

**FILED**  
JAN 09 2015  
KS State Board of Healing Arts

**BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS**

**In The Matter of** )  
**ANN K. NEUHAUS, M.D.** )  
 )  
**Kansas License No.: 04-21596** )  
\_\_\_\_\_ )

**KSBHA Docket No. 10-HA00129**

**FINAL ORDER FOLLOWING REMAND: REVOKING LICENSE  
AND ASSESSING COSTS**

NOW, on this 11<sup>th</sup> day of December, 2014, this matter comes before the Kansas State Board of Healing Arts ("Board") for a Conference Hearing to issue a Final Order following Remand in the above-captioned matter against Ann K. Neuhaus, M.D. ("Respondent"): The Initial Order by the Presiding Officer from the Office of Administrative Hearings ("OAH") was modified as directed by the Honorable Franklin R. Theis of the District Court of Shawnee County, Kansas, in the Memorandum Opinion and Entry of Judgment and Appendix, issued on March 7, 2014 ("Memorandum Opinion").

The Board's Petition requests the revocation of Respondent's license to practice medicine and surgery in the State of Kansas and to assess costs. The Initial Order was filed following a hearing on the Board's Petition seeking action against Respondent for alleged violations of the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.* ("KSHAA" or the "Act"). The previous Final Order of the Board was vacated, in part, by the Memorandum Opinion and the matter was remanded as follows: "this matter must be remanded back to the Kansas State Board of Healing Arts for rehearing as to the appropriate sanction or sanctions, if any, to be imposed upon Dr. Neuhaus's for her violation of K.S.A 65-2836(k) by her violation of K.A.R. 100-24-1." (Memorandum Opinion at p. 83). The Conference Hearing is held pursuant to, and in

accordance with, the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.* ("KAPA").

Respondent appears in person and by and through counsel, Robert V. Eye of the law firm of Kauffman & Eye. Reese H. Hays, Litigation Counsel, appears on behalf of the Petitioner Board. Mark A. Ferguson appears as Special Counsel to the Board.

A copy of The Transcript of The Proceedings ("Tr.") is attached hereto and incorporated herein by reference as Exhibit A. The sixty-eight (68) pages of transcript includes only the public portion of the Conference Hearing. The Board acted in its quasi-judicial capacity and engaged in private deliberations to reach a decision as permitted by law.

Pursuant to the authority granted to the Board through the KSHAA, and in accordance with the provisions of KAPA, the Board hereby enters a Final Order in the above-captioned matter. After reviewing the entire agency record, having heard the statements and arguments of the parties, having reviewed the Briefs submitted by the parties, having reviewed the applicable Findings of the Fact and Conclusions set forth in the Initial Order which survive the Memorandum Opinion, having given due regard to the presiding officer's opportunity to observe and determine the credibility of each witness, having reviewed the Memorandum Opinion and Appendix, having deliberated following the public Conference Hearing and having been otherwise duly advised in the premises, the Board makes the following Findings of Fact, Conclusions and Orders as follows:

#### **Findings and Procedural History**

1. Respondent was licensed to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-21596 on approximately December 5, 1986.

2. Respondent has remained a general practitioner, with one year of internal medicine graduate medical education training. Respondent has never been board certified in a hospital medicine specialty (Tr. at p. 57, ln.17-21).<sup>1</sup>
3. In 1999, limitations were placed on Respondent's license to practice medicine and surgery in the State of Kansas when Respondent was found to have violated federal regulations concerning controlled substances and her U.S. Drug Enforcement Agency registration was limited (Case.No. 00-4A-20). This involved a "substance abuse documentation issue" which was resolved by closing her practice so Respondent no longer needed a DEA License (Tr. at p. 58, ln. 8-13).
4. In 2001, limitations were placed on Respondent's license to practice medicine and surgery in the State of Kansas when Respondent was found to have repeatedly deviated from the standard care in maintenance of patient medical records as required by K.A.R. 100-24-1. This second case "was about documentation during conscious sedation, and there was a long hearing with testimony from an anesthesiologist who found that all of my practices as far as the safety and administration of conscious sedation were adequate, but that I hadn't documented heart and lung examinations on all the patients." (Tr. at p. 58, ln. 13-20). As a result, it was stipulated by the parties that "[l]icensee shall comply with all provisions of K.A.R. 100-24-1, with respect to medical record-keeping." (01-

---

<sup>1</sup> The Findings presented herein are intended to supplement the extensive factual findings contained in the Agency Record reviewed by the Board. These additional citations supplement the record based upon the additional argument, evidence and/or testimony provided during the Conference Hearing on December 11, 2014 or assist in resolving questions which arose during the Conference Hearing or Board deliberations. These citations to the Agency Record or the Transcript are not intended to exclude other important facts or references contained in the Agency Record. The references in the Final Order cannot serve to diminish the thousands of pages of testimony, evidence and briefing contained in the voluminous Agency Record, all of which was reviewed by the Board.

HA-14 at paragraph 33; dated June 15, 2001). Although Respondent closed her practice and no longer performed conscious sedations, this Stipulation has not been lifted and has not expired. This Stipulation remains in full force and effect.

5. It is undisputed that action, inaction and conduct of Respondent has previously come before this Board, which constitutes prior disciplinary action. The repeated instances of record keeping violations constitutes a pattern and the allegations in the Petition is not considered an isolated incident. The allegations presented herein are numerous and repeated and serve as a legitimate ground for disciplinary action by the Board with regard to record keeping.

6. On April 16, 2010, a Petition was filed by the Board against Respondent. The Petition seeks disciplinary action against Respondent's license to practice medicine and surgery in the State of Kansas for allegations of multiple acts of failing to make and maintain adequate patient medical records. (See Petition at para. 16c; Initial Order at para. 14, 31, 44, 55, 63, 71, 80, 90, 98, 106, 118, and 130). The factual allegations and determinations of the Initial Order and initial Final Order, as set forth in paragraph 16.c. of the Petition were sustained by the Court (Memorandum Opinion at p.77-83).

7. Effective July 1, 2010, Respondent changed her license from "Active" to "Exempt" for the 2010-2011 renewal period, stating that her professional activities in Kansas would constitute "Charitable Health Care, Treatment of Family and Friends with no compensation."

8. On or about June 20, 2011, Licensee submitted an application with the Board to change the status of her license to practice medicine and surgery in the State of Kansas from

"Exempt" to "Active." Licensee's request was stayed by Presiding Officer Gaschler pending the outcome of the Petition.

9. On September 12, 2011, and continuing through September 16, 2011, a formal hearing was held on the complaints asserted in the Petition before Presiding Officer Edward Gaschler with OAH.

10. On or about February 17, 2012, Presiding Officer Gaschler issued a detailed Initial Order, setting forth findings of fact and conclusions of law. The Initial Order ordered the revocation of Respondent's license to practice medicine and surgery in Kansas, and ordered the costs to be assessed against Respondent, as set forth in the statement of costs filed by the Board. The Initial Order is twenty-eight (28) pages and sets forth findings of fact, conclusions of law and a determination of an appropriate remedy.

11. On July 6, 2012, the Board issued a Final Order revoking licensure to practice medicine and perform surgery and assessing costs against Respondent.

12. On August 6, 2012, Respondent filed a Petition for Judicial Review of Agency Action pursuant to K.S.A. 77-601, et seq., challenging the initial Final Order.

13. On March 7, 2014, the Honorable Franklin R. Theis, Judge of The District Court of Shawnee County, Kansas issued a Memorandum Opinion and Entry of Judgment and Appendix ("Memorandum Opinion"). The Memorandum Opinion vacated the Final Order of the Board, in part, and remanded the matter to the Board for further consideration consistent with the findings and directives of the Memorandum Opinion.

14. Specifically, the Memorandum Opinion reversed the allegations set forth in paragraph 16.a. and 16.b. (standard of care violations) and sustained the allegations set forth in paragraph 16.c. of the Petition (record keeping violations). The Judge remanded the

matter back to the Board for reconsideration as to the appropriate sanction or sanctions, if any, to be imposed upon Respondent for her violation of K.S.A.65-2836(k) and K.A.R. 100-24-1 and for a determination of whether to assess costs.

15. Paragraph 16 of the Board's Petition provides: "Licensee's acts and conduct during the course of treating Patient #1 constitute violations of the Kansas Healing Arts Act as follows: . . . c. K.S.A. 65-2836(k), in that Licensee has violated a lawful regulation promulgated by the Board, specifically, K.A.R. 100-24-1, by failing to meet the minimum requirements for an adequate patient record." (ROA: 000008; Memorandum Opinion at p.78).

16. The allegation of paragraph 16.c. "states a violation of K.S.A. 65-2836(k) based on a violation of K.A.R. 100-24-1 in relation to the maintenance of adequate medical records by Dr. Neuhaus." The Court found that this Regulation of the Board "is not only for the protection of the public, but also for the protection of an individual licensee of the Board of Healing Arts from misdirected claims." (Memorandum Opinion at pp.78-79).

17. The Regulation of the Board is also for the protection of the integrity of the applicable healing arts profession itself. (Memorandum Opinion at p. 79). It further operates to facilitate proper peer review, where appropriate, and supports effective regulatory oversight of a licensee's profession by the Board. (Memorandum Opinion at p. 79).

18. "Fundamentally, K.A.R. 100-24-1 requires the maintenance of records in regard to patient encounters such that a like provider, trained and knowledgeable in the particular field of the healing arts, could, upon review, say that, based on the record maintained or, in the least, by reference to other readily reliable and readily available sources clearly identified in the record, the particular diagnosis or actions taken or omitted by that

particular healing arts provider facially indicate a compliance with relevant standards of care or other accepted professional practices in the licensee's field of practice." (Memorandum Opinion at p. 79).

19. The Court ruled that "[i]t is clear here that Dr. Neuhaus's maintenance of records as to each of the patients #1-- #11 fell below the requirements of K.A.R. 100-24-1 and below any reasonably required standard of care for their maintenance because she failed to document and maintain the reference material she used for her inputs into the DTREE and GAF computer programs, such that, without such documentation, her own professional conduct, the integrity of her profession in the field of medicine in which she was then engaged, . . . and the proper functioning of regulatory oversight was placed in jeopardy and made subject to allegations of inept, unprofessional, even illegal, conduct, which could not be at least, *prima facie* resolved by reference to her own records." (Memorandum Opinion at pp. 79-80).

20. From the record as whole, Dr. Neuhaus's omissions have not been proven to be for nefarious reasons, but, rather, just quite inadequate and short-sighted. (Memorandum Opinion at p. 80). This statement of the Court which refers to nefarious conduct does not rule out the presence of intentional, willful or negligent conduct reasons for poor record keeping. The reference to the Court's statement ruling out "nefarious conduct" was in the context of a discussion that the acts were not deemed to be motivated by illegal purpose, but they were indeed purposeful and intentional. The Court commented that "the testimonial evidence proffered by Dr. Neuhaus competed with the dismal state of her records." (Memorandum Opinion at p. 74). The adequacy of her medical records may reflect an incompetence to practice medicine with reasonable skills and safety.

21. At the Conference Hearing, Respondent's counsel made the following admission related to the obvious distinction between intentional and nefarious conduct: "We do not dispute that she conducted herself in a knowing fashion, she never said otherwise. I mean knowing implies willful. Willful implies knowing. So I would simply say that what the district court found was that while her motives may have been misguided they weren't nefarious and that is a difference, and I think it's one from a qualitative standpoint separates her from the --from the practitioner who defies the Board authority and the Board requirements for, you know, completely immaterial reasons or reasons that are in fact nefarious." (Tr. at p.33-34).

22. Respondent testified in the initial hearing (on September 15 and 16, 2011) that she intentionally omitted information on the medical records because she was trying "to protect my patients' privacy as much as I could." (ROA 003121). In some cases she simply neglected to include documents in the medical record (ROA 003150-3151) ("but for some reason, it didn't get printed out or --and, you know, it's just a -- an oversight on my part"); ("And I just may have neglected -- I obviously neglected to print it. Because I wouldn't have printed and not put in it the chart, so I evidently didn't print it. And it would have been on the computer for some period of time, but when I quit using that computer, that record would no longer have been accessible.") (ROA 003151).

23. There was extensive questioning of Respondent which elicited testimony of numerous and extensive deficiencies in recording various medical information on patient medical records for patients 1 to 11 (ROA 003182- 003288). Respondent admitted that she could have documented more extensively. Her actions were knowing, willful and intentional because she was "acutely aware" that they were in a "fishbowl" and her concern was to

make an “adequate record that didn’t have identifiable material that would not be redacted from a record” if viewed by a third party in order to make sure that the records were not “personally identifiable.” (ROA 003119- 003121); “So, I mean, all along, I tried to protect my patients’ privacy as much as I could.” (ROA 003121 at ln.3-5). A summary of the testimony of Ann K. Neuhaus, (ROA: 002975-003315) during the underlying hearing can be found at pp. A47-A50 of the Appendix to the Memorandum Opinion.

24. A summary of the listing and identification of the records of each of Dr. Tiller’s and Dr. Neuhaus’s files is included at pp. A72-A102 of the Appendix to the Memorandum Opinion.

25. Respondent admitted that there was “nothing within the patient’s record that indicates what records [she] relied upon to form the basis of [her] conclusions.” (ROA 003234- 3235). The rationale for the numerous omissions, as stated by Respondent was clearly for a knowing and intentional reason, however misguided, which was to provide a patient-centered practice while “maintaining the privacy interests of [her] patients.” (ROA 003305- 003306).

26. Dr. Neuhaus principally erred in the omission of record retention in the following respects, as found by the Court: “While it is correct from a DTREE or GAF report one can deduce the patient’s circumstances from the response to the questions asked, it is equally clear that without a record of the inputs there is a lack of means for verification of the resulting diagnosis. It was in this omission of record retention that Dr. Neuhaus principally erred” (Memorandum Opinion at pp. 80-81). Such documentation of specific responses is needed for adequate patient follow-up and subsequent evaluation, to

determine whether or not their medical condition has improved. Without such documentation, adequate and safe patient follow-up is significantly hindered.

27. “[T]his omission has brought great attention, belabored many, and its resolution has, and will upset some, regardless, all of which K.S.A. 65-2836(k) and K.A.R. 100-24-1 seeks to forestall or mitigate, if not every wholly prevent.” (Memorandum Opinion at p. 81).

28. The Court rejected that Board’s Standard of Care allegations. The reason stated by the Court is that: “the Board’s findings concerning its charges stated in ¶ 16.a. and ¶ 16.b. of its Petition under each of its Counts I-XI in support of a violation of K.S.A. 65-2837(a)(2) and K.S.A. 65-2837(b)(24) lack “substantial evidence” to support them within the meaning of K.S.A. 77-621(c)(7) and (d). This lack of substantial evidence renders the Board’s (initial) Final Order as to those charges “arbitrary” and “capricious” as those terms are used in K.S.A. 77-621(c)(8).” (Memorandum Opinion p. 81).

29. Since the Court found that the Board failed to prove by substantial evidence that Dr. Neuhaus could not perform mental health evaluations or make differential diagnoses generally, or as to any cited patient, or prove that the doing of the same were within the executive province of psychiatrists or other like specialties, any claim Dr. Neuhaus held herself out as able to perform medical services beyond her training and licensure must fail. (Memorandum Opinion at p. 82). The Court reversed the findings in the Petition under paragraph (a) and paragraph (b).

30. A violation of K.S.A. 65-2837(b)(25), which relates to inadequate medical record keeping under K.A.R. 100-24-1 may constitute “unprofessional conduct.” (Memorandum Opinion at p. 82). The Court sustained the allegation set forth in paragraph 16(c) of its Petition.

31. The Memorandum Opinion remanded the matter back to the Board “for [a] further hearing concerning the sanction or sanctions, if any, to be imposed upon [Respondent] for her violation of K.S.A. 65-2836(k) by her violation of K.A.R. 100-24-1.”

32. Because the license to practice the healing arts of Dr. Neuhaus was revoked and the hearing’s costs assessed to her were both based on the Final Order of the Board, which encompassed erroneous findings, both the order of revocation and the order of cost assessment are vacated. (Memorandum Opinion at p. 82). This Board required the Petitioner to submit a revised Statement of Costs which would apportion the costs based upon the Court’s ruling, with the parties to brief the issue.

33. At the Conference Hearing on December 11, 2014, the Board heard arguments of the parties and asked questions of counsel. After being duly sworn, Respondent Ann K. Neuhaus appeared in person and provided sworn testimony on her own behalf. She responded to specific questions from the Board. (Tr. at pp. 56 to 62).

34. The parties were given proper notice of the Conference Hearing and were provided a complete copy of the Agency Record.

35. The parties submitted Briefs in support of their arguments and were permitted adequate time and sufficient opportunity to argue their respective sides of the case. The Board invited presentation of both aggravating and mitigating circumstances and considered all.

36. Petitioner’s Brief on the Remanded Issues requests that the Board find that the appropriate sanction in this matter is the revocation of Respondent’s license and requests that the Board issue an Order that Respondent pay costs.

37. Respondent's Brief argues that the sanction of license revocation represents a disproportionately severe sanction compared to similarly situated peers who have been previously sanctioned for violations of record keeping requirements.

38. Patient records should include the following documentation and information: patient identification, dates of professional services rendered, pertinent and significant information concerning the patient's condition, description of vital signs and tests performed, with findings and results of each, initial diagnosis; statement of the patient's initial reason for seeking services; treatment recommended, documentation regarding the patient's progress during treatment and the inclusion of all patient records received from other health care providers which form the basis for a treatment decision. Failure to include this information and documentation in each patient record constitutes a failure to maintain an adequate patient medical record as required by K.A.R. 100-24-1.

39. Pursuant to K.S.A. 65-2836(k), the Board may limit Licensee's license to practice the healing arts in the State of Kansas for violation of K.A.R. 100-24-1, a lawful Regulation promulgated by the Board.

40. Pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24), the Board may limit a license to practice the healing arts upon a finding that Licensee committed unprofessional conduct by repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

41. The District Court rejected the "Standard of Care violations" and supported the record keeping violations asserted against the Respondent.

42. Dr. Terry L. Webb has been designated by the Board as the Presiding Officer and is authorized to be the signatory on the Final Order as permitted by K.S.A. 77-514(g).

43: Respondent argues that the license revocation ordered on June 5, 2012 is sufficient discipline already suffered (i.e. credit for the duration the sanction already served) and that Respondent be permitted to immediately pursue license reinstatement.

44. The decisions rendered in this case have not been made based upon any personal objections against abortion providers or based upon religious or philosophical grounds. Instead, the Board is careful to make decisions based on relevant evidence and valid considerations.

45. The focus in this matter is not the fact that Respondent's practice included abortion care. Neither the Board, nor the Court finds that Respondent violated K.S.A. 65-6703 in any respect (Memorandum Opinion at pp. 27-31). Rather, the remaining focus of the Board is on the applicable standard of care related only to record keeping and her repeated violations of regulation in this area.

46. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

47: The Kansas State Board of Healing Arts ("Board"), created in 1957, is the licensing and regulatory Board for many health care providers in Kansas. The Board is comprised of 15 members including 5 Medical Doctors (M.D.), 3 Osteopathic Doctors (D.O.), 3 Chiropractic Doctors (D.C.), 1 Podiatric Doctor (D.P.M.), and 3 public members. Professional Councils were established by statute for each of the allied health care professions licensed and regulated by this agency to advise the Board in carrying out the provisions of their practice acts.

48. Eleven (11) members of the Board participated in the Conference Hearing on December 11, 2014, either in person or by phone. The Disciplinary Panel members consisted of Michael J. Beezley, M.D. and M. Myron Leinwetter D.O. As such, these individuals recused themselves from participating in the Board hearing and voting on the matter. Additionally, Respondent's Oral Motion to Recuse Board Member Richard A. Macias was considered by the Board and rejected for the reasons stated on the Record (Tr. at pp. 7-10). Despite the Board's determination that no conflict of interest existed, Mr. Macias voluntarily agreed to recuse himself to avoid any appearance of impropriety.

49. General Counsel Kelli Stevens and Executive Director Kathleen Lippert were conflicted out of advising the Board on the remanded disciplinary decision in this matter. Mark Ferguson serves as special legal counsel to the Board. For the purposes of this proceeding, and to ensure compliance with K.S.A. Supp. 77-514(h), Mr. Ferguson was not supervised or directed by Ms. Stevens in any proceeding arising out of this matter.

50. The Board considered the entire agency record and abided by the directives of the Memorandum Opinion in its issuance of a new Final Order. The Board was provided with a complete copy of the Agency record, including the Memorandum Opinion and Appendix.

51. Each party filed a brief and was given an opportunity to present oral argument on the issues remanded by the judge and the issues to be considered by the Board. Such briefs of the parties were timely filed with the agency. Each party was afforded 15 minutes for presentation of oral argument before the Board and both parties exceeded the time allotted. The parties were permitted latitude to argue and present their case, answer

questions and respond, in an effort to provide full substantive and procedural due process

to the parties.

52. A quorum of members were present and participated in the Conference Hearing and in the Board's deliberations. The Board members functioned as presiding officers in this matter.

53. The stated mission of the Board is: "Safeguard the public through licensure, education and discipline of those who practice the healing arts in Kansas." This is consistent with

the stated statutory purpose of the Act which sets forth the following purpose:

"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. 65-2801.

The stated Philosophy of the Agency is: "The Kansas Board of Healing Arts will perform

licensing and regulatory functions in accordance with all applicable statutes, rules, and

regulations in an open, courteous, and efficient manner. The Board affirms that

safeguarding the public is their primary responsibility. The Board and its' staff will

approach their responsibilities in a balanced and sensible fashion so regulation can be

performed aggressively, but fairly for the benefit of every patron of the State of Kansas."

Applicable Law

**K.S.A. 65-2836 of the Healing Arts Act states, in pertinent part.**

A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately 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 licensee 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, ... 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.

**K.S.A. 65-2837(a) of the Healing Arts Act states, in pertinent part:**

"Professional incompetency" means:

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

**K.S.A. 65-2837(b) of the Healing Arts Act states, in pertinent part:**

"Unprofessional conduct" means:

- ... (24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

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

**K.S.A. 77-527 of the Kansas Administrative Procedure Act states, in pertinent part (with emphasis added):**

(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. The agency head shall consider the agency record or such portions of it as have been designated by the parties.

(e) The agency head or designee shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

(f) The agency head or designee shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the person who rendered the initial order.

(g) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument unless that period is waived or extended with the written consent of all parties or for good cause shown.

(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.

**100-24-1 of the Kansas Administrative Regulations (K.A.R.) provides:**

**Adequacy; minimal requirements.**

- 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.
- c. Each entry shall be authenticated by the person making the entry unless the entire patient record is maintained in the licensee's own handwriting.
- d. Each patient record shall include any writing intended to be a final record, but shall not require the maintenance of rough drafts, notes, other writings, or recordings once this information is converted to final form. The final form shall accurately reflect the care and services rendered to the patient.
- e. For purposes of implementing the Healing Arts Act and this regulation, an electronic patient record shall be deemed a written patient record if the electronic record cannot be altered and if each entry in the electronic record is authenticated by the licensee.

#### **Discussion**

The Respondent has maintained a license to practice medicine and surgery in Kansas since 1986. Respondent is no stranger to this Board, having been involved in two prior disciplinary actions, including claims involving recordkeeping. This case itself has lingered in one status or another for over four (4) years. Most recently, the Judge's Order remanded the matter back to the Board "for [a] further hearing concerning the sanction or sanctions, if any, to be imposed upon [Respondent] for her violation of K.S.A. 65-2836(k) by her violation of K.A.R. 100-24-1".

The underlying matter is a disciplinary action that was filed against Respondent by the Petitioner Board on July 27, 2010. The Petition alleged that Respondent was professionally

incompetent and committed unprofessional conduct and other violations of the Healing Arts Act. (The professional incompetence of Respondent is no longer an issue because this portion of the initial Final Order was vacated by Judge Theis). The remaining portion of the Petition alleges that Respondent failed to maintain accurate patient medical records. The matter proceeded to a formal hearing before OAH on September 12, 2011. The parties presented testimony and evidence to the presiding officer. Subsequent to the hearing, the presiding officer issued the Initial Order. The remaining pertinent part of the Presiding Officer's Initial Order finds that Dr. Neuhaus committed multiple violations of the Kansas Healing Arts Act, including failing to make and maintain adequate patient records. Based upon all of the remaining findings of the Initial Order, as supported by the Court's Memorandum Opinion, and after taking into consideration past disciplinary actions taken against Respondent, the Board must consider the appropriate sanction, if any, for the record keeping violations.

The Board is not considering the previous (initial) Final Order issued on July 6, 2012. The Board is permitted to consider the Initial Order issued on February 20, 2012, as modified by the Memorandum Opinion of Judge Theis and the detailed Appendix provided by the Court. The Memorandum Opinion is lengthy, providing 84 pages of analysis and opinion. The Memorandum Opinion is found at pages 3635-3718 of the Agency Record which was sent out to the Board and parties on November 14, 2014; The Appendix is found at pages 3719-3820 of the Agency Record. In addition to the Memorandum Opinion, Judge Theis attaches a 102 page Appendix, which is a synopsis prepared by the Court of what it believed the record revealed was the substantive, relevant and material testimony given by witnesses at the hearing. The Memorandum Opinion and Appendix guides the Board and dictates the pertinent findings of fact and conclusions of law to support the Final Order issued by the Board.

Based on the evidentiary references and discussion in the Opinion and the evidence of record greatly summarized by the Court in its Appendix, the Board's allegations in its Petition can be sustained as to each of its Counts I- XI as stated and alleged at paragraph 16c, which relates to record keeping. (Memorandum Opinion at pp. 77-78). In other words, the District Court rejected the "Standard of Care violations" and supported the record keeping violations asserted against the Respondent.

The purpose of the Conference Hearing is to issue a Final Order based upon the Board's review of an Initial Order issued by a Presiding Officer at the OAH, as modified by the Memorandum Order of Judge Theis. The previous Final Order has been vacated and this Board must enter a Final Order on sanctions, if any, for Recordkeeping violations, plus costs. The review is conducted pursuant to K.S.A. 77-527 of the Kansas Administrative Procedure Act.

The Board heard arguments of the parties and asked questions of counsel and the Respondent. Parties were given proper notice of the hearing and provided a complete copy of the Agency Record. The parties submitted Briefs in support of their arguments and were permitted sufficient time to argue their respective sides of the case.

Pursuant to K.S.A. 77-533, a conference hearing is appropriate when there is a matter in which there is no disputed issue of material fact or a matter in which there is a disputed issue of material fact and the parties agree to a conference hearing. Based upon the findings of Judge Theis, it is considered that there is no disputed issue of material fact and the only issues to be determined is the appropriate sanction, if any, for the recordkeeping violations and a decision whether or not to assess costs.

Pursuant to K.S.A. 77-527(d), the Board exercises *de novo* review and has all the decision-making power that the Board would have had to render a final order if the Board presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law. Further, in reviewing the findings of fact, the Board shall give due regard to the presiding officer's opportunity to observe the witnesses and to determine the credibility of the witnesses. The Board shall also consider the whole agency record in rendering its Final Order, which it has done in this matter.

The Petitioner Board has the burden to prove its allegations by a preponderance of the evidence, which it has done with regard to the allegations of recordkeeping violations. The Petitioner Board must meet the burden of proof to establish that Respondent committed violations of the Healing Arts Act that are sufficient grounds to revoke her license or take other disciplinary action. The Board has carefully considered the facts which were proven and determined that Respondent's actions amount to unprofessional conduct consistent with Kansas case law precedent. These cases are cited by both parties in their written arguments and are known to the Board and adopted by reference herein.

Petitioner's Brief on the Remanded Issues requests that the Board find that the appropriate sanction in this matter is the Revocation of Respondent's license and issue an Order for Respondent to pay the costs. Petitioner makes compelling and persuasive arguments in this regard. The caselaw, prior decisions of the Board and the Sanctioning Guidelines provide clear direction that revocation is justified, even without applying the mitigating and aggravating factors. When these additional factors are applied, the outcome of revocation is overwhelming and undisputable; as urged by Respondent, the evidence relied upon must be substantial and

competent when viewed in light of the entire record. The evidence relied upon by this Board is clearly substantial and competent when viewed in light of the entire record. Respondent filed a brief for the Board's review, arguing that the sanction of license revocation represents a disproportionately severe sanction compared to similarly situated peers who have been previously sanctioned for violations of record keeping requirements. The cases cited by Respondent are clearly distinguishable from the case currently before this Board. The licensee's in the prior Board actions cited by Respondent either have no prior Board actions and/or the sanctions were delivered by consent order. Each case must be evaluated upon its own merits and this case has a lengthy and protracted history wherein the facts clearly justify revocation. Respondent also attempts to argue that K.A.R. 100-24-1 is subject to unwritten standards and the sanctions are not administered in a uniform and consistent way. This conclusory allegation ignores the presence of the detailed Guidelines for the Imposition of Disciplinary Sanctions, which are published, easily available to the public, easily and consistently applied and in existence for many years. No disparate outcomes are present as the Agency and the Board have consistently and uniformly applied these Sanctioning Guidelines.

Respondent argues that the license revocation ordered on June 5, 2012 is sufficient discipline already suffered (i.e. credit for time of sanctions already served) and that Respondent be permitted to immediately pursue license reinstatement. This request is rejected.

Respondent's misconduct may be placed in either one of two Board Sanctioning Grid Categories. Respondent's conduct may be placed into the General Misconduct Category in that her misconduct was potentially harmful to patients and was disruptive to Board processes. Sanctioning Guidelines at Section II, Category 2A, p. 6. Respondent's misconduct may also be placed into the Patient Record Category regarding an intentional act of failure to create

documentation. See Sanctioning Guidelines at Section II, Category 10A, p. 14. "Intent" is defined in the Sanctioning Guidelines as the conscious objective or purpose to accomplish a particular result. The Facts, at paras. 20-25 and 33 above, establish that Respondent's actions were intentional, willful and knowing; the actions were not the result of negligent, reckless or careless behavior, since they exceeded this threshold. The Respondent's actions were not nefarious because they were not taken for illegal purposes. The actions of Respondent were clearly, intentional, knowing and willful, which squarely places the action within the Category of Offense 10A; rather than 10B.

Regardless of which of the two categories Respondent's misconduct is considered, the result is the same: revocation of Respondent's license to practice medicine and surgery in the State of Kansas. Revocation of Respondent's license is the appropriate sanction because it is the presumed sanction as modified for prior Board actions; prior to adjustment for aggravating and mitigating factors in both categories. See Section V, Sanctioning Grid, Category of Offense 2A, p. 2; and Category of Offense 10A, p. 5. Considering the aggravating and mitigating factors assures that the proper sanction is revocation because, on balance the aggravating factors heavily outweigh the mitigating factors. The aggravating factors provide an overabundance of justification for seeing that revocation occurs.

#### **Application of the Guidelines for the Imposition of Disciplinary Sanctions:**

On August 26, 2008, the Board approved the adoption of the Guidelines for the Imposition of Disciplinary Sanctions ("Sanctioning Guidelines"). These Sanctioning Guidelines are made available to the public and published on the Board's website (See [www.ksbha.org/newsroom/publications.shtm](http://www.ksbha.org/newsroom/publications.shtm)). These Sanctioning Guidelines are recited at length hereafter because the Sanctioning Guidelines provide the detailed policy rationale and

guide the application of the sanctions herein.

The Sanctioning Guidelines set forth the basic principle that a licensee of the healing arts holds a respected and elevated position in society with responsibility not only to patients, but also to the public, to colleagues, to the profession to self, and to the health care system in general. The mission of the Board of Healing Arts is to protect the public by authorizing only those persons who meet and maintain certain qualities to engage in the health care professions regulated by the Board, and to protect the integrity of the profession. This mission is served by creating a regulatory environment that all competent and honorable practitioners to practice, their art and science, by disciplining those who engage in professional incompetence, unprofessional conduct or other proscribed conduct, and by imposing sanctions that appropriately protect the public from immediate harm, remediate and rehabilitate when possible, or punish when necessary, but ordering the least restrictive discipline necessary to meet the proper sanctioning goals.

Inappropriate sanctions can undermine the goals of discipline. Sanctions that are too lenient or that do not adequately address the underlying causes for the violations do not deter and may result in decreased public confidence in the system. Sanctions that are too restrictive may also result in decreased confidence in the system, and may result in fewer reports of violations and create a more litigious environment.<sup>2</sup> As a result, the guidelines do not establish a precise formula for calculating sanctions.

---

<sup>2</sup> The Board considered assessing fines against Respondent for each instance. While doing so would be justified based upon the facts and authorized by law (K.S.A 65-2863a) and the Sanctioning Guidelines, the Board ultimately concluded that Revocation, Costs and Fines would simply be too punitive and harsh. It was recognized that the assessment of costs would be substantial and, therefore, would serve the same purpose in this particular case.

The Healing Arts Act and related regulations both prescribe and proscribe conduct that might be grouped in general categories of administrative requirements, misconduct that is harmful to the health care system in general, failure to perform a duty regarding patient care, and other misconduct that may result in patient harm. Patient harm may be economic harm, delay of appropriate treatment, or adverse patient outcomes. The guidelines attempt to take into consideration all of these legitimate interests when determining the imposition of disciplinary actions.

When the Board finds that a licensee has engaged in conduct constituting grounds for a disciplinary action, the range of disciplinary authority that is available is quite broad. In determining which of these sanctions should be imposed, the Board should consider the goal for imposing discipline. The purpose might either be remedial, to protect the public from immediate harm; or punitive.

The Board recognizes the value of a predictable and consistent pattern of disciplinary sanctions. These sanctioning guidelines are intended to lend credibility to the disciplinary process, aid the Board in efficiently achieving its ultimate goal of protecting the public, and give guidance to licensees and their counsel when faced with allegations of misconduct. This framework applies in any matter when approving a Final Order, announcing the appropriate mitigating and aggravating factors the Board will consider in determining the level of discipline and establishing a graduated scale for multiple and repeated misconduct.

Revocation is appropriate to achieve a remedial purpose, protection, or punishment. Removing a licensee from practice protects the public from future misconduct. Additionally, removing or preventing a person from practice is appropriate when the misconduct demonstrates

that the licensee lack the necessary competence or professionalism to merit the privilege of licensure.

By adopting the policy statements as set forth in the Sanctioning Guidelines, the Board does not limit itself to any form of disciplinary order and it may consider its entire range of authority.

The Board may depart from the policy as it desires and without giving notice.

The Sanctioning Guidelines are intended to supplement rather than replace the policies that have been previously adopted by the Board regarding disciplinary actions. The guidelines are in

addition to other provisions of law that might apply in a specific situation, including the authority of the Board to assess costs in a proceeding.

#### **Definitions Provided Sanctioning Guidelines**

Section IV of the Sanctioning Guidelines define the following terms:

- “Injury” - harm to a patient, the public, or the profession, which results from a licensee’s acts or omissions.
- “Potential for Injury” - harm to a patient, the public, or the profession that is reasonably foreseeable at the time of the licensee’s acts or omissions, but for some intervening factor or event, would probably have resulted from the licensee’s acts or omissions.
- “Intent” - the conscious objective or purpose to accomplish a particular result.
- “Knowledge” - The conscious awareness of the nature of the conduct, but without the conscious objective or purpose to accomplish a particular result.
- “Negligence” - failure to exercise the standard of care that a reasonably prudent licensee would have exercised in a similar situation.
- “Ordinary negligence” - the failure to use ordinary care in the licensee’s practice.

- “Gross negligence” - a conscious, wanton act or omission in reckless disregard for the foreseeable outcome.

- “Inadvertence” - an accidental oversight through unintentional neglect.

Although not defined in the Sanctioning Guidelines, the term nefarious was discussed extensively by the parties at the Conference Hearing. “Nefarious” is generally considered to be defined as “wicked or criminal.” Nefarious means something that is “Evil or Immoral” and is also defined as “flagrantly wicked or impious; evil.” See Merriam-Webster.com. The word nefarious comes from the root word “nefas,” which is “[a] wrongful, sinful, wicked, unlawful or criminal act.” Ballentine’s Law Dictionary, 3<sup>rd</sup> Ed., p.838. Respondent erroneously applies the Court’s reference to nefarious conduct to the situation at hand. The Board agrees with the Court that the conduct was not nefarious or motivated by illegal purpose. However, the actions of Respondent were admittedly intentional and willful. Therefore, the “intent” of the Respondent is relevant to the consideration by the Board.

#### **Instructions for Applying Sanctions Grid and Explanations of Case Types**

In applying the Sanctioning Grid, the Presumed Sanction (Grid column 5) should be the starting point for conduct described. When licensee is found to have committed multiple categories of offenses, consider whether the offenses are multiple ways of describing the same conduct or are separate occurrences and events. If the offenses are separate and are best described in different categories, the sanctions for each offense should be added together. If the instances of misconduct are similar sanctions, treat as multiple instances of same category and modify the decision to use the Presumed Sanction for Multiple Instances (Grid column 5). If multiple categories of offenses might apply to the same instance or transaction, use only the most severe sanction. Mitigating and aggravating factors should then be applied, with the resulting

sanction being within the Range when Presumed Sanction is Modified by aggravating and mitigating Factors (Grid column 6).

### Aggravating and Mitigating Factors - Policy Considerations

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. Aggravating factors may justify more restrictive or severe discipline. Mitigating factors may justify less severe or restrictive discipline. It is important to note that all factors will not necessarily be given equal weight.

### Application of Aggravating and Mitigating Factors

Any of the following factors that the Board considers should be identified in the Final Order, along with a general statement describing how the factor modifies the presumptive sanction:

*A. Factors relevant to the misconduct committed:*

- a.) Nature and gravity of the allegations: Small mitigating factor.
- b.) Age or vulnerability of patient: Large aggravating factor. Many of these patients were minors and were particularly vulnerable given their physical and mental condition, as presented to Respondent.
- c.) Capacity or vulnerability of patient or victim of licensee's misconduct: Aggravating factor, given that the patient was vulnerable and heavily reliant upon the Respondent. The patients were 10-18 years of age, being young and inexperienced.
- d.) Number/frequency of act: Aggravating factor because there are eleven (11) patients involved and each has numerous act of intentional improper and incomplete recordkeeping.
- e.) Injury caused by misconduct: Neutral as it is both aggravating and mitigating. Aggravating because there is injury to the patient and to the profession. Mitigating because there was not tangible personal injury to the patient.

f.) Frequency of commission of acts: Mostly an aggravating factor because there have been multiple and repeated acts of recordkeeping violations by the Respondent. Partially mitigating because there have been no known acts of recordkeeping violations between 2001 and the acts underlying the Petition filed in 2010.

g.) Potential for injury ensuing from act: Both aggravating and mitigating as there is certain injury to the patient and the profession. Considered a mitigating factor because there is no physical injury to the patient.

h.) Consensus about blameworthiness of conduct: Aggravating because Respondent is solely to blame for the conduct.

i.) Abuse of trust: Mitigating because the acts of improper recordkeeping did not necessarily abuse the trust of a particular patient. However, this is an aggravating factor because the acts abuse the trust of the Agency and the Board, given that there is a Stipulation in place that Respondent has abused and failed to meet.

j.) Consent of patient: Not applicable.

k.) Intentional vs. inadvertent: Strongly aggravating. The actions of Respondent were clearly and admittedly intentional, willful and knowing. The acts of improper recordkeeping were not inadvertent.

l.) Motivation of criminal, immoral, dishonest or personal gain: Mitigating factor as the District Court found that Respondent's conduct was not nefarious in nature. While Respondent was paid for her services there was no additional financial incentive created by failing to properly document the medical records of patients.

m.) Length of time that has elapsed since misconduct: Both mitigating and aggravating factor. Partially mitigating because there have been no known acts of recordkeeping violations between 2001 and the acts underlying the Petition filed in 2010. Perhaps also mitigating because the acts complained of occurred more than four years ago. However, the time which has elapsed since Respondent's misconduct does not mitigate her violations to a point where revocation is inapplicable. Furthermore, the length of time is simply because the proceedings have lingered at various stages and the disciplinary process has been protracted. More aggravating because there have been multiple and repeated acts of recordkeeping violations.

*B. Factors relevant to the licensee:*

a.) Age: Aggravating because Respondent is not young or new to the practice, which might provide some leniency. Instead, Respondent is more mature in age and presumably more experienced in life and should know how to satisfy the legal obligations of the profession. Respondent is not new to the profession as she has been a licensee since 1996; she is an experienced practitioner who should know of her duty to document within a patient's record.

b.) Experience in practice: Aggravating factor because the Respondent is experienced, not only in the practice, but in the methods and requirements of the Kansas Healing Arts Act.

c.) Past disciplinary record: Exceptionally aggravating, given that there is a past record of disciplinary activity for this same offense – recordkeeping violations. While the issues in this case are different, the Respondent continues to have problems with accurate and adequate patient records as defined by K.A.R. 100-24-1.

d.) Previous character: Slightly mitigating factor in that there is no evidence to support that Respondent is of poor moral or social character. Respondent has positively contributed to certain aspects of her profession and donated her time, energy and talents, which suggests that she has a good moral and social character. Respondent has “not withdrawn from service to the medical community.” (Tr. at p. 30, ln. 1-9).

e.) Mental or physical health: Not applicable.

f.) Personal circumstances: Not applicable.

*C. Factors relevant to the disciplinary process:*

a.) Admission of key facts: Aggravating factor as the key facts are admitted or undisputed based upon the record, as directed by the District Court. The key facts establish numerous acts of improper recordkeeping and suggest that revocation is warranted.

b.) Full and free disclosure to the Board: Mitigating factor because there is no evidence that Respondent has attempted to conceal facts. Respondent has fully and freely disclosed information to the Board. However, the Presiding Officer found that Respondent's testimony was lacking in credibility and persuasiveness.

c.) Voluntary restitution or other actions taken to remedy the misconduct: Aggravating factor because there is no evidence that Respondent has taken any initiative to seek out or receive additional training, education or supervision on recordkeeping over the years that this matter has been proceeding. There is also no evidence that Respondent has taken any initiative to seek out or receive additional training, education or supervision on recordkeeping

after the Stipulation was entered in 2001. In fact, Respondent and legal counsel admit that nothing has been done to improve or educate Respondent in this area. Respondent points out that she was not "required" to take classes or receive any additional training as part of the Stipulation and has not otherwise been imposed by the Board. However, someone who recognizes that they have been found to engage in numerous and repeated recordkeeping violations and shows a genuine desire to change past wrongful behavior should take the initiative in this area. The failure to take "any steps" toward further training and/or education to correct these recordkeeping deficiencies, either after the Stipulation was entered in 2001, or the Court issued its Opinion in March of 2014, is evidence of a general disregard for the spirit, intent and language of the Stipulation that "Licensee shall comply with all provisions of K.A.R. 100-24-1, with respect to medical record-keeping."

d.) Bad faith obstruction of disciplinary process or proceedings: Mitigating factor because Respondent has fully cooperated with the disciplinary process and proceedings.

e.) False evidence, false statements, other deceptive practices during disciplinary process or proceedings: Not applicable.

f.) Remorse and/or consciousness of wrongfulness of conduct: Aggravating because it appears that Respondent has not learned from prior disciplinary actions taken by the Board and the Respondent fails to express contrition or otherwise acknowledge the wrongful nature of her conduct or the negative impact it has upon the profession. The Board observed that Respondent felt justified in her actions and showed no signs of remorse.

g.) Impact on patient: Aggravating factor because it has the potential to negatively impact the patient. While there was no evidence that Respondent provided an actual threat to the patient (Tr. at p. 23, ln. 3-4), the potential for impact is great. The Board expressed grave concern that these patients may have had a unique need for follow up because Respondent testified that some exhibited suicidal ideation or other indicators of mental illness or psychiatric problems. There were numerous procedural alternatives to ensure completeness and confidentiality of medical records (such as assigning a random number or keeping a private ledger to link the patient to a number) in order to both comply with the law and exercise the Respondent's concern for patient privacy and confidentiality from third parties. Failure to properly document denies the patient of the opportunity to receive proper follow up care and treatment.

h.) Public perception of protection: Extreme aggravating factor because the public perception is damaged, and the negative impact upon the public trust in the profession, by the actions of Respondent through her complete disregard for recordkeeping requirements.

D. *General aggravating and mitigating circumstances:*

a.) Licensee's knowledge, intent, degree of negligence: Strongly aggravating. The actions of Respondent were clearly and admittedly intentional, willful and knowing. The acts of improper recordkeeping were not inadvertent or negligent.

b.) Presence of other violations: Mitigating because the Court rejected the earlier findings of violation of standard of care.

c.) Present moral fitness: Neutral, because there was no evidence of the present moral fitness of the Respondent.

d.) Potential for successful rehabilitation: Strong Aggravating factor because history indicates that Respondent is incapable of successful rehabilitation.

e.) Petitioner's present competence in medical skills: Presently an aggravating factor because there is no evidence that Respondent has taken any initiative to seek or receive any additional training, education or supervision on recordkeeping over the years that this matter has been proceeding. There is also no evidence that Respondent has taken no initiative to seek out or receive additional training, education or supervision on recordkeeping after the Stipulation was entered in 2001. In fact, Respondent and legal counsel admit that nothing has been done to improve or educate Respondent in this area. Beyond the recordkeeping violations, this factor would be slightly mitigating because the Court rejected the earlier findings of violations of the standard of care.

f.) Dishonest/Selfish motives: Mitigating factor because the Court found Respondent was not acting with nefarious motive.

g.) Pattern of misconduct: Strongly aggravating because there have been multiple and repeated acts of recordkeeping violations by the Respondent; both present and past. The recent acts which form the basis for the Petition involve eleven (11) patients and involve numerous recordkeeping violations.

h.) Illegal conduct: Mitigating factor because the Court found Respondent was not acting with nefarious motive. Respondent has never been charged with a crime and this is not an immoral act.

i.) Heinousness of actions: Not applicable because there is no allegation that the Respondent committed heinous acts.

j.) Ill repute upon profession: Strongly aggravating because the public perception is damaged, and the negative impact upon the public trust in the profession, by the actions of Respondent through her complete disregard for recordkeeping requirements. The Mission of the

Board, the Philosophy of the Agency and the policies behind the Sanctioning Guidelines are all implicated by Respondent's inadequate recordkeeping.

k.) Personal problems (if there is a nexus to violation): Not applicable.

l.) Emotional problems (if there is nexus to violation): Not applicable.

m.) Isolated incident unlikely to reoccur: Strongly aggravating because the facts established and the history presented by Respondent indicate that the incident of recordkeeping violations are likely to reoccur; Respondent lacks any potential for rehabilitation or remediation by this Board based, in part, upon the fact that Respondent failed to learn from her prior misconduct and correct her behavior. Respondent has taken no action to prove otherwise. There is no evidence that Respondent has taken any initiative to seek out or receive additional training, education or supervision on recordkeeping over the years that this matter has been proceeding. There is also no evidence that Respondent has taken no initiative to seek out or receive additional training, education or supervision on recordkeeping after the Stipulation was entered in 2001. In fact, Respondent and legal counsel admit that nothing has been done to improve or educate Respondent in this area.

n.) Public's perception to protection: Strong aggravating factor because an action of revocation would send a strong message to the general public that the Board is interested and committed to protecting the integrity of the profession and protecting the public. The Mission of the Board, the Philosophy of the Agency and the policies behind the Sanctioning Guidelines are all implicated by Respondent's inadequate recordkeeping.

#### **Additional Considerations for the Imposition of Disciplinary Actions**

Failure to adequately maintain patient records includes misconduct such as the failure to adequately document evaluation and/or treatment of the patient. The purpose for maintaining patient records include: (1) to furnish documentary evidence of the patient's history, symptoms and treatment; (2) to serve as a basis for review, study and evaluation of the care rendered; (3) to ensure the records provide meaningful health care information to other practitioners should the patient have his or her care transferred to another provider; and (4) to assist in protecting the legal interests of the patient, and responsible practitioner.

The interest of the patient is paramount. Failure to perform these duties regarding patient care has the potential to cause patient harm. In addition to the general aggravating and mitigating circumstances that apply to all categories of misconduct, the Board may also consider the pervasiveness of such misconduct with regard to the licensee's practice in determining the appropriate remedy.

### Conclusions

The issues considered by the Board are those as if no Final Order had ever been previously rendered in this case. The Board accepts, adopts, and incorporates by reference herein, each Finding of Fact set forth in the Initial Order, as explicitly modified by the Memorandum Opinion and Appendix issued by Judge Theis. The Board accepts, adopts, and incorporates by reference herein, each Statement of Fact, Conclusion of Law and Order of the Court set forth in the Memorandum Opinion and Appendix issued by Judge Theis.

The Board must decide whether Respondent committed a violation of the Healing Arts Act as set forth in paragraphs 14, 31, 44, 55, 63, 71, 80, 90, 98, 106, 118 and 130 of the Initial Order, as it relates to the Board's allegation that "the Licensee's practice was in violation of K.S.A. 65-2836 (k) in that the Licensee violated K.A.R. 100-24-1 in failing to meet the minimum requirement for maintaining adequate patient records" as alleged in paragraph 16 c of the Petition. Consistent with the findings of the Court in the Memorandum Opinion, the Board finds that, upon full consideration of all relevant facts, arguments, and circumstances in this proceeding, for Respondent's violations of the Healing Arts Act, Respondent's license to practice medicine and surgery in Kansas should be revoked.

K.S.A. 65-2846 provides that if the Board's decision is adverse to Respondent, costs may be assessed to the parties in a proportion that the Board may determine based on "all relevant

circumstances. The Board finds that, upon full consideration of all relevant facts, arguments, and circumstances in this proceeding, the costs of this proceeding, should be assessed against Respondent. Petitioner should submit a revised and updated Statement of Costs.

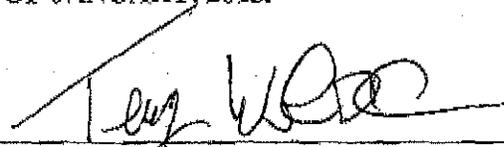
The Board further finds that, upon full consideration of all relevant facts, arguments, and circumstances in this proceeding, Respondent's obligation to remit payment of the costs of this proceeding (a determination of the exact amount of such costs shall be deferred until such time as the parties are heard on this matter through briefing) and the Board determines the amount to be paid based upon an proper apportionment.

**ORDER**

**IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS,** that Respondent's license to practice medicine and surgery in Kansas, No. 04-21596, is hereby REVOKED.

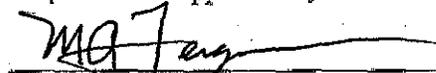
**IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS,** that the costs of this proceeding are hereby assessed against Respondent. The amount of costs to be paid by Respondent will be determined after a Revised Bill of Costs is submitted to the Kansas State Board of Healing Arts and the parties have briefed this issue. Thereafter, the final amount will be determined and further order of the Board will be issued stating the amount.

**IT IS SO ORDERED THIS 9th DAY OF JANUARY, 2015.**



Terry L. Webb, D.C.  
Presiding Officer  
Kansas State Board of Healing Arts

Prepared and Approved by:



Mark A. Ferguson; KS Bar# 14843  
Special Counsel to the  
Kansas State Board of Healing Arts  
Gates, Shields & Ferguson, P.A.  
10990 Quivira, Suite 200  
Overland Park, KS 66210

**NOTICE OF 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, Licensee 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, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing  
**FINAL ORDER REVOKING LICENSURE TO PRACTICE MEDICINE AND  
SURGERY AND ASSESSING COSTS** was served this 9th day of January, 2015 by depositing  
the same in the United States Mail, first-class; postage prepaid, and addressed to:

Ann K. Neuhaus, M.D.  
**Confidential**  
Nortonville, KS 66060

Robert V. Eye  
Kelly J. Kauffman  
KAUFFMAN & BYE  
The Dibble Building  
123 SE 6<sup>th</sup> Ave., Ste. 200  
Topeka, Kansas 66603

And a copy was emailed to the following:

Reese H. Hayes, Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

The original will be filed with the office of:

Kathleen Selzler Lippert, Executive Director  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

  
Mark A. Ferguson

<p style="text-align: right;">Page 1</p> <p>1 .</p> <p>2 BEFORE THE KANSAS STATE BOARD OF HEALING ARTS</p> <p>3 .</p> <p>4 .</p> <p>5 .</p> <p>6 .</p> <p>7 IN THE MATTER OF</p> <p>8 ANNE NEUHAUS, M.D.</p> <p>9 Docket No. 10-HA00129</p> <p>10 .</p> <p>11 .</p> <p>12 .</p> <p>13 .</p> <p>14 TRANSCRIPT</p> <p>15 OF</p> <p>16 PROCEEDINGS</p> <p>17 Taken on December 11, 2014, beginning at 10:07</p> <p>18 a.m., at the Board of Healing Arts, 800 S.</p> <p>19 Southwest Jackson, Suite A, in the City of Topeka,</p> <p>20 County of Shawnee, and State Kansas before</p> <p>21 Presiding Officer, Terry L. Webb, D.C.</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>	<p style="text-align: right;">Page 3</p> <p>1 ON BEHALF OF THE BOARD:</p> <p>2 .</p> <p>3 Mr. Mark A. Ferguson</p> <p>4 Gates, Shields &amp; Ferguson</p> <p>5 10990 Quivira, Suite 200</p> <p>6 Overland Park, Kansas 66210</p> <p>7 913-661-0222</p> <p>8 markferguson@gssflegal.com</p> <p>9 .</p> <p>10 ALSO PRESENT:</p> <p>11 Ron Varner, D.O.</p> <p>12 Kimberly Templeton, M.D.</p> <p>13 John F. Settich, Ph.D.</p> <p>14 Garold O. Minns, M.D.</p> <p>15 Douglas J. Milfeld, M.D.</p> <p>16 Richard A. Macias</p> <p>17 M. Myron Leinwetter</p> <p>18 David P. Laha, DPM</p> <p>19 Joel R. Hutchins, M.D.</p> <p>20 Steven Gould, D.C.</p> <p>21 Robin D. Durrett, D.O.</p> <p>22 Michael Beezley, M.D.</p> <p>23 Anne Hodgdon (Appeared by phone)</p> <p>24 .</p> <p>25 .</p>
<p style="text-align: right;">Page 2</p> <p>1 .</p> <p>2 APPEARANCES</p> <p>3 .</p> <p>4 .</p> <p>5 ON BEHALF OF THE PETITIONER:</p> <p>6 .</p> <p>7 Mr. Reese H. Hays</p> <p>8 Kansas Board of Healing Arts</p> <p>9 800 Southwest Jackson, Lower Level, Suite A</p> <p>10 Topeka, Kansas, 66612</p> <p>11 785-296-7413</p> <p>12 rhays@ksbha.ks.gov</p> <p>13 .</p> <p>14 .</p> <p>15 ON BEHALF OF THE LICENSEE:</p> <p>16 .</p> <p>17 Mr. Robert V. Eye</p> <p>18 Kauffman &amp; Eye</p> <p>19 123 Southeast 6th Street</p> <p>20 Topeka, Kansas 66603</p> <p>21 785-234-4040</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>	<p style="text-align: right;">Page 4</p> <p>1 PRESIDING OFFICER: The next case -- the</p> <p>2 next case before us is Anne Neuhaus, M.D., Docket</p> <p>3 No. 10-HA00129. The parties that are recused are</p> <p>4 Kelli Stevens, Kathy Lippert -- Kathleen Lippert,</p> <p>5 excuse me. The DP in this situation is also</p> <p>6 recused is Doctor Leinwetter and Doctor Beezley.</p> <p>7 Would you please state your appearances, please.</p> <p>8 MR. HAYS: Reese Hays litigation counsel</p> <p>9 appears on behalf of the Board.</p> <p>10 MR. EYE: May it please the Board, the</p> <p>11 respondent appears in person. She's sitting out</p> <p>12 in the gallery and my name is Robert Eye and I</p> <p>13 represent her.</p> <p>14 PRESIDING OFFICER: Mr. Ferguson.</p> <p>15 MR. FERGUSON: Mr. Chairman, my name is</p> <p>16 Mark Ferguson and I serve as special counsel to</p> <p>17 the Board. I've been advised that we have plenty</p> <p>18 of time for this hearing and it was indicated to</p> <p>19 me that the Board would like to have an executive</p> <p>20 session before we formally started the</p> <p>21 proceedings, and I serve at your pleasure but</p> <p>22 would welcome the opportunity to -- before we</p> <p>23 start these proceedings to have an executive</p> <p>24 session with your special counsel.</p> <p>25 PRESIDING OFFICER: Do we have a motion</p>



Page 5

1 to go into executive session?  
 2 DOCTOR LAHA: So move.  
 3 PRESIDING OFFICER: Dr. Laha.  
 4 DOCTOR VARNER: Second.  
 5 THE REPORTER: I'm sorry, who seconded?  
 6 PRESIDING OFFICER: Doctor Varner. We  
 7 are in exec -- we are all in favor.  
 8 MR. EYE: May I raise one -- one matter  
 9 before you go into executive session because it  
 10 might have a bearing on that. I -- I intend to  
 11 move and if this is the appropriate time to do it  
 12 to have Mr. Macias recuse himself. It's my  
 13 understanding that he's the counsel for the  
 14 complaining party or has been a counsel for  
 15 Operation Rescue and I think on that basis he  
 16 should recuse himself from consideration of this  
 17 particular matter.  
 18 PRESIDING OFFICER: Is that something  
 19 that we need to address before we move into  
 20 executive session?  
 21 MR. FERGUSON: I believe we can take that  
 22 under advisement and address that issue in  
 23 executive session as well.  
 24 PRESIDING OFFICER: All in favor of going  
 25 -- thank you. All in favor of going into

Page 6

1 executive session say aye.  
 2 THE BOARD: Aye.  
 3 PRESIDING OFFICER: We're closed. We're  
 4 in executive session.  
 5 (THEREUPON, an off the record discussion  
 6 was had.)  
 7 PRESIDING OFFICER: And we are returning  
 8 to open session. I would -- I would ask the Board  
 9 members when they do speak if they would pick up  
 10 their speakers because we have Miss Hodgdon on the  
 11 phone and it would be -- she's having difficulty  
 12 seeing what the reporter's doing.  
 13 MR. FERGUSON: Mr. President, if you  
 14 don't mind, my name for the record is Mark  
 15 Ferguson and I would reiterate we're -- part of  
 16 the time that we were spending in here was trying  
 17 to work on some technology issues because we do  
 18 have one board member, Anne Hodgdon, who is  
 19 participating by telephone and it's -- we're  
 20 having a little bit of a difficulty with  
 21 connection. So if everyone would please when you  
 22 do speak try to pick up your microphone so that  
 23 she can -- she can hear and listen in on  
 24 everything that occurs.  
 25 Counsel, for the record before we begin

Page 7

1 proceedings, would you -- we were kind of rushed  
 2 there, would you please restate the motion or the  
 3 request that you're making and the basis for that  
 4 request.  
 5 MR. EYE: Certainly. We would move that  
 6 board member Macias, Richard Macias, recuse  
 7 himself because it is my understanding his client,  
 8 or his client at one time, Operation Rescue, is  
 9 the complainant in this particular matter and I  
 10 think that it gives the, at least, the appearance  
 11 of impropriety for the attorney for the  
 12 complainant to also be sitting in judgment given  
 13 the circumstances.  
 14 MR. FERGUSON: Counsel, do you have any  
 15 written motion or anything to submit to the Board  
 16 for consideration?  
 17 MR. EYE: No, it's an oral motion.  
 18 MR. FERGUSON: Okay. And have you made  
 19 that motion before of this body --  
 20 MR. EYE: I have not.  
 21 MR. FERGUSON: -- for this particular  
 22 Board member?  
 23 MR. EYE: I have not.  
 24 MR. FERGUSON: Mr. -- Reese, do you have  
 25 any response?

Page 8

1 MR. HAYS: I believe the first time this  
 2 was heard Mr. Macias was appointed to the Board  
 3 and was not recused or requested to be recused at  
 4 that point in time. Therefore, it would be our  
 5 position that that request for recusal has been  
 6 waived because they did not preserve it the first  
 7 time we had oral arguments on this matter and this  
 8 is the first time it's coming up. As to the  
 9 specifics to Mr. Macias, the Board is -- I'm  
 10 personally unaware of what representation he had  
 11 so I really can't speak to the actual portion of  
 12 his representation of whether it was prior to,  
 13 after, or during.  
 14 MR. EYE: If I may, I -- I think that,  
 15 number one, an improperly constituted body is not  
 16 something that is -- can be summarily or  
 17 permanently waived. If it comes to the attention  
 18 that there is a -- that there is a member that has  
 19 a conflict I think it's incumbent not only on the  
 20 member but on the parties to bring that to the  
 21 attention of the -- of the presiding officer. It  
 22 wasn't -- I wasn't aware of the relationship  
 23 between Mr. Macias and the complaining witness  
 24 back in 2012 when we first convened. I am now and  
 25 that's why I'm making a motion.



Page 9

1 MR. FERGUSON: Thank you. On behalf of  
 2 the Board we have -- I just wanted to make sure  
 3 that you restated your request and we had a clear  
 4 record on that and so we knew the full basis for  
 5 your request. We did understand prior to -- to  
 6 recess there that you were asking that Richard A.  
 7 Macias recuse himself based on your statement of a  
 8 possible prior representation of Operation Rescue.  
 9 I will state for the record that this Board does  
 10 not -- is not of the opinion that he has a  
 11 conflict, and just so that we're clear I will --  
 12 I'll spell out a few of the things that are the  
 13 basis for that decision and we can supplement with  
 14 a written order to that affect. First of all, the  
 15 respondent in this case in the briefing has stated  
 16 that there is -- that there is -- this case has  
 17 nothing to do with abortion and therefore raising  
 18 that concern at this point changes the complexion  
 19 of that contrary to the respondent's prior  
 20 statements. Based on the information that -- that  
 21 Mr. Macias has shared with counsel and with the  
 22 Board there is no nexus to his prior  
 23 representation, there is no evidence that the  
 24 Operation Rescue was a complainant or served as  
 25 the underlying basis for the petition that was

Page 10

1 filed by this Board against this licensee so there  
 2 is no evidence in the record of that. Frankly,  
 3 Mr. Macias doesn't have -- didn't play a critical  
 4 role in that and certainly the issue for lawyers  
 5 is whether or not they used -- they would use any  
 6 confidential information gained in the -- in the  
 7 course of the representation of a client against  
 8 that client and this was an unrelated matter as  
 9 described by Mr. Macias. However, even though the  
 10 board is of the opinion that there is no conflict,  
 11 in order to avoid the appearance of impropriety  
 12 and out of an abundance of caution Mr. Macias will  
 13 be excused from deliberations. There remain  
 14 enough board members to -- to maintain a quorum  
 15 and we'll ask Mr. Macias to excuse himself and we  
 16 will proceed.  
 17 PRESIDING OFFICER: Mr. Hays, would you  
 18 state your case, please.  
 19 MR. HAYS: I'm sorry?  
 20 PRESIDING OFFICER: Would you state your  
 21 case, please.  
 22 MR. HAYS: Yes, sir. May it please the  
 23 Board, the Board materials for this matter was  
 24 sent out in several packets several weeks ago.  
 25 You should have received the agency record for

Page 11

1 this matter. In addition, you should have also  
 2 received the briefs of these issues from both  
 3 parties in a separate packet that was sent to you  
 4 I believe two days after they were submitted by  
 5 the parties.  
 6 Members, the reason for this conference  
 7 hearing is to determine the appropriate sanctions  
 8 to be imposed by respondent or imposed upon  
 9 respondent for her clear violations of her duty to  
 10 abide by the Board's documentation regulations.  
 11 In that you have the power to exercise a de novo  
 12 review and have all of the decision-making power  
 13 that you would have had if you had presided over  
 14 the formal hearing in order to make your Final  
 15 Order in this matter. Furthermore, you should  
 16 give due regard to the presiding officer's  
 17 opportunity to observe the witnesses and to  
 18 determine the credibility of those witnesses, and  
 19 in order to come to your determination of what the  
 20 proper sanction is in this matter, you may utilize  
 21 the Board sanctioning guidelines as a theoretical  
 22 framework in determining the appropriate sanction  
 23 should -- well, or what the appropriate sanction  
 24 should be for this matter and those Board  
 25 guidelines are an instructive document to this

Page 12

1 Board that were adopted by this Board in 2008.  
 2 Furthermore, you may utilize the Board sanctioning  
 3 guidelines to evaluate the numerous aggravating  
 4 factors that are present in determining whether  
 5 this sanction that you hand out today should be  
 6 more severe than it would have been if those  
 7 aggravating factors were not present. And in  
 8 utilizing your Board sanctioning guidelines, you  
 9 can see that respondent's misconduct in this  
 10 matter can fit into one of two Board sanctioning  
 11 grid categories. Her misconduct may be placed  
 12 into the general misconduct category in that her  
 13 misconduct was potentially harmful to patients and  
 14 was disruptive to Board processes. And you may  
 15 find that grid category on page 6, category 2A.  
 16 Her misconduct may also be placed into the patient  
 17 record category regarding an intentional act of  
 18 her's for failing to document properly, and you  
 19 may find that Board sanction grid category on page  
 20 14, category 10A. However, regardless of which of  
 21 the two categories that you place respondent's  
 22 misconduct in to consider what the appropriate  
 23 sanctioning guideline is the result is the same,  
 24 and that result is the revocation of her license  
 25 to practice medicine and surgery in the state of



Page 13

1 Kansas. The reason for that is because that is  
 2 the appropriate sanction for a licensee who has  
 3 been the subject of prior Board actions before  
 4 this pending matter, and prior to the adjustment  
 5 for aggravating factors the -- the sanction that  
 6 is appropriate as stated by the Board sanctioning  
 7 guidelines is revocation of her license.  
 8 Now, I'd like to take a couple minutes to  
 9 speak about respondent's prior Board actions  
 10 because they are related to this current matter in  
 11 that they are also aggravating factors.  
 12 Respondent has been subject of two previous Board  
 13 actions against her medical license, and those who  
 14 cannot remember the past are condemned to repeat  
 15 it. Both of those actions were taken in part  
 16 because of her failure to properly document, and  
 17 more specifically in the second Board action that  
 18 was taken against her in Case No. 01-HA20 this  
 19 Board determined that respondent had violated the  
 20 board of administrative regulations when she  
 21 failed to maintain an adequate patient record in  
 22 that matter. And for that violation in part she  
 23 was specifically ordered to comply with all of the  
 24 provisions of K.A.R. 100-24-1 with respect to her  
 25 future medical record keeping and that is the very

Page 14

1 statute that she has violated in this matter. And  
 2 it should also be noted that that Final Order in  
 3 01-HA20 has not been modified, rescinded in any  
 4 way since issuance back in the early 2000's, and  
 5 it was also in effect when her misconduct that is  
 6 the basis for this action occurred.  
 7 In addition to her prior Board actions there  
 8 are at least seven aggravating factors that are  
 9 present in this case to consider when you're  
 10 determining what the proper sanction is. The  
 11 first aggravating action I would like to speak  
 12 with you about today is the fact that this was an  
 13 intentional act by respondent. It was not by her  
 14 mistake, it was not by her ignorance or her  
 15 inexperience, but rather it was a thought out  
 16 intentional act by respondent to disregard her  
 17 duty to properly document. Now, the respondent  
 18 did allege in her formal hearing testimony that  
 19 she intentionally failed to document in her  
 20 patient records because she wanted to protect the  
 21 patient's identity. However, just as the  
 22 presiding officer noted and found, that argument  
 23 and explanation has no merit because as you can  
 24 see from your own review those patients were  
 25 clearly identified in the patient record. This

Page 15

1 intentional act did not protect her patients, but  
 2 rather placed her patients' current and future  
 3 health in jeopardy due to the fact that they were  
 4 not afforded the opportunity to have their medical  
 5 conditions properly documented but rather  
 6 respondent robbed them of that.  
 7 The second aggravating factor I would like to  
 8 speak with you about today is the fact that all 11  
 9 patients were of a young age and were quite  
 10 vulnerable. As exemplified and the fact that all  
 11 11 patients were between the ages of 10 and 18,  
 12 and they did not have the benefit of age,  
 13 experience, or maturity to address their  
 14 conditions, but rather they were young and  
 15 inexperienced children who respondent diagnosed  
 16 with significant mental illnesses to include some  
 17 of those children she documented as being  
 18 suicidal. Respondent had a duty to ensure that  
 19 her patients had an adequate patient record so  
 20 that they would be able to have access to that  
 21 record for future healthcare that would address  
 22 their needs wholly, completely and sufficiently.  
 23 The third aggravating factor I'd like to  
 24 speak with you about today is the fact that  
 25 respondent is an experienced practitioner who knew

Page 16

1 of her duty to document within a patient's record  
 2 and intentionally disregarded that duty.  
 3 Respondent is not a newly admitted physician fresh  
 4 out of residency, but rather she has been a  
 5 licensee of this Board since 1986. She is a well  
 6 experienced doctor who knew of her duty and chose  
 7 not to fulfill that duty to her patients.  
 8 The fourth aggravating factor I'd like to  
 9 speak with you about today is the nature and the  
 10 gravity of this misconduct. Failing to document  
 11 within a patient's record is not a minor violation  
 12 as you know, but rather proper documentation  
 13 within a patient's record is critically important.  
 14 That is no truer than when a physician is  
 15 presented with young adolescent children who  
 16 present to that physician as having mental  
 17 illnesses and then they document within the  
 18 patient record that some of those children may be  
 19 suicidal, and then they choose not to document  
 20 anything pertinent and significant concerning  
 21 those patient's conditions. It's just not about  
 22 documenting the patient's personal identifiable  
 23 information, but rather it is ensuring that the  
 24 patient has and will receive the proper care and  
 25 treatment at the time of the documentation and in



Page 17

1 the future. As stated by the Board's disciplinary  
 2 sanctioned guidelines, a failure to properly  
 3 document has the potential to cause harm and that  
 4 is no truer than when a physician is presented  
 5 with patients who are possibly severely mentally  
 6 ill and possibly suicidal.  
 7 The fifth aggravating factor I'd like to  
 8 speak with you about today is the fact that this  
 9 was not an isolated failure of her to document in  
 10 one patient case, but rather it was a pattern of  
 11 misconduct over all 11 patients to include patient  
 12 eight who she did no documentation whatsoever in.  
 13 Furthermore, respondent's inability or an  
 14 unwillingness to document appropriately within a  
 15 patient's medical record has been a problem since  
 16 the late 1990s as evidenced by the fact she was  
 17 the subject of a previously mentioned prior Board  
 18 disciplinary actions that occurred in 1999 and  
 19 2001.  
 20 Members, the next aggravating factor I would  
 21 like to speak with you about is the respondent's  
 22 lack of remorsefulness and consciousness of her  
 23 wrongfulness for her misconduct. While she has  
 24 admitted her misconduct, she has neither shown any  
 25 remorse, nor any consciousness of the wrongfulness

Page 18

1 of her misconduct, but rather she has shown that  
 2 she feels justified in her misconduct and her  
 3 failure to document even though that justification  
 4 is clearly wrong.  
 5 The final aggravating factor I'd like to  
 6 speak with you about today is the fact that this  
 7 respondent lacks any potential for rehabilitation  
 8 or remediation by this Board, and that is  
 9 evidenced by the two previous attempts this Board  
 10 has made in order to attempt to remediate her and  
 11 rehabilitate her for her prior or her showing of a  
 12 lack of an ability or willingness to properly  
 13 document. In the first action that the Board took  
 14 against her in 1999, they -- you all attempted to  
 15 remediate her and rehabilitate her by limiting her  
 16 license in regard to her prescribing of controlled  
 17 substances and requiring additional documentation  
 18 to be created in relationship to that prescribing  
 19 of a controlled substance. The Board once again  
 20 attempted to rehabilitate her and remediate her in  
 21 2001 when they once again found that her  
 22 documentation was lacking and they attempted to  
 23 remediate her and rehabilitate her by limiting her  
 24 license to practice medicine and surgery, and  
 25 specifically ordering her to comply with the

Page 19

1 statutory and regulatory duties including  
 2 complying with all of the provisions of K.A.R.  
 3 100-24-1 in respect to her future medical record  
 4 keeping. Here by choosing to ignore the Board's  
 5 attempts to remediate and rehabilitate her  
 6 behavior and misconduct in the two previous  
 7 actions, this respondent's conduct shows that she  
 8 believes her way is better than the Board's way,  
 9 and as such she has shown that her character is  
 10 one that cannot be rehabilitated or regulated by  
 11 this board. Therefore, if you do by happenchance  
 12 allow her the privilege to continue to practice  
 13 and she is presented with a situation where she  
 14 believes that she is justified in her behavior, no  
 15 matter how clearly wrong that behavior is, she  
 16 will disregard any regulation or order of this  
 17 Board that mandates her to do otherwise.  
 18 I would like to take a couple minutes to  
 19 address one of the arguments that was put forth in  
 20 respondent's brief, and respondent's counsel has  
 21 argued in his brief that the revocation of the  
 22 respondent's license to practice would be a  
 23 disproportionate sanction when you consider the  
 24 seven other Board actions that he cites within his  
 25 brief. That argument that he puts forth is flawed

Page 20

1 for three simple reasons. First, in not one of  
 2 those cases that he cites did any of those  
 3 licensees have prior Board action taken against  
 4 them for failing to properly document within their  
 5 records. It's basically apples and oranges. If  
 6 those licensees had prior Board actions and would  
 7 have shown that they could not have been  
 8 rehabilitated or need -- needed further  
 9 rehabilitation or remediation it may have ended up  
 10 with their revocation. However, it's just not the  
 11 same case as we have here. The second reason that  
 12 it's flawed is the fact that all of those actions  
 13 that he cites were done in consent orders.  
 14 Meaning, those licensees took responsibility for  
 15 their actions to include acknowledging the  
 16 wrongfulness of their actions. It's clearly a  
 17 different situation that you are presented here  
 18 today. The third reason is not in one of those  
 19 consent orders was there a finding that the  
 20 licensee's patient documentation was wholly  
 21 inadequate, but that's what you're presented here  
 22 today. To include patient eight, which has no  
 23 documentation whatsoever included in any of that  
 24 record that she presented as her medical record  
 25 documentation for patient eight.



Page 21

1 Members, in conclusion when you apply the  
 2 Board sanctioning guidelines to this matter it  
 3 becomes clear that the only sanction that will  
 4 ensure the mission of this Board to protect the  
 5 public gets fulfilled is to order the revocation  
 6 of respondent's license to practice medicine and  
 7 surgery in the state of Kansas for her misconduct  
 8 that she committed in this matter. As you can see  
 9 from the record in this matter, respondent has had  
 10 the opportunity to be rehabilitated and remediated  
 11 by this board on two previous occasions, and in  
 12 both of those opportunities she failed to learn  
 13 from her previous misconduct and correct her  
 14 behavior.  
 15 Furthermore, the numerous aggravating factors  
 16 show the respondent's failure to properly document  
 17 was an intentional act that was committed by an  
 18 experienced practitioner who knew of her duty and  
 19 -- and chose not to fulfill that duty in all 11  
 20 patient records. Additionally, these patients  
 21 were all young, vulnerable adolescent children who  
 22 were all diagnosed by respondent with severe  
 23 mental illness to include some who she documented  
 24 as being possibly suicidal. Moreover, her records  
 25 were found by the Presiding Officer and probably

Page 22

1 from your own review to be wholly inadequate.  
 2 Therefore, on behalf of the disciplinary  
 3 panel, I respectfully request that you determine  
 4 the appropriate sanction in this matter for  
 5 respondent's intentional failure to properly  
 6 document in all 11 patients records is to revoke  
 7 her license to practice medicine and surgery in  
 8 the state of Kansas. At this point in time I will  
 9 turn it over to opposing counsel.  
 10 PRESIDING OFFICER: Mr. Eye.  
 11 MR. EYE: Thank you, sir. This is a  
 12 procedurally kind of complicated case that's  
 13 gotten tossed back on to your agenda, and while it  
 14 is true that you can exercise de novo powers here  
 15 that is reviewing it as if it had not -- you've  
 16 not seen it before anybody else had seen it  
 17 before. The reality is that on this record  
 18 keeping question there is a finding of the  
 19 district court that has a significant bearing on  
 20 it. That was the district court's finding that  
 21 Doctor Neuhaus's conduct was not nefarious in  
 22 nature, and that really goes to one of the  
 23 mitigating factors that I want to talk about in a  
 24 moment. But keeping that in mind, that backdrop  
 25 in mind that this was not done for nefarious

Page 23

1 motives is something I would like you to consider  
 2 as I work my way through the balance of this  
 3 argument. Number one, there is no evidence that  
 4 Doctor Neuhaus was a threat to patients. There  
 5 just isn't any evidence to support that claim  
 6 whatsoever, and if you compare her conduct to the  
 7 conduct of others who are arguably at least  
 8 somewhat similarly situated, her conduct was no  
 9 more serious in terms of its violations than --  
 10 than her similarly situated practitioners. I'll  
 11 give you three examples. In addition to the ones  
 12 we cited in the brief there are three -- three  
 13 additional ones. And I'm not sure exactly how to  
 14 pronounce this physician's name. It's spelled G-  
 15 A-T-S-C-H-E-T. I assume it's Gatschet but I don't  
 16 know that for a fact, that was Case 08-HA00012.  
 17 On August 27th, 2007, this board found that  
 18 physician to be practicing outside the limits that  
 19 had been prescribed by a prior board order. He  
 20 had been subjected to prior discipline. That  
 21 conduct included making prescriptions that he was  
 22 not authorized to make. He was treating patients  
 23 under the age of 18 that the board had  
 24 specifically prohibited from -- prohibit him --  
 25 prohibited him from doing and the result, public

Page 24

1 censure.  
 2 In Doctor Fieser's case and that's 02-HA-41,  
 3 on February 19th, 2003, this board ordered and  
 4 found that he had engaged in improper referrals,  
 5 but also practiced outside board restricted  
 6 limitations from a prior board action. The  
 7 result, he was censured, he was fined, he had to  
 8 cover cost. Doctor Toth in 05-HA-79, on December  
 9 5, 2005, this board found that he had committed  
 10 significant deviations from the standard of care  
 11 that constituted gross and/or ordinary negligence.  
 12 He violated confidentiality. He exploited a  
 13 patient for financial purposes, financial motives.  
 14 The result, his license went from active to  
 15 inactive, he had to bring a practice mentor on  
 16 board, he was subject to public censure and had to  
 17 cover costs. Now, I understand the apples and  
 18 oranges argument, but, you know, part of the  
 19 problem here is that the apples and oranges  
 20 actually have qualities that need to be -- that  
 21 are the same and need to be considered, and that  
 22 really I think goes to the mitigating  
 23 circumstances that are set out in the board's  
 24 materials regarding how to determine what  
 25 sanctions ought to be imposed.



Page 25

1 Counsel a moment ago specified seven of the  
 2 aggravating factors that he believes have  
 3 application. Let me specify five mitigating  
 4 factors that should be in the mix as well for your  
 5 consideration. First, is the nature and gravity  
 6 of the allegations. Look, record keeping is  
 7 important. We've never said otherwise, we've  
 8 never minimized the importance for adequate record  
 9 keeping. But again, I think it's important to put  
 10 this in perspective and in context of these other  
 11 cases where there have been record keeping  
 12 violations found along with other conduct that's  
 13 not present here, it's not present in this case  
 14 exploiting patients for financial gain, for  
 15 instance, that ought to be considered in imposing  
 16 a sanction.  
 17 The second mitigating factor that is  
 18 specified in your board materials that I want to  
 19 raise is that there was no evidence of injuries,  
 20 and I -- I understand that this board does not  
 21 have to have evidence of injuries in order to  
 22 impose discipline, but your own materials say that  
 23 it's a mitigating factor if there is no evidence  
 24 of injuries, and there is no evidence of injury to  
 25 any patient in this case. And, in fact, I think

Page 26

1 it's noteworthy that the 11 patients that are the  
 2 subject of this proceeding, none of them  
 3 testified. The board didn't -- or the staff  
 4 counsel didn't bring any of them in to -- in to be  
 5 -- to provide testimony, none of them made any  
 6 complaints. And, moreover, there is a slight  
 7 mischaracterization I think that needs to be  
 8 clarified. When a physician like Doctor Neuhaus  
 9 was conducting these interviews there were adults  
 10 on behalf of the child that were present. So it  
 11 wasn't as if Doctor Neuhaus was in there with a  
 12 child and -- and there was nobody else. There  
 13 were adults that accompanied these children in  
 14 these interviews whether it was a parent, or a  
 15 guardian, or somebody who was a responsible  
 16 person.  
 17 The third mitigating factor I would like to  
 18 discuss is that there is not a consensus on blame  
 19 worthiness here. For instance, Doctor Greiner  
 20 testified in this proceeding that he found the  
 21 record keeping sufficient. But perhaps more  
 22 important, more important is that the district  
 23 judge's view that while this record keeping was  
 24 inadequate, it wasn't driven by nefarious motive,  
 25 and if it's not driven by nefarious motive then it

Page 27

1 would seem to me that the sanction should take  
 2 that into account. Even if it was a misguided  
 3 motive. It wasn't as if this was something that  
 4 -- that Doctor Neuhaus was trying to hide. She  
 5 said what her motive was. It was a good faith  
 6 motive. May have been misguided, may have been  
 7 misdirected, but it was still done in good faith  
 8 and it was not nefarious, and that's a finding  
 9 that is in this record.  
 10 The fourth mitigating factor I would ask the  
 11 board to take into consideration is -- really I  
 12 just referenced it a moment ago, but you can take  
 13 into account her motives. And in the board  
 14 mitigating factors materials it specifies that  
 15 motives that you could consider would be whether  
 16 it was criminal, immoral, dishonest or done for  
 17 personal gain. You can say a lot about what  
 18 Doctor Neuhaus has done here, but she's never been  
 19 charged with a crime. The immorality of this I  
 20 think is -- is sort of a silly kind of concept.  
 21 It's hard to see that what she did in terms of  
 22 inadequate record keeping falls into some sort of  
 23 an immoral act, and I think that frankly that's  
 24 such a subjective and loaded term that it's not  
 25 particularly useful in terms of providing much --

Page 28

1 much guidance. It certainly was not done for  
 2 personal gain. There was no evidence that somehow  
 3 she was benefitting from whatever she did in her  
 4 record keeping one way or the other.  
 5 The last mitigating factor I would ask the  
 6 board to take into consideration is known and  
 7 specified in your Board material, and that is that  
 8 these violations are beginning to get pretty old.  
 9 They're now somewhere between 11 and 12 years old,  
 10 and the age of the violations is a mitigating  
 11 factor that's specified in your materials that may  
 12 be considered in determining what, if any,  
 13 sanctions should be imposed.  
 14 You're tasked with one other thing that --  
 15 that hasn't been raised here today, at least yet,  
 16 and that is how to determine if you -- if you find  
 17 that costs should be imposed how to determine what  
 18 that amount is and here's the problem that's  
 19 presented. In the first order specifying costs,  
 20 this Board said that Doctor Neuhaus was  
 21 responsible for the full compliment of costs that  
 22 were compiled, 90 some odd thousand dollars. But  
 23 it didn't differentiate between the costs that  
 24 were incurred for the record keeping violation and  
 25 the costs that were incurred for the standard of



Page 29

1 care violations. You have to proceed now in my  
 2 view on the premise that there is no cost that can  
 3 be imposed for the standard of care violations,  
 4 that has been vacated. And as I mentioned in the  
 5 brief you have to consider this case as if that  
 6 order that you entered never existed, and so when  
 7 you go about calculating a cost, if that's  
 8 something that you intend to do, you have to  
 9 exclude costs that were incurred exclusively for  
 10 purposes of substantiating or presenting the  
 11 standard of care violations and then be able to  
 12 identify the costs and expenses that are  
 13 attributable to the record keeping violations.  
 14 Only by doing that differentiation may your order  
 15 on costs, if you get to that point, be supported  
 16 by substantial and competent evidence, and that is  
 17 a prerequisite for any order that this board  
 18 issues as you're all quite aware I'm sure. The  
 19 first order imposing the \$90,000 in costs has to  
 20 be smaller than the order that comes out now on  
 21 costs has to be less for force of logic. Because  
 22 it can't take into account the standard of care  
 23 costs and how you differentiate that I -- I will  
 24 leave that to your good judgment, but nonetheless  
 25 it is a task that needs to be completed.

Page 30

1 When this Board decided in June of 2012 to  
 2 revoke Doctor Neuhaus's license it certainly had  
 3 an effect on Doctor Neuhaus, no question about it.  
 4 She has, however, not withdrawn from service to  
 5 the medical community. She is pursuing service in  
 6 that regard through different avenues, and she  
 7 still presents an opportunity for the medical  
 8 community to benefit from her experience and  
 9 knowledge. That's why in the brief that we  
 10 submitted as an alternative to revocation we  
 11 suggested some practice alternatives that would  
 12 allow Doctor Neuhaus to get back into active  
 13 practice, but still satisfy your obligation to  
 14 protect the public's trust by imposing some  
 15 limitations, monitoring, so forth. And you're all  
 16 very familiar with the kinds of techniques that  
 17 can be used to oversee a practitioner's work  
 18 during the time that the board is concerned that  
 19 they meet all requirements that are pertinent.  
 20 Doctor Neuhaus is certainly aware through this  
 21 proceeding that the board has every intention to  
 22 require that she comply strictly with the  
 23 requirements that are imposed. I think she should  
 24 be given another opportunity with this Board's  
 25 oversight and supervision through a proxy, I

Page 31

1 assume, to be a contributing member of the medical  
 2 community as a practitioner, and taking into  
 3 account her frame of mind that the district court  
 4 found, and by the way, the hearing officer never  
 5 found that she was operating for nefarious motives  
 6 either for what that's forth. But we believe that  
 7 you should not impose any further discipline,  
 8 essentially make the revocation that happened June  
 9 2012 a time served, if you will, penalty and allow  
 10 her to apply for reinstatement with conditions and  
 11 limitations that this Board would find appropriate  
 12 to protect the public's trust while permitting  
 13 Doctor Neuhaus to resume her practice. Thank you.  
 14 PRESIDING OFFICER: Thank you, Mr. Eye.  
 15 MR. HAYS: May I have a brief rebuttal?  
 16 MR. EYE: I think he used his 15 minutes.  
 17 I think we agreed to 15 minutes a side and by my  
 18 count he used his 15 minutes.  
 19 MR. FERGUSON: He used his and you have  
 20 another minute left if you want to use -- you have  
 21 an additional minute, Mr. Eye.  
 22 MR. EYE: I think I've said enough.  
 23 MR. FERGUSON: Then I think that the  
 24 Board would entertain any questions or ask  
 25 questions of counsel.

Page 32

1 DOCTOR DURRETT: Doctor Neuhaus noted  
 2 several places that she was doing this for the --  
 3 not doing the record keeping in order to have the  
 4 privacy of the patient, was that --  
 5 MR. EYE: That was her testimony, yes,  
 6 sir.  
 7 DOCTOR DURRETT: Did -- did she -- did  
 8 she actually did have some adults in with the  
 9 children did she not document that anywhere? I  
 10 mean, that would have helped her, right?  
 11 MR. EYE: Without going back and looking  
 12 at chart by chart I can't answer it specifically,  
 13 but I believe that in at least in some of these it  
 14 was noted that the -- that the child was  
 15 accompanied by, you know, a parent or a  
 16 responsible adult.  
 17 DOCTOR DURRETT: But it doesn't say that  
 18 they were in the room with them.  
 19 MR. EYE: No, I think that it -- I think  
 20 that, again, without having the actual chart in  
 21 front of me.  
 22 MR. HAYS: May I respond to that? I  
 23 believe her documentation that was the product of  
 24 what she created did not note that, that is  
 25 correct.



Page 33

1 DOCTOR DURRETT: I did not see any of  
 2 that.  
 3 MR. EYE: Well, again, without having  
 4 those specific charts in front of me I'm not sure,  
 5 but it was my recollection that at least some of  
 6 them did note that there was an adult present  
 7 during the examination during the interview. I  
 8 mean, I could be mistaken but that was my  
 9 recollection.  
 10 PRESIDING OFFICER: Any other questions?  
 11 Doctor Settich.  
 12 DOCTOR SETTICH: Mr. Eye, several times  
 13 in your argument you seem to depend on the word  
 14 nefarious as being a demonstration of the standard  
 15 not met in opposing counsel's argument. How do  
 16 you answer the words that he did suggest willful  
 17 and others about the insufficiency of Doctor  
 18 Neuhaus's medical record? You said the highest  
 19 standard of nefarious, how do you answers his?  
 20 MR. EYE: We don't dispute that she was  
 21 -- that she conducted herself in a knowing  
 22 fashion, she never said otherwise. I mean,  
 23 knowing implies willful. Willful implies knowing.  
 24 So I would simply say that what the district court  
 25 found was that while her motives may have been

Page 34

1 misguided they weren't nefarious and that is a  
 2 difference, and I think it's one from a  
 3 qualitative standpoint separates her from the --  
 4 from the practitioner who defies the Board  
 5 authority and the Board requirements for, you  
 6 know, completely immaterial reasons or reasons  
 7 that are in fact nefarious. I mean, it's the -- I  
 8 think that's the way I would respond to your  
 9 question and differentiate between what I was  
 10 arguing and what counsel for the staff argued.  
 11 PRESIDING OFFICER: Doctor Templeton.  
 12 DOCTOR TEMPLETON: As it was mentioned,  
 13 some of the patients were said to be suicidal and  
 14 I would presume from a patient safety standpoint  
 15 they were either further followed or they were  
 16 sent elsewhere for examination. Were these the  
 17 extent of the records that were sent? Because  
 18 there is no -- the records that we have there is  
 19 no supporting documentation that substantiate  
 20 those claims if one is going to see a patient  
 21 that's referred because of something that is  
 22 significant there needs to be additional  
 23 documentation to support that so one knows that  
 24 one is making progress. Was there additional  
 25 information that would have been sent for follow-

Page 35

1 up?  
 2 MR. EYE: The -- if you recall the  
 3 arrangement that was extant here was between  
 4 Doctor Tiller and Doctor Neuhaus. Doctor Tiller  
 5 would make the first run-through of the -- of the  
 6 mental examination, and then per statute he needed  
 7 a second opinion and that's where Doctor Neuhaus  
 8 came in. The arrangement and the agreement  
 9 between Doctor Tiller and Doctor Neuhaus, had  
 10 Doctor Neuhaus simply fulfilling that narrow  
 11 statutory second opinion requirement, any follow  
 12 along or any follow-up treatment subsequent to the  
 13 procedure being performed, the abortion procedure  
 14 being performed would have been something that  
 15 Doctor Tiller would have been primarily  
 16 responsible for and that was the working  
 17 arrangement that they had between Doctor Neuhaus  
 18 and Doctor Tiller. They were not siloed. In  
 19 other words, they were -- they were very much an  
 20 interactive medical team, and I think that that's  
 21 consistent with the testimony that was elicited  
 22 during the hearing itself. One other thing I  
 23 think it's important to note here it is that and  
 24 this was -- this was uncontradicted in the -- in  
 25 the hearing. You know, Doctor Neuhaus didn't

Page 36

1 approve everybody that came in front of her for an  
 2 abortion. I mean, there were some people that  
 3 came in front of her for an abortion that she  
 4 determined did not meet the criteria and so she  
 5 denied them that opportunity. And I -- I only  
 6 bring that up to reinforce the idea that these  
 7 examinations were done in a comprehensive way and  
 8 even your expert Doctor Gold testified in cross-  
 9 examination.  
 10 MR. HAYS: I would object at this point  
 11 in time because the argument that he's putting  
 12 forth at this point in time is not relevant to the  
 13 documentation portion of it, but rather the actual  
 14 standard of care issue and as we all know we're  
 15 not here to argue the standard of care issue.  
 16 MR. EYE: Well, this -- this goes to  
 17 documentation. I -- I don't want to presume that  
 18 there is a ruling.  
 19 DOCTOR TEMPLETON: I would say that if a  
 20 thorough evaluation was performed where was that  
 21 documented?  
 22 MR. EYE: Well, there were documents in  
 23 the charts. Now how thorough they were is -- was  
 24 up to -- was an issue in this case. It was  
 25 determined that it wasn't thorough enough.



Page 37

1 PRESIDING OFFICER: Mr. Eye, did you  
 2 complete your -- what doctor -- excuse me, what  
 3 Mr. Hays was objecting to did you complete your  
 4 comments on that?  
 5 MR. EYE: I think I have. If I answered  
 6 the question that the Board member raised I think  
 7 that I have, yes.  
 8 PRESIDING OFFICER: Doctor Varner, do you  
 9 have a question?  
 10 DOCTOR VARNER: If I understand it right  
 11 she didn't complete the records for fear of  
 12 patient confidentiality.  
 13 MR. EYE: For fear of that  
 14 confidentiality being breached.  
 15 DOCTOR VARNER: But aren't medical  
 16 records confidential? What was going to become of  
 17 them?  
 18 MR. EYE: Well, these -- some of these  
 19 records were the subject of a completely different  
 20 set of litigation. These records were arguably  
 21 made somewhat public during the course of the when  
 22 the records were taken from Doctor Neuhaus by an  
 23 assistant attorney general Steve Maxwell.  
 24 MR. HAYS: I would object to that comment  
 25 as that testimony was actually stricken from the

Page 38

1 record and there is no evidence to base that  
 2 argument upon.  
 3 MR. EYE: I'm trying to answer the  
 4 question of the Board member and that's -- that's  
 5 my answer is that she did recognize that because  
 6 these were abortion records, the reality is that  
 7 that there was an attempt by various parties to  
 8 get access to them and she was -- she was aware  
 9 that it was important to try to protect these  
 10 patients privacy interests to the extent that she  
 11 could do so.  
 12 MR. HAYS: May I answer his question?  
 13 MR. FERGUSON: Yes. And, counsel, I  
 14 think it would be important that the Board know  
 15 that the objections are for the record and -- and  
 16 you'll have a chance to deliberate over what is  
 17 relevant for your consideration and so I think  
 18 that the Board wants to hear a full and complete,  
 19 you know, dialogue and questions and answers, so  
 20 if you do have objections note them for the  
 21 record, but I don't think that the Board intends  
 22 to necessarily restrict unless we get into areas  
 23 that we need to close the hearing.  
 24 MR. HAYS: To answer your question, yes.  
 25 Those patient records were protected by all

Page 39

1 statutes that were available and they are by their  
 2 very nature confidential.  
 3 PRESIDING OFFICER: Mr. -- Doctor  
 4 Settich?  
 5 DOCTOR SETTICH: Mr. Eye, repeatedly Mr.  
 6 Hays asserted that there was no remediation, no  
 7 apparent improvement in Doctor Neuhaus's  
 8 performance of medical record keeping after the  
 9 earlier two violations. You offer -- offer in  
 10 your evidence or argument that if we were to grant  
 11 Doctor Neuhaus the privilege of practicing again  
 12 that for some reason or somehow her medical  
 13 records keeping would be improved?  
 14 MR. EYE: Yes. And I -- and I -- for two  
 15 reasons. Number one, the experience of this,  
 16 number one, I think is -- is very telling. But,  
 17 number two, perhaps more importantly, this is a  
 18 physician that I don't think has any intention of  
 19 going back and doing abortion practice and so that  
 20 the -- so the perceived need to perhaps take  
 21 extraordinary steps to protect patients privacy  
 22 would not be present. And so in that regard I  
 23 think that there is a -- a difference in terms of  
 24 the kinds of patients that she would be seeing  
 25 where the perceived need to take these additional

Page 40

1 steps to protect privacy would not be -- would not  
 2 come into play.  
 3 MR. HAYS: May I respond to that question  
 4 very quickly?  
 5 PRESIDING OFFICER: Yes.  
 6 MR. HAYS: Her previous Board actions  
 7 show what her character is and shows her potential  
 8 for rehabilitation or remediation. When she's  
 9 presented with a situation where she knows better  
 10 than this Board, she's going to do whatever she  
 11 wants regardless of how you try to regulate or  
 12 regulate her or what you allow her to do, and that  
 13 is evidenced by the fact she was under a Board  
 14 order at the time of this misconduct and is  
 15 currently under that board order and it did not  
 16 work. This is her third strike in front of this  
 17 Board, and members, she should be out.  
 18 PRESIDING OFFICER: Doctor Durrett.  
 19 DOCTOR DURRETT: Thank you, Doctor, I  
 20 have a couple questions. First for Mr. Hays, have  
 21 you had the opportunity to separate out the  
 22 charges for the standard of care versus medical  
 23 records keeping issues?  
 24 MR. HAYS: I have not. And quite frankly  
 25 that's going to be a task among all tasks because



Page 41

1 it's so intertwined and the Presiding Officer's  
 2 charges, our expert review charges, the deposition  
 3 charges, everything.  
 4 DOCTOR DURRETT: It can be done or  
 5 estimated.  
 6 MR. HAYS: Possibly.  
 7 DOCTOR DURRETT: Thank you. Mr. Eye, I  
 8 had a question for you. On two previous occasions  
 9 we've had standard of violations concerning  
 10 medical records. Did the doctor take remediation  
 11 or course on approving herself after those two  
 12 violations. Did she take a course to improve her  
 13 medical records?  
 14 MR. EYE: I don't know the answer to  
 15 that. I could find out but I don't -- stating  
 16 here I don't -- if I knew it I don't remember it.  
 17 DOCTOR DURRETT: So, Mr. Hays, on -- on  
 18 the previous order was there a recommendation for  
 19 her to take the record keeping course?  
 20 MR. HAYS: I don't recall off the top of  
 21 my head. I can tell you that the record that you  
 22 have in front of you right now does not have any  
 23 evidence of that and that would be additional  
 24 evidence that would probably be improper to put  
 25 forward at this point in time unless it had

Page 42

1 occurred since 2012.  
 2 PRESIDING OFFICER: Doctor Templeton.  
 3 DOCTOR TEMPLETON: This is for Mr. Hays.  
 4 And so on her -- on her two previous medical  
 5 record keeping violations for which she came  
 6 before the Board, did she offer a defense on  
 7 either one of those that she -- her inadequate  
 8 record keeping was being followed, did she -- was  
 9 she trying to maintain the patient  
 10 confidentiality?  
 11 MR. HAYS: I don't know the answer to  
 12 that question. I didn't try those cases and get  
 13 into that specific of that case. I can't answer  
 14 it.  
 15 DOCTOR TEMPLETON: I didn't know if that  
 16 was a consistent theme or if there was a medical  
 17 record keeping issue for all.  
 18 MR. HAYS: Not that I know of.  
 19 PRESIDING OFFICER: Doctor Settich.  
 20 DOCTOR SETTICH: Mr. Eye, I know the  
 21 parties have agreed dutifully for 15 minutes each  
 22 and we're very anxious for both procedural and due  
 23 process. Did you plan or expect the licensee  
 24 would be available for questions by this Board or  
 25 not today?

Page 43

1 MR. EYE: It was -- Doctor Neuhaus is  
 2 here and -- and if the Board wishes to ask her  
 3 questions I think she would be prepared to answer  
 4 them. Given what the order specified I did not  
 5 anticipate that that would happen. The order was  
 6 pretty specific in terms of what would be  
 7 presented, but if -- if you would like to pose  
 8 questions to Doctor Neuhaus I would ask her to  
 9 approach.  
 10 PRESIDING OFFICER: Why don't we continue  
 11 with Board questions and give you time to think.  
 12 Doctor Durrett.  
 13 DOCTOR DURRETT: Yes. You said there was  
 14 no financial gain on the consultations that were  
 15 given. Were those billed out at all and what were  
 16 they billed out as.  
 17 MR. EYE: She was paid for her services,  
 18 yes, but she didn't gain any more money by -- by  
 19 either documenting or not documenting. In other  
 20 words, the documentation problem didn't have a  
 21 financial gain associated with it.  
 22 DOCTOR DURRETT: But she's responsible  
 23 for helping billing those. Were those billed out  
 24 as a 99212 and 99214 and 99213?  
 25 MR. HAYS: I can answer that question.

Page 44

1 They weren't billed out to insurance. I believe  
 2 they were prepaid and there was a set amount that  
 3 I can't remember off the top of my head right now  
 4 and if it comes to me I will provide you with that  
 5 amount.  
 6 DOCTOR DURRETT: So there was financial  
 7 gain, she was paid for her services no matter how  
 8 well or how poorly she documented, correct?  
 9 MR. EYE: She was paid for her services,  
 10 yes, sir.  
 11 PRESIDING OFFICER: Are there any  
 12 additional questions? Yes, Doctor Milfeld.  
 13 DOCTOR MILFELD: I'd like to ask either  
 14 one of the attorneys if -- if there was ever a  
 15 medical malpractice case filed and if she used  
 16 that defense as patient privacy for lack of record  
 17 keeping how do you think that would fly?  
 18 MR. EYE: Well, I don't know that I can  
 19 give you much of an answer because that's probably  
 20 not enough facts to really make -- to give you  
 21 much of a predictive value. I think it depends on  
 22 the other circumstances.  
 23 DOCTOR MILFELD: No, I'm just asking you  
 24 if she used that as a defense.  
 25 MR. EYE: I'm sorry. I didn't --



Page 45

1 DOCTOR MILFELD: As a defense what -- how  
 2 do you -- how do you suspect that that process  
 3 would be able to be carried out with lack of  
 4 documentation because of patient privacy?  
 5 MR. EYE: I see. I guess I don't know  
 6 the answer to that because again I think it would  
 7 depend on a lot of other circumstances, but I  
 8 don't believe there has been any medical  
 9 malpractices filed against Doctor Neuhaus.  
 10 DOCTOR MILFELD: I'm just asking for your  
 11 conjecture.  
 12 MR. EYE: Yeah, I guess, I would decline  
 13 to be -- to conject to -- engage in too much  
 14 conjecture because I don't know that it furthers  
 15 this discussion very much.  
 16 DOCTOR MILFELD: The thing is did she use  
 17 that as a defense?  
 18 MR. EYE: It depends on the circumstance.  
 19 It depends on the nature of the malpractice. It  
 20 depends on the context. It depends on so many  
 21 other facts that I think just that standing alone  
 22 it's -- it's -- I don't know that it really gets  
 23 much traction as far as telling us what you should  
 24 or shouldn't do in this -- with this case before  
 25 you right now.

Page 46

1 DOCTOR MILFELD: Well, I can speak from  
 2 personal experience and if I use that as a defense  
 3 it wouldn't fly.  
 4 MR. EYE: Well, it depends on the  
 5 circumstances and I think you would agree with  
 6 that.  
 7 PRESIDING OFFICER: Mr. Hays, do you have  
 8 a reply?  
 9 MR. HAYS: I believe it would depend on  
 10 the specific circumstances. However, I think it  
 11 would come down when you have a lack of any  
 12 documentation the only thing you're going to be  
 13 relying upon is the credibility of the witness,  
 14 and I believe that the witness in this matter was  
 15 found not to be credible by the presiding officer?  
 16 MR. EYE: No. This -- this witness --  
 17 it's hard to think that this witness could be  
 18 considered not credible and have a district judge  
 19 read the same record and find that she did not  
 20 have nefarious motives. I mean, that's -- that's  
 21 a collision that can hardly be disregarded here.  
 22 The district judge had the same record and so I --  
 23 you know,  
 24 I --  
 25 MR. HAYS: But the difference is the

Page 47

1 district judge did not have the opportunity to  
 2 observe the witness but -- as the presiding  
 3 officer did, and as you know you should give due  
 4 regard to the presiding officer's ability to  
 5 observe those witnesses and determine their  
 6 credibility, and if he would have found her  
 7 credible we would have had a different result than  
 8 he would have originally found. By finding her in  
 9 fault for her documentation solely alone he found  
 10 her explanations to be not credible.  
 11 MR. EYE: Well, the record says what it  
 12 -- the record speaks for itself, and the reality  
 13 is that the substance of the record, not the form,  
 14 the substance of what's in that record supports  
 15 the finding that there was not a nefarious motive,  
 16 and that's a finding that while you can review  
 17 this de novo, that's a finding that is in place  
 18 and that was not remanded to you. That -- the  
 19 question that was remanded to you dealt strictly  
 20 with sanctions. So as you approach this I think  
 21 you have to keep in mind what the district judge's  
 22 views were here because right now those set the  
 23 limits, I think, for what you can consider given  
 24 the issues before you.  
 25 PRESIDING OFFICER: Doctor Durrett.

Page 48

1 DOCTOR DURRETT: Mr. Eye, question for  
 2 you. So this certification of poor records  
 3 keeping and in the two years since the suspension,  
 4 what steps has the doctor taken to improve her  
 5 medical record keeping? Has she taken a course?  
 6 MR. EYE: First, what suspension, Doctor,  
 7 it was revocation, two years ago.  
 8 DOCTOR DURRETT: I'm -- I'm sorry.  
 9 Correct, correct.  
 10 MR. EYE: Just make sure the record is  
 11 clear on that. Doctor Neuhaus has engaged in  
 12 graduate study pursuing an MPH and a fellowship in  
 13 a public health related -- community health based  
 14 practice. So, to my knowledge, she's not taking a  
 15 specific course on record keeping, but on the  
 16 other hand she's pursued other aspects of her  
 17 medical studies there are, I guess, you could say  
 18 ancillary to that.  
 19 DOCTOR DURRETT: And on this -- this is  
 20 the third occasion. On either of the two  
 21 occasions and this occasion there has been no  
 22 effort to take a medical records keeping course,  
 23 that's my question.  
 24 MR. EYE: You know I -- I would like to  
 25 make sure that that's the case by -- by conferring



<p style="text-align: right;">Page 49</p> <p>1 with Doctor Neuhaus but -- so I -- I don't know if 2 that's correct or not. 3 PRESIDING OFFICER: Doctor Gould. 4 DOCTOR GOULD: Question for Doctor or Mr. 5 Hays. 6 MR. HAYS: I'm listening. 7 DOCTOR GOULD: Mr. Eye mentioned that on 8 No. 5 he says of his mitigating circumstances, the 9 violations are getting rather old now over 12 10 years ago. Is there a time clock on -- on 11 violations or can you just kind of speak to that? 12 MR. HAYS: No, I don't believe that there 13 is. I believe you have to look at it and think 14 and make the decision does she have a character of 15 one that can be fixed or rehabilitated or 16 remediated in some way to show that she won't once 17 again think she knows better than this Board and 18 do whatever she wants. I think that's where you 19 get to the point of nefarious. While it's not 20 nefarious, it's still intentional. It's still 21 that she knew what her duty was. She said you 22 know what, Board, I know that you've ordered me to 23 abide by the documentation regulation and I'm not 24 going to do it. I'm going to do whatever I think 25 is best regardless of what this learned Board</p>	<p style="text-align: right;">Page 51</p> <p>1 into junior high. So I think that the fact that 2 there is no allegation of misconduct for, you 3 know, 11 or 12 years is the reason why that 4 mitigating factors is the criteria for you to take 5 into consideration. 6 DOCTOR NEUHAUS: (Inaudible.) 7 PRESIDING OFFICER: She needs to be able 8 to be heard by the court reporter and I think we 9 have another board member before we -- 10 MR. HAYS: And you also want to swear her 11 in when you do. 12 PRESIDING OFFICER: Right. She needs to 13 be sworn in but we want to make sure that all of 14 the board members have an opportunity to ask 15 questions and if you so choose to have your client 16 answer questions. 17 MR. HAYS: May I respond to that question 18 real quick. There has been no evidence that she 19 has done anything to change her belief that when 20 she believes what she's doing is right, regardless 21 of how you try to regulate her, she'll do -- she 22 will comply with this Board. There is no 23 indication of that or evidence of that. 24 PRESIDING OFFICER: Miss Hodgdon, did you 25 have a question?</p>
<p style="text-align: right;">Page 50</p> <p>1 orders her to do otherwise. So as to the age, I 2 don't think there is a time for her to come back 3 to show that she can safely practice because she 4 is of the character that cannot be regulated by 5 this Board, and there are certain people that will 6 not adhere to the regulations that you set forth. 7 MR. EYE: May I weigh in briefly? 8 THE REPORTER: Who was that? Sorry. 9 MR. EYE: There's a reason why that 10 duration of time has passed since the violations 11 was put in your mitigating factors. I do think 12 that it has to be considered in a broader context 13 as I think I responded to the -- to the question a 14 moment ago, these things are contextual for sure. 15 And I think that the -- one of the problems that 16 in any licensing case that comes about whether 17 it's for a physician or anybody else, is that 18 sometimes the lines aren't particularly bright. 19 They do tend to get blurred and one of the reasons 20 that they get blurred is the passage of time. 21 There is no allegation in this case that she has 22 violated the record keeping requirement for 11 or 23 12 years. None. So what we're dealing with are 24 allegations of record keeping violations, that, 25 you know, if they were a child they'd be heading</p>	<p style="text-align: right;">Page 52</p> <p>1 MS. HODGDON: Yes, I do. Can everyone 2 hear me? Okay. Mr. Eye, I'm troubled by your 3 continued on the record reference to the word 4 "nefarious" so I would like to speak to that for a 5 moment. Nefarious means evil and I -- I don't 6 want later for you to say that -- that 7 (inaudible) -- 8 THE REPORTER: Speak up. 9 MS. HODGDON: -- whatever finding they 10 found had to do with nefarious. Because as far as 11 I'm concerned, we're not looking at something evil 12 here. That is a word that's been used way too 13 much. 14 PRESIDING OFFICER: I'm sorry, this is 15 Terry Webb again. The court reporter is having a 16 little difficulty time hear -- difficult time 17 hearing and if you could speak just a bit slower 18 please. 19 MR. HAYS: And, Mr. Board President, 20 we're going to turn up the volume so it's a little 21 easier. 22 PRESIDING OFFICER: Great. They're 23 turning up the volume. All right. Let's try that 24 again. 25 MS. HODGDON: I am concerned about Mr.</p>



Page 53

1 Eye's continued focus on the word "nefarious."  
 2 The term means evil and I for one do not consider  
 3 the fact that we're looking at an evil behavior  
 4 here. We are looking at a willful behavior on  
 5 Doctor Neuhaus's part to not care what the rules  
 6 are, not to care what the statutes are that she  
 7 exists within. She thinks that she can do  
 8 whatever she wants, as long as she believes that  
 9 it's appropriate at the moment which sounds pretty  
 10 narcissistic to me but I'm not a psychologist.  
 11 The bottom line is that I don't want the record to  
 12 continue to be manipulated in this action to focus  
 13 on the word nefarious because I don't believe that  
 14 other than Mr. Eye's continued reference to it  
 15 we're talking about nefarious. We're not talking  
 16 an evil behavior. We're talking about a willful  
 17 disregard of the rules and - and -- and  
 18 regulation that she is supposed to uphold. I also  
 19 believe that no physician has the right to keep  
 20 things out of the written record because they  
 21 themselves deem it to be advisable to not keep  
 22 them in the record. So to me this is about a  
 23 rules issue, it is not about evil doing and I want  
 24 the record to reflect that because I think it's  
 25 important that this record not be manipulated by

Page 54

1 the word "nefarious."  
 2 PRESIDING OFFICER: Thank you. Any  
 3 further questions? Doctor Varner.  
 4 DOCTOR VARNER: For Mr. Eye. The  
 5 nefarious issue, freeing that, then it's safe to  
 6 say that the lack of medical records is  
 7 intentional?  
 8 MS. HODGDON: I can't hear.  
 9 MR. HAYS: May I answer that real quick?  
 10 She testified that it was intentional.  
 11 MS. HODGDON: I can't hear.  
 12 MR. VARNER: The question was whether or  
 13 not the act of not keeping medical records was  
 14 intentional.  
 15 MR. HAYS: I don't believe there was any  
 16 question that it was not intentional. That was  
 17 her testimony and that's what she stated.  
 18 PRESIDING OFFICER: Any additional  
 19 questions?  
 20 DOCTOR GOULD: So, going back to the  
 21 records and the age of the allegations or  
 22 violations. Do we have any evidence of records  
 23 between these violations and then between the  
 24 revocation order occurred?  
 25 MR. HAYS: There were no records put into

Page 55

1 this matter, any evidence put forth by either  
 2 party as to the current state of her records and  
 3 thereby you don't have anything to weigh it upon.  
 4 MR. EYE: Well, that's true. And the --  
 5 the -- there certainly could have been records  
 6 that were required by counsel for the Board that  
 7 came subsequent to, you know, 11 or 12 years ago.  
 8 They didn't ask for any but, you know, for so.  
 9 MR. HAYS: Members, there was nothing  
 10 preventing Mr. Eye and his client putting forth  
 11 any mitigation evidence showing how she has  
 12 rehabilitated herself or remediated herself.  
 13 There is just no evidence of that in this record.  
 14 MR. EYE: Well, the burden wasn't on us.  
 15 The burden of proof was on the -- on the staff and  
 16 the Board.  
 17 MR. HAYS: But he's asking you at this  
 18 point in time to find mitigation where there is no  
 19 evidence of it.  
 20 MR. EYE: Well, I'm certainly not asking  
 21 you to find aggravation where there is no evidence  
 22 of it either, and I think that you have to presume  
 23 proper conduct in the absence of improper  
 24 evidence.  
 25 MR. HAYS: I don't believe there is any

Page 56

1 evidence or authority for that.  
 2 MR. EYE: Well, it's -- it's their burden  
 3 of proof to show impropriety and they haven't  
 4 showed any impropriety in a single thing that  
 5 she's done for 11 or 12 years.  
 6 PRESIDING OFFICER: Mr. Eye, would Doctor  
 7 Neuhaus -- does she wish to testify before this  
 8 Board?  
 9 DOCTOR NEUHAUS: If any one has questions  
 10 for me I'll answer.  
 11 ANNE NEUHAUS, M.D.,  
 12 called as a witness on behalf of the Licensee, was  
 13 sworn and testified as follows:  
 14 PRESIDING OFFICER: Did you have a  
 15 statement you would like to make, Doctor Neuhaus?  
 16 DOCTOR NEUHAUS: I'm sorry, I'm deaf in  
 17 this ear.  
 18 PRESIDING OFFICER: Do you have a  
 19 statement you would like to make, Doctor Neuhaus?  
 20 Would you like to make a statement.  
 21 DOCTOR NEUHAUS: Well, since the question  
 22 of my record keeping since this period has come up  
 23 the board does have in its possession some records  
 24 that have been subpoenaed for other things so  
 25 there should be some ability to review that.



Page 57

1 PRESIDING OFFICER: Thank you.  
 2 DOCTOR NEUHAUS: And the -- and the last  
 3 issue that I know of was a case where I submitted  
 4 a record and that case was closed without further  
 5 investigation.  
 6 PRESIDING OFFICER: Anything else at this  
 7 time, Doctor? Doctor Durrett.  
 8 DOCTOR DURRETT: Doctor Neuhaus, just one  
 9 final question for myself. Your consultations  
 10 were at the old obstetrics family practice?  
 11 DOCTOR NEUHAUS: The -- the consultations  
 12 were in a specific requirement by the statute that  
 13 a second licensed physician in Kansas examine in  
 14 each of these patients and determine whether or  
 15 not the abortion was medically necessary, but  
 16 there was no specification as far as Board --  
 17 DOCTOR DURRETT: You're specialty, that's  
 18 what I'm after.  
 19 DOCTOR NEUHAUS: I'm a general  
 20 practitioner, I did one year of internal medicine.  
 21 DOCTOR DURRETT: Thank you  
 22 PRESIDING OFFICER: Are there any  
 23 additional questions? Doctor Settich.  
 24 DOCTOR SETTICH: Doctor, you heard your  
 25 counsel say that if we grant your license back to

Page 58

1 you that you are prepared to do all of the  
 2 necessary records keeping in such a way that would  
 3 be compliant with the Practice Act. Do you offer  
 4 us either evidence or arguments to make that true?  
 5 DOCTOR NEUHAUS: We submitted a brief to  
 6 that effect, and in the past I was never required  
 7 to take a course. Apparently, it wasn't  
 8 considered necessary. It was -- the one case was  
 9 -- was mentioned by Mr. Hays was a substance abuse  
 10 documentation issue which was resolved with -- it  
 11 just didn't get ended because I closed that  
 12 practice and didn't have a -- didn't need a DEA  
 13 license. And the second one was about  
 14 documentation during conscious sedation, and there  
 15 was a long hearing with testimony from an  
 16 anesthesiologist who found that all of my  
 17 practices as far as the safety and administration  
 18 of conscious sedation were adequate, but that I  
 19 hadn't documented heart and lung examinations on  
 20 all the patients. So, evidently, they didn't feel  
 21 it was necessary to have me take a course at that  
 22 point, but my records were monitored, I think, on  
 23 a monthly basis, by one of the Board investigators  
 24 who came through and randomly looked at so many  
 25 records per month up until the point where I

Page 59

1 closed that practice and was no longer doing  
 2 conscious sedation.  
 3 DOCTOR SETTICH: Thank you  
 4 PRESIDING OFFICER: At this point -- are  
 5 there any further questions? At this point, I  
 6 would --  
 7 DOCTOR MILFELD: Yes.  
 8 PRESIDING OFFICER: Okay.  
 9 DOCTOR MILFELD: Help me out, Doctor, or  
 10 help us out, Doctor Neuhaus, and the word raised  
 11 by Doctor Varner was "intentional." What is your  
 12 interpretation of the intentional undocumenting or  
 13 not documenting of records for privacy purposes.  
 14 DOCTOR NEUHAUS: Well, I don't know if  
 15 anyone is familiar with this case, but a number of  
 16 these patients' records were discussed at length  
 17 on the Bill O'Reilly show.  
 18 MR. HAYS: I would object to this line of  
 19 questioning. Number one, it was struck from this  
 20 -- this line of questioning was specifically  
 21 struck from the formal hearing, and therefore I  
 22 would still say this is improper testimony about  
 23 the actual records because if she's going to bring  
 24 up this defense then we may have to open up and  
 25 provide a whole bunch of rebuttal evidence that we

Page 60

1 did not provide because it was this testimony was  
 2 actually struck from the record.  
 3 MR. EYE: Well, I think, she was just  
 4 trying to answer your question, Doctor. So, I  
 5 mean, without having any kind of punitive or  
 6 result she was just trying to answer your  
 7 question.  
 8 MR. FERGUSON: Mr. Eye, do you agree that  
 9 was struck from the record and if so then I think  
 10 -- I think we should limit her response even  
 11 though it may be responsive to the -- to the  
 12 question, we want to make sure that we keep the  
 13 record and we keep the hearing clear today from  
 14 anything that shouldn't be brought into the  
 15 record.  
 16 MR. EYE: Well, my recollection is that  
 17 it was, but as the hearing officer said this is de  
 18 novo so I'm not really sure that that limits  
 19 questions that can be posed, and to the extent  
 20 that you're trying -- the Board is trying to  
 21 gather whatever information is necessary to come  
 22 to a decision, you know I think that that's  
 23 something that you should do and I'm sure that's  
 24 what prompts -- I presume that's what prompts your  
 25 question.



Page 61

1 DOCTOR NEUHAUS: And, I apologize. I did  
 2 a very bad job of answering that. The main  
 3 concern that we had in the first place or that I  
 4 had was that the information be accurate and  
 5 correct and complete without having personally  
 6 identifying data that could be used to identify  
 7 these patients, and I had a specific reason for  
 8 that that had to do with another case that was  
 9 also brought by Cheryl Sullenger to the Board and  
 10 was investigated regarding a case that was in the  
 11 Harper's Bazaar Magazine.  
 12 MR. HAYS: And I object, this was part of  
 13 the testimony that was struck.  
 14 DOCTOR NEUHAUS: This was a case that the  
 15 Board examined where I was subpoenaed for records  
 16 and had to provide records --  
 17 MR. HAYS: I would still continue to have  
 18 an objection prior to her answering the question.  
 19 THE REPORTER: One at a time.  
 20 MR. HAYS: I understand. I would have  
 21 you rule on that objection prior to her answering  
 22 the question.  
 23 MR. EYE: May I be heard on that?  
 24 DOCTOR NEUHAUS: It goes to my motivation.  
 25 MR. EYE: May I be heard on that? I

Page 62

1 think the guidance that I understood was that  
 2 objections would be made of record and determined  
 3 later. So, I mean, if that's the practice then  
 4 the objection has been made on the record and --  
 5 MR. HAYS: The problem with her going on  
 6 with offering this testimony it will inevitably  
 7 cause us to probably reopen this formal hearing  
 8 and present our rebuttal evidence about those  
 9 records that we can prove that all of those  
 10 records that she had were included in those that  
 11 you had to review this matter.  
 12 DOCTOR NEUHAUS: Those are a separate set  
 13 of -- of -- this was a subpoena that never went  
 14 beyond--  
 15 MR. FERGUSON: Counsel, I think it's  
 16 important that we just -- even though we have  
 17 provided great latitude as one of the Board  
 18 members said to assure substantive and procedural  
 19 due process, we don't want the -- the flexibility  
 20 that we've allowed the parties to overtake this  
 21 proceeding and create additional, you know,  
 22 concerns beyond what the scope of this is intended  
 23 to be. So I wasn't involved in the ruling on that  
 24 prior exclusion, but I would ask counsel to be  
 25 very careful not to bring in other issues and

Page 63

1 whether or not, you know, you should instruct your  
 2 -- your client to -- to limit the testimony to  
 3 things that were presented, that were relevant and  
 4 germane to the issue before this body today.  
 5 We've given quite a bit of latitude but I want to,  
 6 you know, caution you that we're not -- we don't  
 7 want to open the door for other issues so.  
 8 MR. EYE: May I have just a moment to  
 9 confer?  
 10 MR. FERGUSON: I think that would be  
 11 advisable. Mr. Eye, I just admonish counsel on  
 12 both sides to make sure we limit, and if you think  
 13 it's absolutely necessary that she respond make  
 14 sure that it's limited to those issues that are  
 15 germane and relevant to the proceeding today and  
 16 if not we should probably move on to another  
 17 question.  
 18 MR. EYE: We understand. I don't think  
 19 we have anything more to say --  
 20 MR. FERGUSON: Okay.  
 21 MR. EYE: -- in the attempted response  
 22 that we made.  
 23 PRESIDING OFFICER: Any further  
 24 questions?  
 25 DOCTOR HUTCHINS: The thing I got from

Page 64

1 her was the fact that she felt that she had  
 2 reason, that there was some reason in her mind  
 3 that she did not have to document her work.  
 4 MR. EYE: And that was what the district  
 5 court found as well, and he found that that --  
 6 that that was -- that her reason was I think he  
 7 characterized it as misguided or something along.  
 8 DOCTOR HUTCHINS: No matter what the  
 9 rules are, if she thinks that's inappropriate then  
 10 she doesn't have to go back to it.  
 11 MR. EYE: Well, I think that that's  
 12 inferring more than I think is proper here.  
 13 DOCTOR HUTCHINS: She doesn't acknowledge  
 14 it.  
 15 MR. EYE: Yeah, but now you're assuming  
 16 that it would be the case -- that that would be  
 17 the extent, attitude in all instances, and we  
 18 already have established in the last 11 or 12  
 19 years there has been no finding of misconduct.  
 20 DOCTOR HUTCHINS: Well, I know but is  
 21 that not the pertinent point that we're coming  
 22 about this three different times again something  
 23 wrong and she's always gone back to the fact that,  
 24 well, if I don't think it's right then I don't  
 25 necessarily have to do it.



Page 65

1 MR. EYE: No, I don't think that that was  
 2 the case all three times.  
 3 PRESIDING OFFICER: Doctor Durrett, did  
 4 you have a question?  
 5 DOCTOR DURRETT: Yes. I would like to  
 6 make a motion we move into closed session for  
 7 discussion of deliberation of this case.  
 8 PRESIDING OFFICER: I have a motion.  
 9 DOCTOR TEMPLETON: Second.  
 10 PRESIDING OFFICER: Seconded by Doctor  
 11 Templeton.  
 12 PRESIDING OFFICER: All in favor say aye.  
 13 THE BOARD: Aye.  
 14 PRESIDING OFFICER: We need to set a  
 15 time.  
 16 MR. FERGUSON: We're -- we're not moving  
 17 into executive session. What we're moving into  
 18 deliberation of a quasi judicial body and so we're  
 19 not going to set a time. I understand that we  
 20 also have -- we're now past the noon hour and we  
 21 had lunch scheduled so I think that the Board once  
 22 we clear the room the Board can decide how they  
 23 want to proceed and if we're going to either take  
 24 a break, eat lunch and then deliberate or  
 25 deliberate over lunch or we can continue to

Page 66

1 deliberate and we can -- we can probably announce  
 2 to the public kind of what we intend to do, but  
 3 there is no requirement to set a resuming time and  
 4 do the best we can to stay on schedule.  
 5 THE SPEAKER: Well, on behalf of the  
 6 Associated Press given the state wide and national  
 7 attention in this case as received, I would  
 8 encourage you that if you're not going into  
 9 executive session, even if you're entertaining  
 10 going into executive session that you have your  
 11 deliberations in public so that the public knows  
 12 your reasons for doing whatever you do.  
 13 PRESIDING OFFICER: At this time the  
 14 executive session we probably should --  
 15 MR. FERGUSON: Correction. We're not  
 16 going into executive session. The deliberation by  
 17 this body on the -- on the hearing.  
 18 PRESIDING OFFICER: And with that in mind  
 19 would you like to, I'm sorry, take back your --  
 20 your motion. I'm sorry.  
 21 MR. FERGUSON: No, the motion was  
 22 correctly stated.  
 23 PRESIDING OFFICER: So all in favor say  
 24 aye.  
 25 THE BOARD: Aye.

Page 67

1 PRESIDING OFFICER: So we are in recess.  
 2 (THEREUPON, a recess was taken.)  
 3 PRESIDING OFFICER: Okay, we're back in  
 4 session. After deliberation this case has been  
 5 taken under advisement and a final order will be  
 6 issued within 30 days.  
 7 DOCTOR DURRETT: I would like to make a  
 8 motion.  
 9 PRESIDING OFFICER: Yes, sir, Doctor  
 10 Durrett.  
 11 DOCTOR DURRETT: I motion that Mr. Hays  
 12 be directed to modify his statement of costs by  
 13 January the 5th, 2015, be provided to opposing  
 14 counsel who has 14 days to respond.  
 15 PRESIDING OFFICER: Do we have a second?  
 16 DOCTOR TEMPLETON: Second.  
 17 PRESIDING OFFICER: All in favor say aye.  
 18 THE BOARD: Aye.  
 19 PRESIDING OFFICER: Opposed  
 20 THE BOARD: No response.  
 21 DOCTOR DURRETT: I make a motion that  
 22 Doctor Webb be available to sign the final order.  
 23 PRESIDING OFFICER: Do we have a second?  
 24 DOCTOR TEMPLETON: Second.  
 25 PRESIDING OFFICER: Seconded Doctor

Page 68

1 Templeton. All in favor say aye.  
 2 THE BOARD: Aye.  
 3 PRESIDING OFFICER: Opposed?  
 4 THE BOARD: No response.  
 5 PRESIDING OFFICER: Then that closes the  
 6 proceedings. Thank you  
 7 MR. EYE: Thank you.  
 8 (THEREUPON, this portion of the board  
 9 meeting concluded at 1:01 p.m.)  
 10 .  
 11 .  
 12 .  
 13 .  
 14 .  
 15 .  
 16 .  
 17 .  
 18 .  
 19 .  
 20 .  
 21 .  
 22 .  
 23 .  
 24 .  
 25 .



1 CERTIFICATE  
2 STATE OF KANSAS  
3 SS:  
4 COUNTY OF SHAWNEE  
5 I, Cameron L. Gooden, a Certified Court  
6 Reporter, Commissioned as such by the  
7 Supreme Court of the State of Kansas, and  
8 authorized to take depositions and  
9 administer oaths within said State pursuant  
10 to K.S.A 60-228, certify that the foregoing  
11 was reported by stenographic means, which  
12 matter was held on the date, and the time  
13 and place set out on the title page hereof  
14 and that the foregoing constitutes a true  
15 and accurate transcript of the same.  
16 I further certify that I am not related  
17 to any of the parties, nor am I an employee  
18 of or related to any of the attorneys  
19 representing the parties, and I have no  
20 financial interest in the outcome of this  
21 matter.  
22 Given under my hand and seal this  
23 22nd day of December, 2014.  
24  
25 Cameron L. Gooden, C.C.R. No. 1335



800 E. 1<sup>st</sup> Street  
Wichita, KS 67202  
316-291-1612

5111 SW 21<sup>st</sup> Street  
Topeka, KS 66604  
785-373-3063  
www.appinobiggs.com

6420 W. 95<sup>th</sup> Street  
Overland Park, KS 66212  
913-383-1131