

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

**BOARD MINUTES – Friday**  
**February 8, 2013**

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 8, 2013**

**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, February 8, 2013. The meeting was called to order at 8:30 a.m. by Kimberly Templeton, M.D. and President.

|                               |         |
|-------------------------------|---------|
| Eustaquio Abay, M.D. -        | absent  |
| Michael Beezley, M.D. -       | present |
| Ray Conley, D.C. -            | present |
| Gary Counselman, D.C. -       | absent  |
| Robin Durrett, D.O.           | present |
| Anne Hodgdon, public member - | present |
| Joel Hutchins, M.D. -         | present |
| David Laha, DPM -             | present |
| M. Myron Leinwetter, D.O.     | present |
| Rick Macias, public member -  | present |
| Garold O. Minns, M.D. -       | present |
| John Settich, public member - | present |
| Carolina M. Soria, D.O. -     | present |
| Kimberly Templeton, M.D.      | present |
| Terry L. Webb, D.C.           | present |

Staff members present were Kathleen Selzler Lippert, Executive Director; Kelli Stevens, General Counsel; Ann Halferty, Assistant General Counsel; Reese Hays, Litigation Counsel; Jessica Bryson, Stacy Bond, and Seth Brackman, Associate Litigation Counsel; Jane Weiler, Legal Assistant; Kathy Moen, Medical Litigation Support Specialist; Dan Riley, Disciplinary Counsel; Joshana Offenbach, Associate Disciplinary Counsel; Katy Lenahan, Licensing Administrator; John McMaster, M.D., Medical Director; and Cathy Brown, Executive Assistant. The attached sign-in sheet indicates those people who were present during portions of the meeting.

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

## II. APPROVAL OF AGENDA

(Conley/Leinwetter) Approve agenda with the following changes:

**Additions:** KSA 65-2837(b)(32) added to General Counsel Report; Acceptance of On-line Verifications from Illinois Website added to Licensing Administrator Report; Ultrasound/Laser Fat Reduction added under Other Business at 9:45 a.m.

**Deletions:** McAllister, Georger, Lakin & Grant hearings continued to April.

**Changes:** Staff reports rescheduled to 1:30 p.m.

Carried.

## APPROVAL OF BOARD MEETING MINUTES

(Conley/Laha) Approve minutes of December 7, 2012 regular meeting. Carried.

## III. OTHER BUSINESS

### General Counsel Review – Executive Session

(Conley/Durrett) Go into executive session for 10 minutes, pursuant to K.S.A. 75-4319(b)(2), for the purpose of consultation with an attorney for the Board, which would be deemed privileged in the attorney-client relationship. Carried.

(Board Member/Board Member) Return to open session. Carried.

## IV. SETTLEMENT AGREEMENT

**Brent Duran, D.O.** – Consideration of a Proposed Consent Order. Ms. Bond appeared for the Board. Dr. Duran appeared in person with counsel, Mr. David Steed.

Following are the members of the disciplinary panel and those members present at the board meeting recused themselves from the proceedings: Dr. Conley, Dr. Minns, Ms. Hodgdon and Dr. Leinwetter.

(Bond/Laha) Go into closed session pursuant to K.S.A. 77-523(f) to discuss matters which are confidential under K.S.A. 65-4925. Carried.

(Beezley/Durrett) Return to open session. Carried.

(Beezley/Durrett) Consent Order approved as written. Carried.

**Jeffrey E. Sroufe, R.T.** – Consideration of Proposed Consent Order. Ms. Weiler appeared for the Board. Mr. Sroufe 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. Counselman and Dr. Beezley. Ms. Stevens and Ms. Selzler Lippert also recused themselves from the proceedings.

(Conley/Laha) Go into closed session to discuss confidential matters under investigation pursuant to K.S.A. 65-2839a(d). Carried.

(Conley/Laha) Return to open session. Carried.

(Conley/Hodgdon) Ratify the Consent Order. Carried with Dr. Leinwetter and Dr. Durrett opposed.

**Martha Byers, M.D., Docket #12-HA00092** – Consideration of Proposed Consent Order. Mr. Hays appeared for the Board. Dr. Byers appeared in person with counsel, Mr. Mark Stafford.

Following are the members of the disciplinary panel and those members present at the board meeting recused themselves from the proceedings: Dr. Conley, Dr. Leinwetter, Dr. Minns and Ms. Hodgdon. Ms. Stevens also recused herself.

(Webb/Soria) Motion to approve the Consent Order failed with all but Dr. Soria opposed.

Mr. Settich was appointed as Presiding Officer with authority to approve a Consent Order.

## V. **OTHER BUSINESS**

**Ultrasound/Laser Fat Reduction** – Discussion and presentation of a draft policy by Ms. Stevens

Position Statement: Use of lasers or ultrasound for fat reduction is the practice of the healing arts and constitute surgery and may only be performed by those licensed to practice medicine and surgery or as appropriately delegated by those who practice medicine and surgery. Fat reduction devices should be FDA approved for that purpose.

The Board's subcommittee requested that the Board adopt a policy stating their position, and that this policy would serve as a guidance document until the Board can get a regulation in place. Ms. Stevens presented the Board with a draft policy for their review and consideration.

John Keifhaber, Executive Director, Kansas Chiropractic Association and Randy Schmidt, D.C. and Dustin Cheney, D.C., Kansas Chiropractic Association provided comments and asked that the Board delay their decision on adopting a

policy until the association's General Counsel has a chance to review and respond or provide input.

Jerry Slaughter, Executive Director, Kansas Medical Society provided comments supporting the draft policy.

(Minns/Beezley) Approve the policy. Carried with Dr. Conley and Dr. Webb opposed

## VI. ADMINISTRATIVE PROCEEDING

**MARGARET SMITH, M.D., DOCKET #12-HA00058** - Conference Hearing on Motion to Terminate Requirement. Ms. Weiler appeared for the Board. Dr. Smith 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, Dr. Webb, Dr. Soria and Mr. Settich. Dr. Beezley presided.

(Minns/Durrett) Requirements terminated. Carried.

**HANNAH LAI, M.D., DOCKET #12-HA00045** - Conference Hearing on Request for Termination of Requirements. Ms. Weiler appeared for the Board. Dr. Lai 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, Dr. Webb and Dr. Soria. Dr. Beezley presided.

(Minns/Durrett) Requirements terminated. Carried.

**RICHARD PRESTON, M.D., DOCKET #13-HA00016**- Conference Hearing on Petition for Discipline. Mr. Brackman appeared for the Board. Dr. Preston 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. Conley, Dr. Leinwetter, Dr. Minns and Ms. Hodgdon.

(Minns/Laha) Go into closed session pursuant to K.S.A. 77-523(f) to discuss matters which are confidential under K.S.A. 65-4925. Carried.

(Beezley/Webb) Return to open session. Carried.

(Beezley/Webb) Revoke license. Carried.

## **VII. OTHER BUSINESS**

### **Presentation of Service Plaque**

Dr. Welsh was unable to attend the meeting and receive her plaque. Ms. Lippert will meet with and present it to her.

### **Presentation on Disciplinary Panel Function/Process**

Mr. Reese Hays, Litigation Counsel made a presentation to the Board.

### **Presentation Regarding Board Decision-Making**

Ms. Kelli Stevens, General Counsel made a presentation to the Board.

## **VIII. STAFF REPORTS**

### **Licensing Administrator:**

#### **Approval of Administrative Actions**

(Conley/Minns) Approve administrative actions. Carried

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

(Conley/Minns) Approve licensee/registrant list. Carried.

#### **Minutes of Committee/Council Meetings**

Review of minutes of all council meetings held since last board meeting. There were no questions or revisions.

#### **Licensing Report – Illinois Verifications**

(Conley/Minns) Accept Illinois verifications from their website for an interim period, while they are experiencing processing timeframe difficulties as a result of budget and staffing cuts.

### **Litigation Counsel:**

#### **Litigation Report**

Mr. Hays presented information and statistics regarding litigation cases. Most significant, the total number of cases that have been closed are up from last year.

Mr. Hays described the difficulty board staff is having in locating expert witnesses, which is the reason that some cases remain on our backlog of open cases. Board members agreed that if staff would send them a list of the type of experts they are looking for, board members would help staff locate an expert.

### **Disciplinary Counsel:**

#### **Disciplinary Report**

Mr. Riley presented information and statistics regarding disciplinary cases. He stated that they are making progress on closing their oldest cases and that trends have been better for the past few months.

**D.O. Review Committee Appointment**

(Minns/Conley) Appoint Dr. Roy R. Danks, D.O. to the D.O. Review Committee. Carried.

**General Counsel:**

**Chiropractic Use of Oxygen Concentrators**

Ms. Stevens presented the information she had gathered on this topic and the Board discussed whether the use of oxygen concentrators was within the chiropractic scope of practice. Board members decided that they needed more information on the topic before making a decision. Ms. Stevens will research this further and provide information at a future board meeting.

**Institutional License Draft Regulations**

Ms. Stevens presented draft regulations for institutional license application, reporting of practice setting and cancellation of such license for practice outside of the allowed settings, which would implement K.S.A. 65-2895. The Board reviewed and approved moving forward with work on the regulations.

**Anatomical Pathology Services**

The direct billing provision contained in K.S.A. 65-2837(b)(32) has resulted in an unforeseen, and perhaps unintended, consequence for safety net clinics in Kansas. The clinics have sought to contract with national labs to bill lab fees directly to the clinics. The clinics would then pay the whole fee and only charge the patient a nominal or greatly discounted fee. However, the lab refused to enter into such an arrangement because it would ostensibly violate the direct billing requirement. Board staff believes that this provision does not apply to clinics which are not physician-owned entities. However, if a physician-owned practice entered into the same arrangement described above, it would technically violate the direct billing provision, even though the patient would be paying a lower cost for the pathology services. The physician(s) would still be billing for pathology services not personally rendered.

Board members agreed with staff's determination and requested that Ms. Stevens send a letter to the labs that contained the Board's decision. The Board requested that this item be put on the April agenda again to discuss any responses that are received. Carried.

**General Counsel Report**

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

(Conley/Minns) Go into executive session pursuant to 75-4319(b)(2) for 15 minutes for the purpose of attorney-client consultation. Carried.

### **Executive Director:**

#### **Budget Update**

Budget summaries were provided in the Board's packet of materials. There was nothing out of the ordinary to report and the Board had no questions.

#### **Legislative Update**

Ms. Selzler Lippert provided a summary of bills that she is tracking for the 2013 Legislative Session. Staff submitted amended language for HB 2077 regarding granting a professional license to persons separating from the military.

#### **Actions Taken Since Last Board Meeting**

Ms. Selzler Lippert reviewed the list of actions taken since the December 2012 board meeting that was provided in the Board's packet of materials. She reported to the Board that Dr. Bradley Eck, D.C. did not appear for his hearing and his license was revoked.

#### **2013 Annual FSMB Meeting-Appoint Delegate and Alternate**

Dr. Templeton was appointed as the Board's voting delegate and Dr. Leinwetter was appointed as the alternate.

#### **Appoint 2013 FCLB/NBCE Delegate and Alternate**

Dr. Counselman was appointed as the Board's voting delegate and Dr. Conley was appointed as the alternate.

#### **IPP Reports**

Submitted quarterly reports were included in the Board's packet of materials. Dr. Conley asked for information on the relapse reported on the Radiologist Technologist report.

#### **P.A. Advisory Council Appointment**

Dr. Durrett volunteered for and was appointed to the Physician Assistant Advisory Council.

#### **Misc. Items/Information for the Board**

**Statutory Revisions** - Ms. Selzler Lippert advised the Board that staff is looking at the various practice acts to see what can be done to improve them if the act is opened by legislation introduced by others. The Physician Assistants will be submitting amendments to their practice act but not during this session. This will give the Board time to look at proposed changes they want to make and provide input.

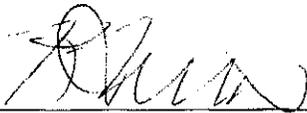
**Disciplinary Panel #28** – The Board appointed Disciplinary Panel #28: Dr. Abay, Mr. Macias, Dr. Counselman, Dr. Durrett and Dr. Laha. The Panel will begin their duties May 1, 2013.

**Litigation Summary of Cases for Board Member Review** – Litigation is preparing a list/summary of open cases. They would like for a board member to be appointed to review and decide if staff should close or dispose of the case, or move it on through our disciplinary process. Board members decided that rather than one board member being appointed to do this the outgoing Disciplinary Panel would split the list between them, then review and make determinations for the cases on their individual list.

**IX. ADJOURNMENT**

(Board Member/Board Member). This meeting is adjourned. Carried.

The meeting adjourned at 1:35 p.m.



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Kimberly Templeton, M.D.  
President



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Kathleen Seidler Lippert  
Executive Director