

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF PHARMACY

In the Matter of [Respondent], R. Ph.
License No. []

**ORDER ON RESPONDENT'S MOTION
FOR REMOVAL OF PANEL MEMBER
STUART T. WILLIAMS**

This matter came before Administrative Law Judge Jim Mortenson on [Respondent's] (Respondent) motion for removal of Minnesota Board of Pharmacy Complaint Review Panel member Stuart T. Williams, dated October 23, 2015. A motion hearing was held on November 12, 2015. Following the motion hearing the Administrative Law Judge issued a Recommended Order for Dismissal dated November 20, 2015. The Order was based on Respondent's Motion for Dismissal and/or Summary Disposition. The Board of Pharmacy declined to dismiss the matter and remanded the case to the Administrative Law Judge on December 30, 2015.

Hans Anderson and Lucas T. Clayton, Assistant Attorneys General, appeared on behalf of the Minnesota Board of Pharmacy Complaint Review Panel (Panel). Michael Weber, Weber & Nelson Law Office, PLLC, appeared on behalf of Respondent.

Based upon the record, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

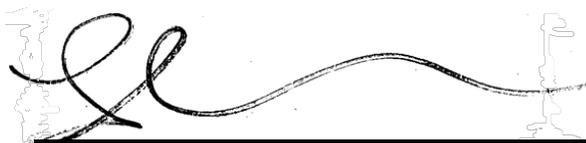
ORDER

IT IS HEREBY ORDERED that:

1. Respondent's Motion for Removal of Panel member Stuart T. Williams (Williams) is **DENIED**; and
2. The following issues will be considered at hearing, and subsequent findings of fact, conclusions of law, and a recommendation will be made to the Board:
 - a. Did Williams ever work with or meet Respondent prior to May 2, 2014?
 - b. If so, does Williams have a professional connection or conflict of interest that requires he not be permitted to participate in any Board activities related to this case?

- c. Does Williams have a current or former direct financial connection with Respondent?

Dated: March 2, 2016



JIM MORTENSON
Administrative Law Judge

MEMORANDUM

On October 23, 2015, Respondent filed a motion for removal of Panel member Williams.¹ In the motion, Respondent argues that Williams should be removed from considering this matter because he has “separate personal knowledge directly related to the Board’s allegations[.]”² The Panel, in its response to the motion, dated November 2, 2015, argues Williams lacks such personal knowledge, and asserts that he first met Respondent during proceedings in this matter, and only had a short phone call with her prior to that time.³

Minn. Stat. §§ 214.10, subd. 2, .103, subd. 7 (2014) provides the Administrative Law Judge authority in this matter. Those provisions also provide the Minnesota Board of Pharmacy authority to initiate contested case hearings, pursuant to Minn. Stat. ch. 14 (2014), for disciplinary hearings concerning licensed parties.

“All hearings. . . required to be conducted” under Chapter 14 “shall be conducted by an administrative law judge. . . .”⁴ “[T]he report or order of the administrative law judge constitutes the final decision in the case unless the agency modifies or rejects it. . . within 90 days after the record of the proceeding closes. . . .”⁵ If the Board fails to act within those 90 days it “must return the record of the proceeding to the administrative law judge for consideration of disciplinary action.”⁶ Thus, the Board has final authority over any possible discipline of Respondent, unless it abdicates that responsibility to the Administrative Law Judge following the contested case hearing and report of the Administrative Law Judge.

¹ Respondent’s Memorandum in Support of Motion for Removal of Panel Member Stuart T. Williams (October 23, 2015).

² *Id.* at 1.

³ Memorandum of Law in Opposition to Respondent’s Motion for Removal of Panel Member Stuart T. Williams (November 3, 2015).

⁴ Minn. Stat. § 14.50.

⁵ Minn. Stat. § 14.62, subd. 2a.

⁶ *Id.*

The Office of Administrative Hearings has rules governing contested case hearings.⁷ The duties of the Administrative Law Judge are enumerated at Minn. R. 1400.5500, and include the authority to, among other things, “hear and rule on motions[.]” These duties must be carried out “[c]onsistent with law[.]”⁸ Because the Board has authority to make a determination about whether to accept the Administrative Law Judge’s report, including recommendations for summary disposition, it is beyond the scope of the Administrative Law Judge’s authority to conclusively determine whether a board member must be removed from participating in a disciplinary matter.⁹ The Administrative Law Judge’s authority is limited to making a recommendation.

“A board member who has actual bias or a current or former direct financial or professional connection with a regulated person may not vote in board actions relating to the regulated person.”¹⁰

Respondent makes detailed statements about her relationship with Williams. Respondent alleges she met with Williams at least four times, while she was employed with a clinic that Williams, an attorney, represented.¹¹ Respondent worked for the clinic from 1999 until 2007.¹² Respondent claims she met with Williams about setting drug prices.¹³ Respondent states she met with Williams about creating a new business entity for her employer clinic’s organization.¹⁴ Respondent claims she met with Williams and Roseville police about a stalking incident that occurred in relation to her employment with the clinic.¹⁵ According to Respondent, she met with Williams in 2005 and discussed her substance diagnosis and treatment.¹⁶ Respondent states that Williams advised her where to get treatment and that following treatment she could return to work at the clinic.¹⁷

Williams denies all of Respondent’s claims about meeting with her prior to May 2, 2014.¹⁸ The May 2, 2014 meeting was about the present disciplinary matter and Williams was the Board Chair.¹⁹ Williams agreed with Respondent that he and his law firm represented Respondent’s former employer and the employer’s president.²⁰ He denies that he was ever lead counsel in any litigation involving those two clients or the clinic’s

⁷ Minn. R. §§ 1400.5010-.8401 (2015).

⁸ Minn. R. 1400.5500.

⁹ See: Minn. Stat. §§ 14.61, .62, 210.103, subd. 7; Minn. R. 1400.5500.

¹⁰ Minn. Stat. § 214.103, subd. 10 (2014). See also Minn. Stat. § 214.10, subd. 8(b) (2014) “A board member who has a direct current or former financial connection or professional relationship to a person who is the subject of board disciplinary activities must not participate in board activities relating to that case.” There is a dispute about whether Minn. Stat. § 43A.38 (2014) also applies (pertaining to conflicts of interest and state employees). That dispute need not be resolved here, however, because of the factual dispute at hand.

¹¹ Affidavit (Aff.) of [Respondent] at ¶¶ 28-32 (October 22, 2015).

¹² *Id.* at ¶ 27.

¹³ *Id.* at ¶ 29.

¹⁴ *Id.* at ¶ 30.

¹⁵ *Id.* at ¶ 30.

¹⁶ *Id.* at ¶ 32.

¹⁷ *Id.*

¹⁸ Aff. of Williams (October 29, 2015).

¹⁹ *Id.* at ¶ 10.

²⁰ *Id.* at ¶ 7.

primary attorney on any matter.²¹ Williams asserts that his only interaction with Respondent as an attorney for her employer was a telephone conversation with her on July 27, 2004, regarding whether the clinic's pharmacy was within a particular insurance network and the effect this had on patient drug prices.²² Williams asserts he has no bias toward Respondent.²³

Respondent claims that her former employer, the aforementioned clinic, filed for bankruptcy protection and that Williams' law firm filed a claim for unpaid legal fees.²⁴ Williams does not address this allegation in his affidavit, but he does state, generally, that he has no "current or former direct financial or professional connection with" Respondent.²⁵

Given the disputed facts, it is premature to draw conclusions about whether or not Williams' participation on the Board in relation to Respondent's discipline proceeding is a conflict of interest. While there is a lack of evidence of actual bias, there is conflicting evidence about whether Williams has a former direct financial or professional connection with Respondent. Thus, the Administrative Law Judge will complete the evidentiary record on this question, and permit the parties to present additional evidence and cross examine witnesses (particularly Respondent and Williams, who have already provided testimony in the form of affidavits) on this issue. Findings of fact will then be made, as well as conclusions of law and a recommendation to the Board on whether Williams should be removed from voting or participating in the disciplinary action regarding Respondent's license.

J. R. M.

²¹ Aff. of Williams at ¶¶ 7 and 11.

²² *Id.* at ¶ 12.

²³ *Id.* at ¶ 19.

²⁴ Aff. of [Respondent] at ¶ 34.

²⁵ Aff. of Williams at ¶ 19.