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BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)	
KEZIA SHINE, D.C.)	
)	KSBHA Docket No. 16-HA00031
Kansas License No.: 01-05327)	OAH Docket No. 16-HA0004

**FINAL ORDER REVOKING LICENSURE
AND ASSESSING COSTS**

On April 13, 2018, the above-captioned matter came before the Kansas State Board of Healing Arts ("Board") for review of the Initial Order filed with the Board on January 22, 2018 on its own motion, on the Petition for Review of Initial Order filed on behalf of the agency, and on the "Petition for Reconsideration of the Initial Order" filed by Kezia Shine, D.C. ("Respondent"). Respondent appeared in person and through counsel, Brian Niceswanger and Stephanie Pruet of Evans & Dixon, LLC. The Petitioner agency appears through Reese H. Hays, Litigation Counsel. Board members Dr. Douglas Milfeld, Dr. Ronald Varner, Dr. Steven Gould, and Ms. Anne Hodgdon recused themselves from participating in the Board deliberations and decision in this matter, as these members served on the Disciplinary Panel.

Pursuant to the authority granted to Board by the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act ("KAPA"), K.S.A. 77-501 *et seq.*, specifically K.S.A. 77-527, the Board hereby enters this Final Order. After reviewing the Initial Order, the parties' briefs, and the agency record in this matter; hearing the oral arguments of the parties; and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

Procedural History

On November 17, 2015, a Petition for disciplinary action was filed against Respondent's license to practice chiropractic in the State of Kansas for failure to adhere to the appropriate standard of care in the treatment of patients and inadequate medical record documentation.

The Board appointed the Office of Administrative Hearings ("OAH") to conduct a formal hearing on this matter and to issue an Initial Order. A Formal Hearing in the above-captioned matter was held before Sandra L. Sharon, an Administrative Law Judge/Presiding Officer of the OAH on February 20-24, 2017, October 30-31, 2017, and November 1-2, 2017. The parties presented witnesses and exhibits. Upon the conclusion of the hearing, the parties were given the opportunity to submit written closing arguments.

On January 22, 2018, the Presiding Officer issued an Initial Order concluding the Respondent's actions involving care of pregnant women did not meet the standard of care for a chiropractor, and constituted "serious violations of the Healing Arts Act." The Initial Order imposed an 89-day license suspension, a \$5,000.00 fine, and a probationary period upon return from suspension, and assessed the costs of the proceedings against Respondent.

On January 29, 2018, Petitioner filed a Request for Review of Initial Order.

On January 30, 2018, the Board issued to the parties a Notice of Intent to Review Initial Order.

On February 8, 2018, Respondent filed a "Petition for Reconsideration of the Initial Order," and filed a "Brief in Response to Board Order" on March 13, 2018.

On February 27, 2018, Petitioner filed a Brief on Review of Initial Order.

On March 16, 2018, Litigation Counsel filed Petitioner's Statement of Costs requesting that Respondent be required to pay the costs of this matter totaling \$93,324.65.

On March 21, 2018, the Board gave notice to the parties that it would hear oral arguments on Review of the Initial Order and issued a briefing schedule.

On April 13, 2018, the Board heard oral arguments from the parties on the Review of the Initial Order in the above captioned case. A quorum of Board members was present and participated in the deliberations and decision. In advance of the April 13, 2018 oral arguments, the Board was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including the hearing transcript and all exhibits, briefs, and motions filed by the parties in advance of oral arguments. The entire agency record was considered by the Board in rendering its decision. In reviewing the Initial Order, the Board gave due regard to the Presiding Officer's opportunity to observe the witnesses and determine their credibility during the formal hearing.

Applicable Law

K.S.A. 65-2801 states the purpose of the healing arts act:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

K.S.A. 65-2871 defines the persons deemed to be engaged in practice of chiropractic:

For the purpose of this act the following persons shall be deemed to be engaged in the practice of chiropractic: (a) Persons who examine, analyze and diagnose the human living body, and its diseases by the use of any physical, thermal or manual method and use the X-ray diagnosis and analysis taught in any accredited chiropractic school or college and (b) persons who adjust any misplaced tissue of any kind or nature, manipulate or treat the human body by manual, mechanical, electrical or natural methods or by the use of physical means, physiotherapy (including light,

heat, water or exercise), or by the use of foods, food concentrates, or food extract, or who apply first aid and hygiene, but chiropractors are expressly prohibited from prescribing or administering to any person medicine or drugs in *materia medica*, or from performing any surgery, as hereinabove stated, or from practicing obstetrics.

K.S.A. 2015 Supp. 65-2846 provides,

For all professions regulated by the Board, if the Board's order is adverse to the Applicant or applicant for reinstatement of license, costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the proceedings and the level of participation by the parties. If the board is the unsuccessful party, the costs shall be paid from the healing arts fee fund.

K.S.A 77-527 of the Kansas Administrative Procedure Act states, in pertinent part,

(d) Subject to K.S.A. 77-621, and amendments thereto, in reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties. In reviewing findings of fact in initial orders by presiding officers, the agency head shall give due regard to the presiding officer's opportunity to observe the witnesses and to determine the credibility of witnesses. The agency head shall consider the agency record or such portions of it as have been designated by the parties.

(h) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall state the facts of record which support any difference in findings of fact, state the source of law which supports any difference in legal conclusions, and state the policy reasons which support any difference in the exercise of discretion. A final order under this section shall include, or incorporate by express reference to the initial order, all the matters required by subsection (c) of K.S.A. 77-526, and amendments thereto.

Zoeller v. State Bd. Of Healing Arts, Case No. 12-C-50, slip opinion at p. 12 (Shawnee County District Court July 2, 2012), provides,

When presented with a doctor who poses a possible threat to his patients, the Board must act in accordance with the interests of the public before the interests of the doctor.

Therefore, the Board's responsibility is not to weigh the benefit and harm of this agency action as it pertains to [Respondent] and his personal life, but to the benefit and harm to the public and the public's perception of the Board as a regulatory agency. If the Board is to perform its regulatory function, the public must perceive the Board as acting in the public's best interest, rather than catering its decision to the benefit of the doctors it is tasked with regulating.

"Where substantial evidence is presented that supports a finding of a violation of the [Kansas Healing Arts Act], Board members are entitled and expected to rely on their own expertise and experience in making these decisions." *Hart v. Bd. of Healing Arts of State*, 27 Kan. App. 2d 213, 218, 2 P.3d 797, 802 (2000).

The Kansas Supreme Court in *Kansas State Bd. of Healing Arts v. Foote*, 200 Kan. 447, 459, 436 P.2d 828, 837 (1968) found the Kansas State Board of Healing Arts "is the agency peculiarly qualified to predicate judgment on a scientific basis, and that judgment ought not be readily interfered with."

The Board adopts and incorporates herein by reference paragraphs 1 through 6 of the "Applicable Law" section set forth in Initial Order as follows:

1. K.S.A. 65-2851a(a) states, "All administrative proceedings provided for by article 28 of chapter 65 of the Kansas Statutes Annotated and affecting any Respondent licensed under that article shall be conducted in accordance with the provisions of the Kansas administrative procedure act."
2. K.S.A. 65-2837 provides, in relevant part:

(a) "Professional incompetency" means:

- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the board.
- (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board.
- (3) A pattern of practice or other behavior that demonstrates a manifest incapacity or incompetence to practice the healing arts.

(b) "Unprofessional conduct" means:

- (12) Conduct likely to deceive, defraud or harm the public.
- (24) Repeated failure to practice healing arts with that level of care, skill and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records that accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

3. K.S.A. 65-2836 provides, in relevant part:

A licensee's license may be revoked, suspended or limited, or the Respondent may be publicly censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a Respondent has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

4. K.A.R. 100-24-1 provides, in relevant part,

(a) Each licensee of the board shall maintain an adequate record for each patient for whom the licensee performs a professional service.

(b) Each patient record shall meet these requirements:

- (1) Be legible;
- (2) contain only those terms and abbreviations that are or should be comprehensible to similar licensees;
- (3) contain adequate identification of the patient;
- (4) indicate the dates any professional service was provided;
- (5) contain pertinent and significant information concerning the patient's condition;
- (6) reflect what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each;
- (7) indicate the initial diagnosis and the patient's initial reason for seeking the licensee's services;

- (8) indicate the medications prescribed, dispensed, or administered and the quantity and strength of each;
 - (9) reflect the treatment performed or recommended;
 - (10) document the patient's progress during the course of treatment provided by the licensee; and
 - (11) include all patient records received from other health care providers, if those records formed the basis for a treatment decision by the licensee.
5. The Board's Guidelines for the Imposition of Disciplinary Sanctions contain the definition of ordinary negligence and gross negligence, as determined by the board. Ordinary negligence is the failure to use ordinary care in the Respondent's practice. Gross negligence is a conscious, wanton act or omission in reckless disregard for the foreseeable outcome.
 6. "The whole purpose and tenor of the healing arts act is the protection of the public against unprofessional, improper, unauthorized, and unqualified practice of the healing arts. The goal is to secure to the people the services of competent, trustworthy practitioners." *Kansas State Bd. Of Healing Arts v. Foote*, 200 Kan. 447, 453, 436 P.2d 828, 833 (1968).

Findings of Fact

The Board adopts all the Findings of Fact made by the Presiding Officer in the Initial Order as follows, and provides emphasis, in italics, to specific facts in considering this Final Order.

1. Kezia Shine, D.C. ("Respondent") is licensed as a Doctor of Chiropractic Medicine in the State of Kansas.
2. Respondent is the owner of Align LLC (Align). Align has one office in Olathe, Kansas and another office in Parkville, Missouri.
3. In 2011, the Respondent's practice was housed in Corporate Woods in Overland Park, Kansas. Respondent leased space from New Birth Company (New Birth). New Birth is a free-standing birth center co-owned by an Advanced Practice Registered Nurse (APRN) midwife.
4. Respondent's practice is not limited to, but primarily focuses on pregnant women. She is well known and enjoys a good reputation in the prenatal community.
5. Some of Respondent patients are also patients of New Birth.
6. The Webster technique and the Leopold maneuver used by the Respondent are central to the issues in this matter.

7. The Webster technique is used for myofascial release of the round ligaments that support the uterus.
8. The Leopold maneuver is performed to assess a fetus' position in-utero. It is performed by palpating above the pubic bone to feel for baby parts, palpating the fundus to feel for baby parts, and palpating the sides of the abdomen to feel for baby parts.
9. On May 7, 2014, Patient 1 had her initial appointment with the Respondent. Patient 1 was twenty-five (25) years old and in the thirty-second (32nd) week of her second pregnancy. Patient 1 was also a patient at New Birth for this pregnancy.
10. Patient 1 went to the Respondent for pregnancy related complaints. On May 7, 2014, a myofascial release was performed for Patient 1. *The medical documentation of this office visit does not identify that the Webster technique was used. The Respondent's testimony was that she used the Webster technique for the myofascial release.*
11. On May 21, 2014, Patient 1 had another office visit with the Respondent. *A myofascial release was again performed for Patient 1. Again, the documentation did not identify the technique used as the Webster technique.*
12. Patient 1 saw the Respondent next on June 4, 2014. In addition to the myofascial release, Patient 1 requested her ankle be taped for stabilization and decrease motion due to a sprain. The ankle was taped using "RockTape." RockTape is a name brand for kinesiology tape. *Documentation was not made of the use of the RockTape, who performed the taping, where the sprain was located on the ankle, and where the tape was placed.*
13. Patient 1 made another visit to the Respondent on June 9, 2014. Patient 1 requested that her ankle be taped again. *The documentation of this visit does not contain the use of the RockTape, who performed the taping, where the sprain was located on the ankle, and where the tape was placed.*
14. On June 16, 2014, Patient 1 had another appointment with the Respondent. Patient 1 reported to the Respondent that she had been having contractions "all night" but they had stopped. RockTape was used on Patient 1's abdomen. *Patient 1 testified that while laying down, the Respondent pushed her baby down from the top of her belly (fundus) toward her feet and a receptionist held the positioning with her forearm while the Respondent taped her belly. The tape was applied across the top of Patient 1's belly and downward at her sides. Patient 1 described that she felt a lot of pressure and that she felt the baby move into her pelvis. Documentation indicates*

that the taping of Patient 1's belly was to relieve heartburn. Patient 1 testified that she did not have heartburn during this pregnancy. New Birth's records support Patient 1's assertion that she did not have heartburn during this pregnancy.

15. Patient 1 had another office visit with the Respondent on June 20, 2014. Patient 1 refused to allow her belly to be taped at this visit and told the Respondent it was on the advice of her midwife. The Respondent's documentation of this visit indicated that Patient 1 did not want her belly taped because it did not do anything and it itched.
16. On June 23, 2014, Patient 1 delivered a stillborn male child. Pathology reports indicated the stillbirth was due to a fetal maternal hemorrhage.
17. *The Respondent's documentation of the care she provided to Patient 1 lacked the use of the Webster technique and the type of traction used for Patient 1.*
18. [REDACTED] Patient 2 first was treated by the Respondent on July 16, 2014, when she was thirty-one (31) weeks pregnant. Patient 2's reasons for seeking medical care, [REDACTED] were upper back tightness and round ligament pain. Patient 2 was also a patient at New Birth.
19. *In documentation of Patient 2's July 21, 2014 visit, the Respondent indicated Patient 2's baby was in a breech position based on her check of the baby's position. New Birth diagnosed Patient 2's baby as breech approximately 5 weeks later, at week 37 of the pregnancy.*
20. On August 8, 2014, after work performed by the Respondent's intern on Patient 2's round ligaments, *during palpation by the Respondent of Patient 2's upper right abdomen, Patient 2 experienced a sharp pain.* Following the pain, Patient 2 went to the bathroom where she passed a dark colored blood clot and was bleeding vaginally. The Respondent instructed Patient 2 to go across the hall to New Birth to see her midwife.
21. *Patient 2 reported at New Birth that the Respondent's palpation of her upper right abdomen felt like a deep tissue massage for the purpose of trying to turn the baby from a breech position.* Patient 2 was transferred to Shawnee Mission Medical Center and found to have a partial placental abruption.

22. In a note dated September 2, 2014, the Respondent wrote, "there must have been a previous injury to produce a sharp pain when palpated that day... " There is no allegation by the Petitioner that the Respondent caused the placental abruption.
23. *Patient 2's weight, Body Mass Index (BMI), temperature, blood pressure and pulse were documented at the initial visit but not again. There is no intake consent form on Patient 2 and Patient 2's allergies and family history are not documented.*
24. Patient 2 did not give testimony as to her experience with the Respondent at the August 8, 2014 visit. However, due to the exigent circumstance of her passing a dark blood clot and bleeding vaginally, she did go directly to New Birth and made notes of her experience. Those notes include this statement made by Patient 2, "My baby was breech so we were adjusting to try and turn baby." Patient 2's notes also reported that the Respondent "had used some pressure on front ligament to help loosen them to turn baby, and push on him like a deep tissue massage. I think I made a mistake."
25. Patient 3 initially saw the Respondent during her third trimester of pregnancy on the recommendation of an individual in her birth preparedness class at New Birth.
26. On the New Patient History Form, *Patient 3 specifically indicated she was "aiming for Pelvis Alignment [and] Turning of Baby."* Patient 3's goal was to have a vaginal birth after prior cesarean section.
27. *On February 24, 2014, at Patient 3's first visit at Align, no one took her blood pressure, measured her weight, or height. This was not performed at any of Patient 3's subsequent visits to Align.*
28. *On February 24, 2014 and March 4, 2014, the Respondent manually maneuvered Patient 3's baby's head into a downward position. Respondent used the Leopold maneuver and identified the baby's head and bottom. Respondent then, by cupping the baby's bottom and head through Patient 3's pregnant abdomen, turned in a circular position to guide the baby's head into a downward position.*
29. After March 4, 2014, Patient 3 no longer allowed the Respondent to manipulate her baby on the advice of New Birth's APRN midwife.
30. *Respondent failed to document Patient 3's weight, height, BMI, temperature, blood pressure, and pulse on February 24, 2014.*
31. *In her documentation of the care provided to Patient 3, Respondent failed to identify her use of diversified technique and the type of traction provided. Respondent*

recommended cold packs but did not document why they were recommended. Respondent failed to document a taping of Patient 3's shoulder.

32. The Board additionally finds that, at oral arguments on this matter, *Respondent stated under oath that she does not monitor or record fetal heart tones on any of her pregnant patients, and she is completely unfamiliar with the technique.* (Transcript of Proceedings, Review of Initial Order, pp. 37-38.)
33. The Board additionally finds that, at oral arguments on this matter, *Respondent stated under oath that she acknowledged an APRN midwife filed the original complaints against Respondent which prompted this disciplinary action.* (Transcript of Proceedings, Review of Initial Order, pp. 40-41.)
34. The Board additionally finds *Respondent testified at the oral arguments on this matter that she has not changed her chiropractic practice in any way since the concerns involved in this matter were brought to her attention, but she has changed her documentation software.* (Transcript of Proceedings, Review of Initial Order, pp. 35-36.)
35. The Board additionally finds that the costs incurred by the Board in the proceedings are shown to be \$93,324.65, as set forth in Petitioner's Statement of Costs and the attached exhibits. Respondent does not dispute the evidence of the costs incurred in the proceeding.

Discussion

Petitioner asks the Board to adopt the Initial Order's Findings of Fact and Conclusions of Law, but adjust the disciplinary sanction to order revocation of licensure instead of suspension, a monetary fine, and probation.

Respondent requests the Board to reject the Initial Order in its entirety and dismiss the Petition. She asserts numerous errors in both the Initial Order and the entire disciplinary action, including that the Healing Arts Act is unconstitutional, the Board and Presiding Officer committed various due process violations against her, the Initial Order was not supported by sufficient evidence, the Presiding Officer made erroneous evidentiary rulings, and the Initial Order constitutes arbitrary and capricious agency action.

I. Constitutional Questions

Respondent asserts the Healing Arts Act as it pertains to chiropractors' treatment of pregnant women is unconstitutionally vague. As a state administrative agency, the Board has no authority to consider such constitutional questions. "No state agency has the authority to declare a law unconstitutional." *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 49 Kan. App. 2d 354, 381, 310 P.3d 404, 420 (2013), *aff'd*, 302 Kan. 656, 359 P.3d 33 (2015). "[A]dministrative agencies may not rule on constitutional questions." *In re Weisgerber*, 285 Kan. 98, 102, 169 P.3d 321, 325 (2007).

II. Due Process

Respondent alleges the Board and Presiding Officer deprived her of due process in the disciplinary investigation, the formal hearing, and the imposition of sanctions. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Eldridge*, 424 U.S. at 334, 96 S.Ct. 893 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 [1972]). But its fundamental requirement is the opportunity to be heard at a meaningful time and in a meaningful manner. 424 U.S. at 333, 96 S.Ct. 893; *see also Kaley v. United States*, 571 U.S. —, 134 S.Ct. 1090, 1114, 188 L.Ed.2d 46 (2014) (citing *Eldridge*, 424 U.S. at 333, 96 S.Ct. 893); *In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974 (2007); *Matter of Ellison*, 305 Kan. 519, 526, 385 P.3d 15, 21 (2016).

“The essential elements of due process of law in any judicial hearing are notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case.” *Collins v. Kansas Milling Co.*, 207 Kan. 617, 620, 485 P.2d 1343 (1971).

1. KAPA Proceedings

Regarding due process in administrative proceedings specifically, a summary is found in 73 C.J.S. Public Administrative Law and Procedure § 164:

As applied to administrative officials, agencies, and bodies, due process of law is not a term of fixed and invariable content, and greater flexibility has been given to the term when applied to administrative agencies than when applied to a judicial tribunal. The nature of the agency's action determines what due process must be accorded in an administrative proceeding, in that rulemaking or legislative proceedings are subject to less stringent due process requirements, and adjudicatory proceedings that are combined with investigatory functions may likewise require fewer due process protections than proceedings that are solely adjudicatory. No particular form of proceeding is required to constitute due process in administrative proceedings. [...] The requirement that an administrative body determine the existence or nonexistence of the necessary facts before any decision is made meets the essential requirements of due process.

The Board finds, at each stage of this lengthy disciplinary proceeding, Respondent was provided ample notice and many opportunities to be heard in compliance with K.S.A. 77-512, and the Presiding Officer adhered to K.S.A. 77-526(c) and (d) in basing her conclusions of law and findings of fact on evidence contained in the agency record. Notice was given of the numerous allegations against Respondent and the possible sanctions involved. Respondent was given several opportunities to present her case, participate in the discovery process, review and respond to the evidence presented against her, and confront the Board's witnesses. The Board and Presiding Officer followed the due process requirements of KAPA throughout this case.

In *Kansas Dept. of Revenue v. Coca Cola Co.*, the defendant company Coca Cola claimed a due process violation involving a tax assessment on income tax liability. Coca Cola argued it was denied both notice of the issue and knowledge regarding the KDR's evidence. In rejecting its

argument, the Kansas Supreme Court noted that Coca Cola was “aware of the issues before the department, and there [was] no showing that it has been or in the future will be deprived of a meaningful opportunity to be heard and to present its evidence at the administrative hearing.” 240 Kan. 548, 551, 731 P.2d 273 (1987).

Applying the Supreme Court’s analysis in *Coca Cola* to this case, the Board finds Respondent has failed to show a due process violation occurred at any stage of the proceeding. She was aware of the Petition for disciplinary action filed by the Petitioner. She was actively engaged in pre-hearing discovery and later given a hearing before the Office of Administrative Hearings, where she presented her arguments against the Petition. She was also afforded the opportunity to present briefs and oral arguments in the Board’s review of the Initial Order. Furthermore, the Kansas Healing Arts Act’s statutes explicitly allow the Board to discipline a licensee upon a finding of certain grounds, and such discipline may include revocation. Therefore, the Board and Presiding Officer’s actions satisfied both the constitutional requirements for due process and the Kansas statutory requirements for administrative proceedings for licensee discipline.

The Board further finds Respondent’s argument that the formal hearing was improperly closed lacks merit. KAPA’s provision governing formal hearing procedure, K.S.A. 77-523, states in subsection (f), “The hearing is open to public observation, except to the limited extent, as determined by the presiding officer, that it is necessary to close parts of the hearing pursuant to a provision of law requiring confidentiality or expressly authorizing closure.” The formal hearing in this matter was ordered closed to protect confidential patient information pursuant to the Presiding Officer’s order. This determination is consistent with K.S.A. 65-2839a(d), and was thus compliant with K.S.A. 77-523(f).

2. Investigatory Process

This matter proceeded through the administrative hearing process as dictated by the KAPA, but originated when three complaints against Respondent were filed with the Board. A brief discussion of the Board's disciplinary investigation process is thus warranted. Complaints may be filed by anyone. The source of the complaint is not determinative of Board action. Board action is predicated on whether there is competent admissible evidence of a violation of the practice act. Competent and admissible evidence can only be ascertained after a thorough and comprehensive investigation.

If a complaint appears to have merit on its face, an investigation may be opened. An investigation does not presume guilt or compliance with the practice act with respect to the allegations in the complaint; rather, the purpose of an investigation is to obtain information relevant to the issues so an evidence based decision can be made. If an investigation is opened, an investigator is assigned to obtain relevant information. The investigator will contact the licensee and let them know the underlying issues and request the licensee provide a detailed response with supporting records or documents. This is the licensee's opportunity to tell their side of the situation. Additionally, the investigator will subpoena medical records and documents from any source that relates to the issue and obtain other relevant investigation material or may include interviewing relevant individuals.

Board investigations are often completed within 4 to 6 months, while others take longer. There are a variety of factors that can cause an investigation to take longer than 6 months; for instance, incomplete records or initial records leading to additional record requests, additional complaints on same licensee, uncooperative 3rd parties or licensees, and/or an inability to access

individuals or records relevant to the investigation. Outside expert opinion may be important to evaluate the care or conduct involved in a situation and can contribute to case timelines.

Once an investigation is complete, all standard of care cases are reviewed by a peer review group, known as a Review Committee (RC). The RC is a group of voluntary members of the same profession as the licensee who have substantial experience. The RC members have experience in urban and rural practice settings as well as general and specialty practice. There is a separate and distinct RC for each profession, for instance there are separate M.D., D.O., and D.C. Review Committees. Additionally, there are RC or a professional council for each of the other professions regulated by the Board. The RC evaluates all the medical issues and articulates whether the standard of care was or was not met. If the case involves an area outside of the RC experience, they may request outside expert review. Evidence based decisions are dependent on thorough and complete collection of information and evaluation by peers and/or experts. The RC does not have authority to make decisions in a case. An RC provides peer review for a specific profession.

If the RC determines that SOC was not met, investigations are then reviewed by the Disciplinary Panel (DP). The DP is a subgroup of Board members that are tasked with making decisions on investigations. The DP has the authority to make decisions on the investigation's resolution. The complete investigation and RC evaluation are submitted to the DP. The DP reviews available information to assess things such as: 1) whether a violation of the practice act exists, 2) whether competent, admissible evidence exists to support a violation, and 3) whether action is necessary to protect the public. The DP may authorize closure of the case or further action.

The Board's litigation staff, acting at the direction of the DP, is tasked with implementing the DP's directive. If the DP authorizes the filing of a petition for disciplinary action, the burden of proof stands with the Board to prove any allegations against a licensee for violations of the

practice act. If standard of care is involved, an outside expert must review and render an expert opinion and testify if the case goes to an evidentiary hearing.

Respondent argues the Board violated her due process rights when it allegedly deviated from its usual investigation process. The Board finds this argument fails on its face, the as Board's investigation process is an informal administrative investigation, functioning to investigate complaints rather than to make an adjudication of any kind.

“Due process does not always require the opportunity to confront and cross-examine witnesses in the setting of an informal administrative investigation. For example, due process may not require such procedures when credibility determinations are not made during the initial administrative investigation but are reserved for a later hearing where these safeguards are available. *See [Brock v. Roadway Express, Inc., 481 U.S. 252, 266, 107 S.Ct. 1740, 95 L.Ed.2d 239 (1987)]* (‘[T]he primary function of the investigator is not to make credibility determinations.... Final assessments of the credibility of supporting witnesses are appropriately reserved for the administrative law judge, before whom an opportunity for complete cross-examination of opposing witnesses is provided.’) (Citations omitted). Similarly, these procedures have not been required where the administrative agency in question has a purely ‘investigatory’ function with no ‘adjudicatory’ component. *See [Hannah v. Larche, 363 U.S. 420, 451, 80 S.Ct. 1502, 4 L.Ed.2d 1307 (1960)]*; *see also SEC v. Jerry T. O'Brien, Inc., 467 U.S. 735, 742, 104 S.Ct. 2720, 81 L.Ed.2d 615 (1984)* (holding right to confrontation not implicated during SEC investigation of securities law violations).” *Cooper v. Salazar*, 196 F.3d 809, 815 (7th Cir. 1999).

The Board concludes its investigation procedure in this case is a purely investigatory function with no adjudicatory component, and thus did not violate Respondent's due process rights. Respondent was provided copious due process throughout the highly active administrative proceeding in this matter, as discussed above.

III. Evidentiary Issues

1. Sufficiency of the Evidence

Respondent argues the Presiding Officer's factual determinations are not adequately supported by the evidence in the agency record. In administrative proceedings before the Kansas

State Board of Healing Arts, unless a specific statute or regulation requires use of the clear and convincing standard, the Petitioner must show by a preponderance of the evidence that its petition should be granted. Here, there is not a specific statute or regulation requiring the agency to prove its allegations by a clear and convincing standard of proof for its disciplinary actions. Therefore, the agency must prove its allegations by a preponderance of the evidence. Additionally, “Where substantial evidence is presented that supports a finding of a violation of the [Kansas Healing Arts Act], Board members are entitled and expected to rely on their own expertise and experience in making these decisions.” *Hart v. Bd. of Healing Arts of State*, 27 Kan. App. 2d 213, 218, 2 P.3d 797, 802 (2000).

Count I - Patient #1

The Presiding Officer found “Respondent failed to keep medical records that accurately described the services she rendered (Webster technique) on May 7, 2014 and May 21, 2014. This is unprofessional conduct as detailed in K.S.A. 65-2837(b)(25), failure to keep written medical records which accurately describe the service rendered.” The evidence relied upon by the Presiding Officer in making this finding was that Patient 1 went to Respondent for pregnancy-related complaints, myofascial releases were performed at two office visits, the medical documentation for these visits do not identify that the Webster technique was used, but the Respondent’s testimony was that she used the Webster technique for the myofascial release. Further, the Respondent's documentation of the care she provided to Patient 1 lacked the use of the Webster technique and the specific type of traction used for Patient 1.

The Presiding Officer also concluded Respondent demonstrated unprofessional conduct as detailed at K.S.A. 65-2837(b)(25), failure to keep written medical records which accurately describe the service rendered, specifically the use of RockTape brand kinesiology tape on June 4,

2014 and June 9, 2014. The evidence relied upon by the Presiding Officer in making this finding was that Patient 1 requested her ankle be taped for stabilization and decrease motion due to a sprain on two separate office visits. The ankle was taped on both occasions using RockTape. Documentation was not made of the use of the RockTape, who performed the taping, where the sprain was located on the ankle, and where the tape was placed for either office visit.

The Presiding Officer also found Respondent manipulated a baby in utero in violation of the standard of care for a pregnant woman and beyond the scope of practice for a chiropractor, a “violation of K.S.A. 65-2836(b) as defined at K.S.A. 65-2837(a)(1), failure to adhere to the applicable standard of care to a degree which constitutes gross negligence in that it was a conscious, wanton act in reckless disregard for the foreseeable outcome.” In making this finding, the Presiding Officer relied on the evidence that Respondent used RockTape on Patient 1’s abdomen, with the documented purpose of encouraging the baby to drop corroborated by Patient 1’s testimony. Patient 1 reported pressure applied to her belly from the top down towards her feet and a second person holding her abdomen in that position as the Respondent applied the tape. Patient 1 reported a lot of pressure and felt her baby move into her pelvis.

The Board finds the Webster technique is a modality that is within the scope of chiropractic care; however, it must be done appropriately and documented in the medical record. Failure to document utilization of the Webster modality represents a danger to continuity of care and creates opportunity for adverse situations if subsequent providers are not able to ascertain this care was provided for a patient. A core axiom in medicine is that “if it isn’t documented, it didn’t happen.” The Board determines it significant that Respondent utilized the Webster technique and failed to document it appropriately. This failure is contrary to continuity of care and patient safety.

The Board further finds Respondent's care of Patient 1 centered on pregnancy related issues, and any event causing a pregnant patient to sprain an ankle that required taping on two separate occasions should be documented. Such an injury should also keep the medical provider alert for any signs such event had additional collateral consequences. Further, a pregnant patient who experienced a fall or twist significant enough to require taping should cause Respondent to explore the event and possible trauma to patient and fetus; nothing in Respondent's medical record reflects this type of evaluation.

Particularly alarming to the Board is Respondent's vagueness and inconsistency in describing the type of traction used during her treatment of Patient 1, as there are forms of traction which are appropriate for pregnant patients, and others that are dangerous and ill-advised. By failing to document the type of traction, Respondent put Patient 1 at risk by preventing subsequent providers from ascertaining whether the care provided for Patient 1 was appropriate considering her pregnancy. Respondent's failure to document requires the Board to conclude she failed to perform an appropriate evaluation. The failure to document on multiple occasions a primary modality used in the care and treatment of a pregnant patient reflects on Respondent's ability to provide care consistent with required standards. The agency record shows Respondent exhibited multiple failures of appropriate examination and documentation, in violation of both K.S.A. 65-2836(k) and 65-2837(b)(25).

The Board further finds Respondent lacks credibility regarding what care was provided to Patient 1 because Respondent's documentation indicated that the taping of Patient 1's belly was to relieve heartburn, but Patient 1 testified that she did not have heartburn during this pregnancy, and New Birth's records support Patient 1's assertion that she did not have heartburn during this

pregnancy. Moreover, the lack of follow-up appointments for Patient 1's alleged heartburn indicates Patient 1's testimony is more credible.

The central issue in the case at bar is whether the Respondent utilized the Webster technique within the standard of care for the patients listed in the petition. The Board finds taping a pregnant patient's abdomen "to encourage the baby to drop" is not an aspect of the Webster technique and is wholly outside the scope of chiropractic care.

Count II - Patient #2

The Presiding Officer concluded the Respondent demonstrated professional incompetency and violated K.S.A. 65-2836(b) as defined at K.S.A. 65-2837(a)(2), in that a chiropractor's use of palpation to determine or diagnose baby position is failure to use ordinary care in practice to a degree which constitutes ordinary negligence. The evidence relied upon by the Presiding Officer in making this finding was that in documentation of Patient 2's visit on July 21, 2014, the Respondent indicated Patient 2's baby was in a breech position based on her check of the baby's position.

The Presiding Officer also concluded Respondent demonstrated professional incompetency and a violation of K.S.A. 65-2836(b) as defined at K.S.A. 65-2837(a)(1), failure to adhere to the applicable standard of care to a degree which constitutes gross negligence in that it was a conscious, wanton act in reckless disregard for the foreseeable outcome. The evidence the Presiding Officer relied upon in making this finding was that Patient 2, a massage therapist trained in deep tissue massage, reported at New Birth on August 8, 2014 that the Respondent's palpation of her upper right abdomen was sharply painful and felt like a deep tissue massage for the purpose of trying to turn the baby from a breech position. Respondent did not document the events of August 8th until September 2, 2014; in this late entry, Respondent documented her impression of the events, writing that "[i]n my [her] opinion, there must have been a prior injury to produce that

sharp pain when I palpated that day ...” The Presiding Officer considered Patient 2’s version of events at the July 21, 2014 office visit a contemporaneous declaration and unguarded, and thus most reliable. Based on this evidence, the Presiding Officer found Respondent’s palpation of Patient 2’s baby was more a manipulation of a baby and beyond incidental touch that would be considered within the scope of chiropractic care, and was done to a degree that likely exacerbated a previous, unknown injury.

The Presiding Officer also concluded Respondent engaged in unprofessional conduct as detailed at K.S.A. 65-2837(b)(25) by failing to keep accurate records for Patient 2. This finding is supported by the fact that there was no intake consent form on Patient 2 and Patient 2’s allergies and family history were not documented.

The Board finds there is no reason for a chiropractor to determine or manipulate the position of a fetus, which both involve the practice of obstetrics. Respondent’s documentation therefore indicates she engaged in conduct inconsistent with the standard of care for a chiropractor and outside the scope of practice for a chiropractor. The Board also finds there is no reason to conduct deep tissue massage on a patient who is 31 weeks pregnant. The Board finds the Respondent’s September 2, 2014 note was created approximately one month after the care that was the subject of the complaint, was not contemporaneous to the care provided, and as such is not credible. By opining in this note that there “must have been a previous injury ...,” Respondent clearly demonstrates her failure to document Patient 2’s trauma or injury.

Count III - Patient #3

The Presiding Officer concluded Respondent demonstrated professional incompetency by her failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as well as unprofessional conduct pursuant to K.S.A. 65-2837(b)(24). The evidence relied upon by the

Presiding Officer in making this finding was that on February 24, 2014, at Patient 3's first visit at Align, no one took her blood pressure or measured her weight or height. These basic assessments were not performed at any of Patient 3's subsequent visits to Align.

The Presiding Officer also concluded Respondent engaged in unprofessional conduct as detailed at K.S.A. 65-2837(b)(25) and K.A.R.100-24-1(a) and (b) by failing to keep medical records that accurately described the services rendered. The evidence the Presiding Officer relied upon in making this finding regarding Patient 3 was Respondent's failure to identify her use of diversified technique and the specific type of traction provided to Patient 3, as well as her failure to document a taping of Patient 3's shoulder.

The Presiding Officer also concluded Respondent engaged in unprofessional conduct as defined in K.S.A. 65-2837(b)(12). The evidence the Presiding Officer relied upon in finding Respondent engaged in conduct likely to deceive, defraud, or harm the public was that on Patient 3's intake paperwork at Respondent's office, she indicated she was "aiming for Pelvis Alignment [and] Turning of Baby." The Presiding Officer found, "There is nothing to show that the Respondent educated Patient 3 that she was limited to care and treatment of Patient 3, that manipulating a baby in utero, turning a baby or treating an unborn baby is beyond her authorized scope of practice."

Finally, the Presiding Officer found Respondent demonstrated professional incompetency and violated K.S.A. 65-2836(b) and K.S.A. 65-2837(a)(1), failure to adhere to the applicable standard of care to a degree which constitutes gross negligence in that it was a conscious, wanton act in reckless disregard for the foreseeable outcome. The evidence the Presiding Officer relied upon in making this finding was Patient 3's report that on February 24, 2014 and March 4, 2014, the Respondent manually maneuvered Patient 3's baby's head into a downward position. Respondent used the Leopold maneuver and identified the baby's head and bottom. Respondent

then, by cupping the baby's bottom and head through Patient 3's pregnant abdomen, turned in a circular position to guide the baby's head into a downward position.

The Board finds the stated intentions of Patient 3 that included "turning of baby," combined with the lack of evidence showing Respondent educated Patient 3 that her care and treatment of Patient 3 was limited by her statutory scope of practice, indicates Respondent had a reputation for practicing outside of the chiropractic scope of practice by intentionally manipulating babies in utero. Further, credible testimony refutes Respondent's claims that she merely performed the Webster technique and did not meaningfully move babies. Without contemporaneous, accurate documentation of the care provided, Respondent's testimony on the nature and extent of care provided and her denial that she intentionally manipulated babies is not credible. As stated above, the Board is, again, particularly concerned by Respondent's failure to accurately document the type of traction used.

The Board concludes the Presiding Officer's Findings of Fact and Conclusions of Law are based on credible evidence contained in the agency record. Further, the Board concludes the Petitioner's presentation of evidence in this proceeding showed by a preponderance of the evidence that Respondent engaged in the conduct alleged in the Petition, in violation of K.S.A. 65-2836(b), (f) and (k); K.S.A. 65-2837(a)(1), (a)(2), (a)(3), (b)(12), (b)(24), and (b)(25); and K.A.R. 100-24-1.

2. Evidentiary Rulings

Respondent also lodges many complaints regarding evidentiary rulings made by the Presiding Officer at the formal hearing. Evidentiary matters in formal hearings conducted pursuant to KAPA are summarized in K.S.A. 77-524(a): "A presiding officer need not be bound by technical rules of evidence, but shall give the parties reasonable opportunity to be heard and to present

evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence need not be excluded solely because it is hearsay.” The Board finds the Presiding Officer’s conduct of the formal hearing in this matter provided the parties ample opportunities to be heard and to present evidence, and the Presiding Officer acted reasonably and without partiality in making her rulings. The Board therefore declines to disturb the Presiding Officer’s evidentiary rulings.

Respondent also attacks the Presiding Officer’s credibility determinations. Pursuant to K.S.A 77-527(d), “In reviewing findings of fact in initial orders by presiding officers, the agency head shall give due regard to the presiding officer’s opportunity to observe the witnesses and to determine the credibility of witnesses.” After a careful review of the entire agency record, the Board finds the record contains sufficient evidence to support the Presiding Officer’s credibility determinations and gives due regard to the Presiding Officer’s opportunity to observe the witnesses in person. The Board therefore finds no reason to disregard the Presiding Officer’s witness credibility assessments.

For the reasons discussed above, the Board concludes the Presiding Officer’s Findings of Fact and Conclusions of Law contained in the Initial Order are fully supported by the evidence contained in the agency record.

IV. Arbitrary and Capricious

Respondent argues the Presiding Officer acted in an arbitrary and capricious manner in that she failed to rely on Respondent’s evidence and instead based her decision on the Board’s evidence. The standard of review for considering whether an agency action is arbitrary and capricious is articulated in *Wright v. Kan. State Bd. of Educ.*, 46 Kan.App.2d 1046, 1059, 268 P.3d 1231 (2012), as follows:

An agency action is arbitrary and capricious if it is unreasonable or without foundation in fact. *Chesbro v. Board of Douglas County Comm'rs*, 39 Kan.App.2d 954, 970, 186 P.3d 829, *rev. denied* 286 Kan. 1179 (2008). A rebuttal presumption of validity attaches to all actions of an administrative agency, and the burden of proving arbitrary and capricious conduct lies with the party challenging the agency's actions. *Connelly v. Kansas Highway Patrol*, 271 Kan. 944, 965, 26 P.3d 1246 *cert. denied* 534 U.S. 1081 (2001). Our Supreme Court "has defined arbitrary to mean 'without adequate determining principles... not done or acting according to reason or judgment;'... [and] capricious as 'changing apparently without regard to any laws.' [Citations omitted.]" *Dillon Stores v. Board of Sedgwick County Comm'rs*, 259 Kan. 299, 912 P.2d 170 (1996).

The Board considers this issue a retread of Respondent's due process and evidence sufficiency arguments. The Presiding Officer acted reasonably and lawfully in relying on evidence she considered credible, and Respondent has failed to demonstrate this constitutes arbitrary and capricious conduct, "without adequate determining principles" or "changing apparently without regard to any laws." In reviewing the Initial Order, it would be within the Board's statutory discretion to reject the Presiding Officer's credibility determinations and base its findings and conclusions on different evidence. Instead, the Board adopts the Presiding Officer's determinations and bases this decision on substantial, competent, and credible evidence in the agency record.

The Board agrees with the Presiding Officer that, contrary to Respondent's assertions, the Healing Arts Act does not require a finding of actual harm to a patient in order for a licensee's acts or conduct to be grounds for disciplinary action under the provisions of the act. *Fieser v. Kansas State Bd. of Healing Arts*, 281 Kan. 268, 130 P.3d 555 (2006).

The Board notes that an issue before the Board in this matter is whether the care the Respondent provided met the standard of care for a chiropractor when using the Webster technique, and not whether the Webster technique itself is within that standard of care. Based on the evidence contained in the agency record, the Board agrees with the Presiding Officer that Respondent did not meet the standard of care in multiple instances. Additionally, although many

of Respondent's witnesses testified her conduct with Patients 1, 2, and 3 was within the standard of care for a chiropractor, the agency record does not support this claim. Respondent admitted, under questioning during the oral arguments on review of the Initial Order, that the source of the complaints in this matter was not a MD, DO, or D.C.; rather the complainant was of a different profession altogether. The Board finds the professions of the Review Committee (exclusively chiropractors) and Complainant demonstrate an absence of physicians' bias against chiropractors in this disciplinary action, contrary to the Respondent's arguments.

Respondent testified at the oral arguments on review of the Initial Order that she has not altered her chiropractic practice in any way as a result of these proceedings, with the only caveat that she has changed her software in an attempt to improve her documentation. Further, Respondent demonstrated a lack of patient care awareness and ability when she testified at oral arguments she has no idea how to monitor fetal heart tones when a core of her patient population involves pregnant patients. The Board finds Respondent put patients at risk by practicing below the standard of care in the events under consideration, and she is unable or unwilling to recognize that continuation of this behavior puts future patients at risk.

Conclusions of Law

The Board concludes Respondent's arguments in favor of rejecting the Initial Order are meritless. The Board further concludes, after reviewing the agency record and arguments from the parties, that the appropriate sanction in this matter is revocation rather than the suspension, fine, and probation set forth by the Initial Order. The Initial Order concluded the evidence showed Respondent committed multiple acts of gross and ordinary negligence, professional incompetency, and unprofessional conduct in violation of K.S.A. 65-2836, K.S.A. 65-2837, and K.A.R. 100-24-

1. The Board rejects the Initial Order's discussion regarding the proper timing for revocation, as

the sanction of revocation is not limited to emergency proceedings brought pursuant to K.S.A. 77-536 or K.S.A. 65-2838. Under K.S.A. 65-2836, revocation of licensure is statutorily authorized upon a finding of the existence of numerous grounds, including unprofessional conduct, professional incompetency, and willful or repeated violation of the Healing Arts Act or regulations. *See* K.S.A. 65-2836(b), (f), and (k).

The sanction of revocation under the facts of this case is consistent with both K.S.A. 65-2836 and the Board's guidance document, "Guidelines for the Imposition of Disciplinary Sanctions," issued by the agency pursuant to K.S.A. 77-438. This document provides non-binding guidelines on the type of offense, sanctioning goals, and application of aggravating and mitigating factors. Respondent's multiple violations of the Healing Arts Act in this matter fall within the Disciplinary Guidelines' Sanctioning Category 1A, which at a minimum, subjects Respondent to revocation of her license. Aggravating and mitigating factors are discussed at Section III, page 15 of the Disciplinary Guidelines. Instructions include the following:

"After it has been established that a violation has occurred, then the Board should consider the facts and circumstances unique to the case to determine whether the presumptive sanction is appropriate in light of any aggravating and/or mitigating factors ..."

The Board considers the following mitigating factors present in this case: First, Respondent did not commit her numerous violations of the Healing Arts for a criminal, immoral, dishonest, or personal gain; but rather, it appears she believes she was helping her patients. Further, this is Respondent's first case in front of this Board and she has not been subject to any previous disciplinary or non-disciplinary action. Finally, the acts by Respondent occurred in early to mid-2014, this action was filed November 7, 2015, and the Formal Hearing process concluded at the

issuance of the Initial Order on January 22, 2018. Therefore, almost four years have transpired since Respondent committed the wrongful acts.

The Board considers the following aggravating factors present in this case: Respondent's actions were intentional for the most serious acts, Respondent failed to show remorse or consciousness of the wrongfulness of her conduct, Respondent failed to admit key facts, the nature and gravity of the allegations against Respondent are grave, Respondent's commission of wrongful acts was frequent and repeated, Respondent's degree of negligence was grossly negligent, Respondent lacks a potential for rehabilitation as displayed by her refusal to change her practice after this action was brought, Respondent's acts show a pattern of misconduct, and Respondent is an experienced practitioner. The Board concludes the aggravating factors outweigh the mitigating, and the presumptive sanction of revocation under the Disciplinary Guidelines is appropriate in light of the evidence in the agency record.

Although the sanction of revocation differs with the Initial Order, this Final Order is in harmony with the policy of enforcing the Healing Arts Act in the interests of public health, safety and welfare, and properly protecting the public against unprofessional, improper, unauthorized, and unqualified practice of the healing arts. *See* K.S.A. 65-2801; *Kansas State Bd. Of Healing Arts v. Foote*, 200 Kan. 447, 453, 436 P.2d 828, 833 (1968).

The Board accepts, adopts, and incorporates herein by reference the Findings of Fact and Conclusions of Law contained in the Initial Order in this Final Order Revoking Licensure and Assessing Costs, with the exception of the appropriate sanction. The Board further concludes the Petitioner has shown by a preponderance of the evidence that Respondent has 1) demonstrated a pattern of manifest professional incompetency through multiple instances of gross and ordinary negligence; and 2) engaged in unprofessional conduct by willfully and repeatedly failing to comply

with Board rules and regulations regarding record keeping, willfully and repeatedly practicing in violation of the standard of care of a chiropractor and outside the authorized scope of chiropractic practice, and engaging in conduct likely to deceive, defraud, or harm the public. *See* K.S.A. 65-2836(b), (f) and (k); K.S.A. 65-2837(a)(1), (a)(2), (a)(3), (b)(12), (b)(24), (b)(25), and K.A.R. 100-24-1. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2801, the Board determines Respondent's conduct warrants the discipline of revocation.

At oral arguments on this matter, Respondent requested a stay of effectiveness of any adverse Board decision. 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). The Board has discretion to take action on a petition for stay, either before or after the effective date of the initial or final order. K.S.A. 77-528. The Board determines Respondent failed to demonstrate a stay in this matter is necessary in light of the gravity of this case, the danger her conduct poses to the public, and her professed continuation of her chiropractic practice unaltered despite its incompatibility with the Healing Arts Act. Respondent's request for a stay of effectiveness of this Final Order is therefore denied.

The Board further concludes it is appropriate to assess costs to Respondent when the Board's order is adverse to her licensure. Pursuant to K.S.A. 2015 Supp. 65-2846, costs of \$93,324.65 are therefore assessed against Respondent. These costs shall be paid in full within 30 days of the filing of this Final Order, or, in the alternative, Respondent may submit a proposed payment schedule for Board consideration and approval.

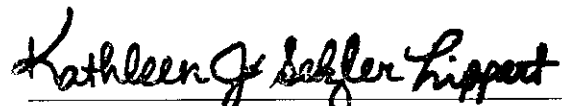
IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Respondent's request to stay the revocation of her license until exhaustion of Respondent's final appeal is hereby **DENIED**.

IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Kezia Shine, D.C.'s license No. 01-05327, to practice chiropractic in the State of Kansas, is hereby **REVOKED**, effective upon the date of filing of this Final Order.

IT IS FURTHER ORDERED that Respondent is hereby ordered to pay **COSTS** in the amount of \$93,324.65. These costs shall be paid in full within 30 days of the filing of this Final Order, or, in the alternative, Respondent may submit a proposed payment schedule for Board consideration and approval. Payment shall be submitted to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson Street, Lower Level, Suite A, Topeka, Kansas 66612.

IT IS SO ORDERED THIS 10th DAY OF May, 2018, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lippert, Executive Director

NOTICE OF APPEAL RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Respondent may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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 Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

NOTICE REGARDING UNLAWFUL CORPORATE PRACTICE OF CHIROPRACTIC

PLEASE TAKE NOTICE that your license to practice chiropractic in the State of Kansas has been revoked. As such, you may no longer lawfully hold an ownership interest in any professional business entity organized to provide chiropractic services in the State of Kansas.

NOTICE REGARDING DUTY TO MAINTAIN PATIENT RECORDS

PLEASE TAKE NOTICE that pursuant to K.A.R. 100-24-2, you are required to maintain each of your patients' records for a minimum of 10 years from the last date of service. Because you cannot actively practice, K.A.R. 100-24-3 requires that you notify the Board on or before June 11, 2018, of the location of your patients' records, the name of the designated agent to maintain the records, along with the telephone number and mailing address of the agent. If you will be maintaining the records yourself, you shall give your contact information instead. This

information will be provided to former patients who contact the Board to inquire as to the location of their records. You should also be aware that if you are unable or refuse to allow patients access to their records, the Board may petition the court for appointment of a custodian of the records pursuant to K.S.A. 65-28,128.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER REVOKING LICENSURE AND ASSESSING COSTS** was served this 10th day of May, 2018, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

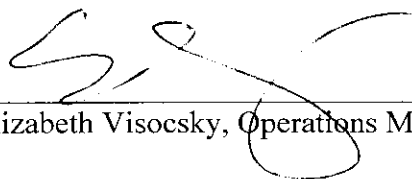
Kezia Shine, D.C.
9209 W 110th Street
Overland Park, KS 66213

Brian Niceswanger
Stephanie Pruet
Evans & Dixon, LLC
51 Corporate Woods
9393 West 110th Street, Suite 120
Overland Park, KS 66210

And a copy was hand-delivered to the office of:

Reese Hays, Litigation Counsel
Susan Gering, Deputy Litigation Counsel
Kansas Board of Healing Arts
800 S.W. Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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



Elizabeth Visocsky, Operations Manager