the Final Order in the Ann Neuhaus, M.D. case, which was remanded back to the Board by Judge Theis.

Executive Director:

Budget & Legislative Update

Funding for Prescription Monitoring Program and KTRACS

(Leinwetter/Milfeld) Provide funds of up to \$216,500.00 from the Board of Healing Arts fee fund, spread out over FY 18 and FY 19, to support the Prescription Monitoring Program (PMP) and KTRACS. Carried.

Joint Policy Statement on the Use of Controlled Substances for the Treatment of Chronic Pain

The joint policy statement has been signed by the Presidents of the Kansas Boards of Healing Arts, Nursing and Pharmacy and will be posted on each agency's website. Ms. Selzler Lippert read a note that the Board had received from Dr. Eric Voht, complimenting the joint boards on the excellent, thorough, wisely written policy.

Actions Taken Since Last Board Meeting

Information was provided in the board's packet of information. There was no discussion and no questions.

IPP Report

Second Quarter reports for FY 2017 were provided in the board's packet of information. There was no discussion and no questions.

Discussion of Block Voting on Consent Orders

This item will be included on the April board meeting agenda, for consideration and vote.

Discussion of FSMB Model Policy for Use of Opioid Analgesics in the Treatment of Pain

The policy was included in the Board's packet of information for the meeting, for their review.

Misc. Items/Information for the Board

60th Anniversary of Board in 2017 -

Recommendations for commemorating the Board's 60th Anniversary were included in the packet of information for the February board meeting. The board approved staff moving forward with the following items:

- Placing a logo on the agency website and a line on the agency's letterhead, that commemorates the Board's 60th year. Dr. Templeton suggested "Protecting the Public for 60 Years."
- Contacting the President of the Federation of State Medical Boards to see if he would consider coming to the August 2017 board meeting, to recognize the Board's 60th year.
- Having a cookie and punch reception during the August board meeting's lunch or afternoon break.
- Purchasing some inexpensive promotional items to hand out at the reception.
- Purchasing a Kansas flag to be flown over the Statehouse to commemorate the Board's 60th anniversary and then framing the flag for presentation at the reception and display at the agency.
- Obtaining a Proclamation from the Governor's office and seeing if the Lt. Governor would be available to present it at the August board meeting reception.
- Issuing a press release regarding the 60th anniversary of the board and announcing the reception/presentation at the August board meeting.

Board members did not wish to sponsor a fund raiser to commemorate the anniversary.

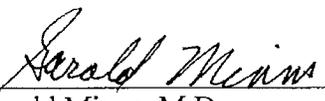
Executive Session

(Board member/Board member) Go into executive session for 5 minutes pursuant to K.S.A. 75-4319(b)(1) for the purpose of personnel matters of non-elected personnel. Carried.

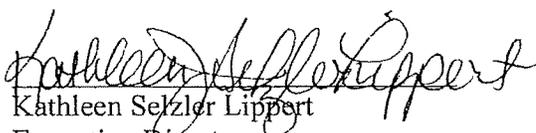
IV. ADJOURNMENT

(President). This meeting is adjourned. Carried.

The meeting adjourned at 4:00 p.m.



 Garold Minns, M.D.
 President



 Kathleen Selzler Lippert
 Executive Director