

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

BOARD MINUTES – February 10, 2023

FORMAT OF MINUTES – Prior to each motion there appears the names of two Board Members in parenthesis. The first made the motion, the latter seconded the motion. Ayes, nays, abstentions, and recusals are recorded when requested.

FRIDAY, 2/10/2023

I. CALL TO ORDER - ROLL CALL

The Kansas State Board of Healing Arts met in person at the Board Office, 800 Jackson, Lower Level-Suite A, Topeka, Kansas and via virtual meeting on Friday, February 10, 2023. The meeting was called to order at 9:00 a.m. by Ronald Varner, D.O., President.

Abebe Abebe, M.D.	present
Mark Balderston, D.C.	present
Molly Black, M.D.	present
Richard Bradbury, D.P.M.	present
Jerry DeGrado, D.C.	present (arrives 9:02 a.m.)
Robin Durrett, D.O.	present
Thomas Estep, M.D.	present
Steven Gould, D.C.	present
Camille Heeb, M.D.	present
David Jordan, public member	present (arrives 9:08 a.m.)
Jennifer Koontz, M.D.	present (arrives 9:02 a.m.)
Stephanie Suber, D.O.	absent
Ronald Varner, D.O.	present
Sherri Wattenbarger, public member	present
Kathy Wolfe Moore, public member	present

Staff members present were Susan Gile, Executive Director and Operations Manager; Courtney Cyzman, General Counsel; Warran Wiebe, Deputy General Counsel; Ruslan Ivanov, Assistant General Counsel; Cody Bebout, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Tammi Mundil, Deputy Disciplinary Counsel; Britani Potter, Assistant Disciplinary Counsel; Steve Hendler, Disciplinary Legal Intern; Joe Crumpton, Special Investigator – Supervisor; Richard Young, Medical Investigator; Brett Hoss, Special Investigator; Todd Hiatt, Litigation Counsel; Matthew Gaus, Deputy Litigation Counsel; James McSweyn, Associate Litigation Counsel; Lisa Montgomery, Associate Litigation Counsel; Brad Taylor, Associate Litigation Counsel; Callie Dunlap, Legal Assistant – Litigation; John McMaster, M.D., Medical Director; Rebekah Moon, Licensing Administrator; Chandni Bhakta, Deputy Licensing

Administrator; Kathy Moen, Medical Litigation Support Specialist; Kady Curtis, Support Staff Supervisor; Ivan Perez, Compliance Coordinator; Kelly Clubb, Technology Support Consultant; Jeff Cundiff, Applications Developer; Jennifer Cook, Paralegal to General Counsel; LeeAnn Hunter-Roach, Legal Assistant to General Counsel.

Others:

APPROVAL OF AGENDA

(Estep/Durrett) Motion to approve agenda with additions of presentation by music therapists and consider appointment of Dr. Gaston to DO Review Committee.

Carried.

APPROVAL OF 12/8 and 12/9/2022 BOARD MEETING MINUTES

(Estep/Durrett) Motion to approve minutes of 12/8 and 12/9/2022 Board meetings with no changes. Carried.

II. OTHER BUSINESS

New Staff Introductions

Susan Gile, Executive Director:

[Dr. DeGrado and Dr. Koontz have joined]

The Disciplinary Department has added Angela Mordecai as Complaint Coordinator and Brett Hoss as a Special Investigator. Litigation has a new Associate Litigation Counsel – Sebastian Orosco and two new legal assistants – Lisa Stewart Seymour and Callie Dunlap. Jeff Cundiff joins the IT Department as Application Developer. We will have a new Operations Manager starting March 20th. Sheila Rice (HR Manager) and Ruslan Ivanov (Assistant General Counsel) will be leaving the agency.

III. STAFF REPORTS

Executive Director:

Report and Updates on Agency by Susan Gile, Executive Director

The agency continues to work on recruitment and retention. The HR Manager and other staff recently participated in a virtual job fair.

The agency was made aware of available SPARK funding. These are federal funds related to COVID-19. The agency submitted two requests. One request was for IT related items. This request was denied. The second request was for upgrades to our facilities and this request was approved.

We hosted an open House at the Capitol. It was well attended, and we will likely continue.

Executive Director attended the FSMB/AIM joint meeting in Dallas, Texas. It was very informative.

The agency budget continues to move through the process. Questions regarding open positions and budget.

(Estep/Durrett) Motion for executive session under K.S.A. 75-4319(b)(1) to discuss personnel matters of non-elected personnel for 10 minutes. Return to the open meeting at 9:28 a.m.

(Estep/Wattenbarger) Motion to return to the open meeting of the Board. Carried.

Presentation regarding Music Therapy

Dr. Abebe has received from KU Bruce Bohanan Teaching Professorship Award.

Active Shooter Mitigation Training by Kansas Highway Patrol given to Board staff. Some changes will be implemented as a result.

Legislative Update

We are watching and monitoring several bills this session. Some of the bills include HB 2239 provides an exemption for continuing education if the individual has a certain amount of work experience during the year. The KSBHA legislative workgroup authorized us to oppose this bill should it receive a hearing. SB 112 is the CRNA independent practice bill, which outlined public safety considerations to evaluate when looking at scope of practice. We provided neutral written only testimony. HB 2257 is the music therapist bill, which would provide licensure and regulation for music therapists under the Board of Healing Arts. We continue to work with the legislative workgroup through the session for all bills we are tracking. Questions.

Board member introductions and areas of expertise.

Board members provided introductions and talked about areas of expertise.

Board members roles and participation.

Discussion of Board member roles.

IT discussion on Board packets and storage.

One of our drives is getting full so we need to clean out Board packets. In the future, we will maintain one copy of old Board packets instead of multiples.

Discussion on Missouri PDMP

(Estep/Durrett) Motion the Board go into executive session pursuant to K.S.A. 75-4319(b)(2) for the purpose of attorney-client consultation to discuss matters that are confidential and privileged related to legal analysis of the Missouri law regarding the PDMP and consideration of options for 5 minutes. Return to the open meeting at 10:23 a.m. Carried.

(Estep/DeGrado) Motion to return to open meeting of the Board.

Executive session pursuant to K.S.A. 75-4319(b)(1) to discuss personnel matters of non-elected personnel

(Durrett/Estep) Motion for executive session under K.S.A. 75-4319(b)(1) to discuss personnel matters of non-elected personnel for 15 minutes. Only the Executive Director to remain in the room. Return to the open meeting at 10:35 a.m.

(Estep/Varner) Motion to return to open meeting of the Board.

(Estep, Durrett) Motion to authorize Executive Director offer discussed in executive session related to unelected personnel. Carried.

Recess – 5 minutes [10:45-10:50 a.m.]

IV. ADMINISTRATIVE PROCEEDINGS

(Durrett/Black) Motion to recess the open Board Meeting to conduct administrative proceedings under the Kansas Administrative Procedures Act. Carried.

Mark Allen, M.D., Docket #17-HA00064 – Conference Hearing on Motion to Terminate Consent Order.

Mr. Matthew Gaus appeared for the Board. Dr. Allen appeared in person and with counsel, Kelli Stevens.

Recusals: n/a

(Estep/Durrett) Motion to go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under K.S.A. 65-4925. Carried.

(Durrett/Estep) Motion to return to open hearing. Carried.

(Durrett/Estep) Motion to terminate Consent Order granted effective today. Carried.

Shala Holman, P.A., Docket #23-HA00017– Conference Hearing on Application for Change of License Designation.

Mr. Bradley Taylor appeared for the Board. Ms. Holman appeared in person and with counsel Tarak Devkota.

Recusals: Dr. Balderston, Dr. Bradbury, Dr. Heeb, Ms. Wattenbarger, and Dr. Suber

(Estep/Durrett) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Estep/Durrett) Motion to return to open hearing. Carried.

(Durrett/Estep) Application for change of license designation from Inactive to Active granted. Carried.

Amarnath Kadimella, M.D., Docket #23-HA00010– Conference Hearing on Application for Licensure.

Dr. Kadimella appeared in person via teleconference (audio and video), *pro se*.

Recusals: n/a

(Durrett/Estep) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Estep/Wattenbarger) Motion to return to open hearing. Carried.

This matter will be continued to the next regularly scheduled Board meeting, to allow Applicant time to submit a proposed practice plan that includes a supervising physician and at least quarterly reports – will be outlined in Journal Entry. Applicant is permitted to appear virtually at the April 14, 2023, Board meeting.

Bob Svagr, M.D. Docket #23-HA00016– Conference Hearing on Application for Licensure.

Dr. Svagr appeared in person, *pro se*.

Recusals: n/a

(Durrett/Estep) Motion to approve application for licensure. Carried.

V. CONSENT ORDERS

Dary Zerbe, M.D. Docket No. 23-HA00021. Review of Proposed Consent Order.

Mr. Bradley Taylor appeared for the Board. Dr. Zerbe appeared in person, *pro se*.

Recusals: n/a

(Estep/Durrett) Motion to go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under K.S.A. 65-2839a and K.S.A. 65-4925. Carried.

(Durrett/Wattenbarger) Motion to approve Consent Order. Carried.

Recess: 5 minutes

Dwayne Watkins, M.D. Docket No. 23-HA00022. Review of Proposed Consent Order.

Mr. James McSweyn appeared for the Board. Dr. Watkins appeared in person, *pro se*.

Recusals: n/a

(Estep/Durrett) Motion to go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under K.S.A. 65-2839a. Carried.

(Durrett/Estep) Motion to approve Consent Order. Carried.

Courtney Kathrens, P.T.A. Docket No. 23-HA00023. Review of Proposed Consent Order.

Mr. James McSweyn appeared for the Board. Ms. Kathrens appeared in person, *pro se*.

Recusals: n/a.

(Estep/Durrett) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under K.S.A. 65-4925. Carried.

(Abebe/Varner) Motion to return to open hearing. Carried.

(Durrett/Heeb) Motion to approve Consent Order with removal of original paragraph 12 (a) on page 4. Carried.

(Balderston, Durrett) Motion to return to the open meeting of the Board. Carried.

Reconvene Board Meeting

Staff Reports Continued/New Business Items continued from 9:00 a.m. block

General Counsel:

General Counsel Report by Courtney Cyzman

Appellate Case Updates

Trust Women v. Bennett et al. – On Dec. 23, 2022, the AG’s office filed a Notice of Appeal on the Order on Remand issued by Judge Watson in the Shawnee County District Court which issued a temporary injunction on enforcement of K.S.A. 65-4a10. The AG’s office later withdrew their Notice of Appeal.

Bejar v. Kansas State Board of Healing Arts – We are waiting on a written opinion from the Kansas Court of Appeals.

Currently there are nine active Presiding Officer. Seven have Board members assigned as the PO and 2 are with OAH.

Office Based Surgery Workgroup - this workgroup continues to meet monthly.

Regulation in promulgation process, highlights:

- K.A.R. 100-54-13 (OT professional liability insurance) – temporary is effective. JCARR hearing today on K.A.R. 100-54-13.
- All CNMI regulations that Board approved for final adoption in December have become effective as well as amended regulations regarding athletic trainers and radiologic technologist.

Emergency temporary license: The law that provided for emergency temporary licenses under the Kansas Emergency Management Act expired January 20, 2023.

(Estep/Varner) Motion the Board go into executive session pursuant to K.S.A. 75-4319(b)(2) for the purpose of attorney-client consultation to discuss pending appellate cases for five minutes. Return to the open meeting at 1:15 p.m.

(Abebe/Estep) Motion to return to open meeting.

Discussion on licensure by endorsement and options.

(Estep/Durrett) Motion the Board go into executive session pursuant to K.S.A. 75-4319(b)(2) for the purpose of attorney-client consultation to discuss matters that are confidential and privileged related to legal analysis of the law related to

licensure by endorsement and consideration of options for 10 minutes. Return to the open meeting at 1:28 p.m.

(Estep/Durrett) Motion to return to open meeting of the Board.

Board members appointed to licensure by endorsement workgroup: Dr. Heeb, Dr. Black, Mr. Jordan, and Dr. Koontz.

Policy Update.

Information provided by Cody Bebout regarding CALE (California Acupuncture Licensing Examination) exam and overview of proposed policy.

(Balderston, Black) Motion to approve KSBHA Board Policy #23-03 – Recognition of the CALE for Acupuncture Licensure. Carried.

Update on Collaborative Drug Therapy Management Advisory Committee. SB 200 was effective July 1, 2022. Legislation provided for the Collaborative Drug Therapy Management Advisory Committee to develop a statewide protocol adopted for pharmacists to initiate therapy for influenza, strep, and UTI. The CDTMAC began meeting in fall 2022, meets regularly, and the first approved protocol is “Protocol for Testing and Initiation of Therapy for Suspected Influenza in Adult Patients.” Implementation of this protocol is anticipated in about 6 months.

Appointments for Prescription Drug Monitoring Program Advisory Committee.

Kansas State Board of Pharmacy sent a letter regarding consideration of appointment and/or reappointment to committee. Dr. Estep and Dr. Templeton’s terms have expired. Dr. Estep and Dr. Templeton agree to continue to serve.

(Durrett/Black) Motion to reappoint Dr. Estep and Dr. Templeton to Prescription Drug Monitoring Program Advisory Committee. Carried.

Executive session pursuant to K.S.A. 75-4319(b)(1) to discuss personnel matters of non-elected personnel.

(Durrett/Abebe) Motion for executive session under K.S.A. 75-4319(b)(1) for the need to discuss personnel matters of nonelected personnel for 10 minutes. Only the General Counsel to remain in the room. Return to the open meeting at 1:46 p.m. Carried.

(Estep/Black) Motion to return to open Board meeting. Carried.

(Durrett/Black) Motion to authorize General Counsel offer discussed in executive session related to unelected personnel. Carried.

Licensing Administrator: Rebekah Moon

Approval of Licensee/Registrant List

(Bradbury/Abebe) Approve licensee/registrant list. Carried.

Licensing Report

The statistical report for the Licensing Department was included in the Board's packet of materials for their review. There were no questions or discussion.

Disciplinary Counsel: Nancy Dodik

Disciplinary Report

The statistical report for the Disciplinary Department was included in the Board's packet of materials for their review. There have been 62 cases closed, 41 cases transferred to Litigation, and they currently have 217 open investigations. No questions.

Consider appointment of Dr. Karen Evans, D.O. to DO Review Committee.

Consider appointment of Dr. Jerry Gaston, D.O. to DO Review Committee.

(Durrett/Estep) Motion to appoint Dr. Evans and Dr. Gaston to DO Review Committee. Carried.

Litigation Counsel: Todd Hiatt

Litigation Report

The statistical report for the Litigation Department was included in the Board's packet of materials for their review. They have closed about 200 cases. New additional staff have been added to the department. There were no questions or discussion.

VI. ADJOURNMENT

(Estep/Abebe) Motion to adjourn meeting. Carried.

The meeting adjourned at 1:51 p.m.



Ronald Varner, D.O.
President



Susan Gile
Executive Director