

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

BOARD MINUTES – August 12, 2022

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, August 12, 2022

I. CALL TO ORDER - ROLL CALL

The Kansas State Board of Healing Arts met at the Board Office, 800 Jackson, Lower Level-Suite A, Topeka, Kansas and via virtual meeting on Friday August 12, 2022. The meeting was called to order at 9:00 a.m. by Thomas Estep, M.D., President.

Abebe Abebe, M.D.	present	
Mark Balderston, D.C.	present	
Molly Black, M.D.		absent
Richard Bradbury, D.P.M.	present	
Jerry DeGrado, D.C.	present	
Robin Durrett, D.O.	present	
Thomas Estep, M.D.	present	
Steven Gould, D.C.	present	
Camille Heeb, M.D.	present	
Jennifer Koontz, M.D.		absent
Stephanie Suber, D.O.	present	
Ronald Varner, D.O.	present	
Sherri Wattenbarger, public member	present	
Kathy Wolfe-Moore, public member		absent

Staff members present were Susan Gile, Acting Executive Director and Operations Manager; Courtney Cyzman, General Counsel; Warran Wiebe, Deputy General Counsel; Ruslan Ivanov, Assistant General Counsel; Tammie Mundil, Deputy Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Matthew Gaus, Deputy Litigation Counsel; Lydia Hornbaker, Associate Litigation Counsel; James McSweyn, Associate Litigation Counsel; Kady Curtis, Supervisor/ Litigation Support Staff; Ivan Perez, Compliance Coordinator; Barb Madison, Special Investigator; John McMaster, M.D., Medical Director; Rebekah Moon, Licensing Administrator; Chandni Bhakta, Deputy Licensing Administrator; Cameron Charity, Licensing Analyst; Emily Clubb, Licensing Analyst; Kathy Moen, Medical Litigation Support Specialist; Jackson Hermann, Litigation Legal

Assistant; Kelly Clubb, Technology Support Consultant; Jennifer Cook, Paralegal to General Counsel; and LeeAnn Hunter-Roach, Legal Assistant to General Counsel; and Ali Diaz, Administrative Specialist, Administration.

Others: Dr. Kimberly Templeton; Kemper Tell; Mitch DePriest.

II. OTHER BUSINESS

Plaque presented to outgoing KSBHA President, Dr. Estep.

APPROVAL OF AGENDA

(Varner/DeGrado) Motion to approve agenda with the following changes:
Add item: Consideration of adoption of temporary regulations K.A.R. 100-73-7 and K.A.R. 100-69-10. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Varner/DeGrado) Motion to approve minutes of June 10, 2022, Board meeting. Carried.

New Staff Introductions

Cameron Charity and Emily Clubb have joined the Licensing Department as Licensing Analysts. Cody Bebout has joined as an Assistant General Counsel. Ruslan Ivanov has moved from the Litigation Department to an Assistant General Counsel position. Tammie Mundil has transferred from Litigation to the Deputy Disciplinary Counsel position. Matthew Gaus has become Deputy Litigation Counsel. Two attorney positions are open in Litigation.

Executive Director:

Report and Updates on Agency

Elect Board President and Vice President

Board members received the information about the election process from Acting Executive Director, Susan Gile. Dr. Ronald Varner, D.O. is nominated for KSBHA President by Dr. Estep. Seconded by Dr. Durrett. Carried. By acclimation, Dr. Varner is the President of the Board.

Dr. Estep nominates Dr. Jerry DeGrado, D.C. for Vice President. Seconded by Dr. Durrett. Carried. By acclimation, Dr. DeGrado is the Vice President of the Board.

Dr. Varner, KSBHA President, begins presiding over the meeting.

Final approval of impaired provider contracts

(Durrett, Estep) Motion to approve impaired provider contracts. Carried.

Final approval of Medical Director contract

(Durrett, Estep) Motion to approve Medical Director contract. Carried.

Discuss and consider final approval of CE Broker contract.

(Durrett, Estep) Motion to proceed moving forward with CE Broker and authorization to enter into the contract upon CE Broker's acceptance of amendments from the General Counsel; and that any substantive alteration or requests to the contract must come back to the Board for consideration and approval. Carried.

PBI Presentation

Mark Schenthal and Kasey Cleary give a presentation and handout regarding PBI as an option for the agency to use for professionals who need remediation. PBI provides remedial education to healthcare professionals via virtual live classrooms. Questions from the Board.

Appoint legislative workgroup.

Kathy Wolfe-Moore, Dr. Durrett, Dr. Estep, Dr. Varner, and Dr. Balderston were appointed to the legislative workgroup.

General Counsel:

General Counsel Report

Appellate Case Update:

Michael Estivo, DO v. KSBHA - On June 17, 2022, the Kansas Court of Appeals issued an unpublished opinion reversing the District Court's Order and affirming the Board's Final Order in its entirety. In the Final Order that was affirmed, Dr. Estivo was required to attend a CPEP record keeping seminar and was assessed costs of \$32,129.50. Dr. Estivo did not petition the Kansas Supreme Court for review. This matter has concluded in the Board's favor.

Trust Women v. Bennett et al – The Attorney General's office has filed their Petition for Review to the Kansas Supreme Court. We did not file a Petition for Review. Trust Women has filed their Response in Opposition. We are waiting for an order either granting or denying review from the Kansas Supreme Court.

Bejar v. Kansas State Board of Healing Arts – Appellate briefing has concluded in this matter. On August 3, 2022, the Kansas Court of Appeals assigned this case

to the summary calendar, meaning there will be no oral argument prior to a decision. Either party has 14 days to file a motion requesting an oral argument.

KSBHA v. Shawn Parcels- We are waiting a written opinion from the Kansas Court of Appeals.

Regulation Update:

Four CNMI regulations became effective on July 8, 2022. Amended PT regulations had a JCARR hearing and public hearing and are before the Board for final adoption today. The regulation on reentry active license has received all necessary stamps and is ready to proceed. Dr. Templeton provided general comments regarding the proposed reentry active regulation.

Education and Outreach. Year to date, 28 presentations have been given, 12 more are scheduled.

(DeGrado/Estep) Motion to go into executive session pursuant to K.S.A. 75-4319(b)(2) for the purpose of attorney-client consultation with the General Counsel to discuss an offer on an appellate case for a period of 5 minutes. Carried.

(Estep/DeGrado) Motion to reconvene the open meeting. Carried.

Consider final adoption of permanent K.A.R. 100-29-7, K.A.R. 100-29-9, and K.A.R 100-29-15.

K.A.R. 100-29-7. (Estep/Abebe) Motion to adopt K.A.R. 100-29-7. Carried. Roll call vote. Unanimously adopted.

K.A.R. 100-29-9. (Estep, DeGrado) Motion to adopt K.A.R. 100-29-9. Carried. Roll call vote. Unanimously adopted.

K.A.R. 100- 29-15. (DeGrado, Estep) Motion to adopt K.A.R. 100-29-15. Carried. Roll call vote. Unanimously adopted.

Consider adoption of temporary proposed amended K.A.R. 100-73-7 and K.A.R. 100-69-10:

K.A.R. 100-73-7. (Estep, DeGrado) Motion to adopt temporary amended K.A.R. 100-73-7. Carried. Roll call vote. Unanimously adopted.

K.A.R. 100-69-10. (Estep/DeGrado) Motion to adopt temporary amended K.A.R. 100-69-10. Carried. Roll call vote. Unanimously adopted.

Consider initial approval of proposed amendment to K.A.R. 100-11-1.

Three versions of proposed amendments to K.A.R. 100-11-1 presented by Acting Executive Director, Susan Gile for review and consideration.

(Estep/DeGrado) Motion to go into executive session pursuant to K.S.A. 75-4319(b)(2) for the purpose of attorney-client consultation with the General Counsel to discuss matters that are confidential and privileged related to proposed amendments to K.A.R. 100-11-1 for a period of 10 minutes.

(Estep/Gould) Motion to reconvene the open meeting. Carried.

(Estep/Gould) Motion to go into executive session pursuant to K.S.A. 75-4319(b)(2) for the purpose of attorney-client consultation with the General Counsel to discuss matters that are confidential and privileged related to proposed amendments to K.A.R. 100-11-1 for a period of 10 minutes.

(Estep/Abebe) Motion to reconvene the open meeting. Carried.

(Estep, Bradbury) Motion to amend K.A.R. 100-11-1 as proposed by raising renewal fees for the Healing Arts by \$30. Carried. Dr. Gould and Dr. Durrett vote in opposition.

Appoint CNMI Council Member – KSBHA Board President or Board member designated by the President

(Balderston, Estep) Motion to appoint Dr. DeGrado to the CNMI Council as the Board member designated by the President. Carried.

Consider appointments for the Collaborative Drug Therapy Management Advisory Committee

The KSBHA is required to appoint three physicians, and at least two of whom have experience in collaborative drug therapy management. K.S.A. 65-1677. The KSBHA must also give consideration to any names submitted by the Kansas Medical Society. *Id.*

KMS has recommended: Dr. Erin Fast, Dr. Michael Machen and Dr. Lynn Fisher.

(Estep/DeGrado) Motion to appoint Dr. Fast, Dr. Machen, and Dr. Fisher to the Collaborative Drug Therapy Management Advisory Committee. Carried.

10 minutes recess.

General Counsel report (continued):

Follow-up on S Sub for HB 2279

At the June 10, 2022, KSBHA Board meeting, the Board approved requesting an Attorney General's ("AG") opinion on the scope of S Sub for HB 2279. The request for the AG's opinion was sent the same day. To date we have not received a response. Our last update from the AG's office was that it was under review, and they would notify us when a decision is made. General Counsel provided a timeline of events since last KSBHA Board meeting on the KSBN proposed amended regulations implementing S Sub for HB 2279.

(Estep/Durrett) Motion to 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 and interpretation of S Sub for HB 2279 for 15 minutes. Carried.

(Estep/DeGrado) Motion to reconvene the open meeting. Carried.

The Board's position and analysis on S Sub for HB 2279 has not changed. Point of action moving forward is twofold: (1) Submit written testimony to the KSBN during the public comment period on proposed permanent regulations K.A.R. 60-11-101, 104, 105, and 107; and (2) Proceed with our standard complaint and investigatory process and prosecute the unlicensed practice of medicine, as authorized under the Kansas Healing Arts Act.

FCLB/NBCE Update

General Counsel provided the Board information on *Vanterpool v. FCLB, Winkler, and Boghosian*, Case No. 1:22-CV-01208 filed in the United States District Court for the District of Colorado.

III. STAFF REPORTS

Licensing Administrator:

Approval of Licensee/Registrant List

(DeGrado/Estep) Motion to approve licensee/registrant list. Carried.

Licensing Report by Rebekah Moon

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:

Disciplinary Report by Tammie Mundil, Deputy Disciplinary Counsel

The statistical report for the Disciplinary Department was included in the Board's packet of materials for their review. There have been 98 investigations closed and there are 548 open investigations. There were no questions or discussion.

Litigation Counsel:

Litigation Report by Todd Hiatt

The statistical report for the Litigation Department was included in the Board's packet of materials for their review. They have two open attorney positions. Matthew Gaus is the new Deputy Litigation Counsel. Todd believes they would be fully staffed with 5 attorneys but sees benefit in adding support staff. Also, Litigation would like to continue to develop their list of experts.

IV. ADMINISTRATIVE PROCEEDINGS

(Estep/DeGrado) Recess board meeting to conduct administrative proceedings under the Kansas Administrative Procedures Act. Carried.

V. CONSENT ORDERS

Charles Gibbs, M.D., Docket No. 21-HA00031

Review of Proposed Consent Order.

Mr. Todd Hiatt appeared for the Board. Dr. Gibbs appeared in person and with counsel Kelli Stevens and Matt Chiasson.

Gen Counsel: Warran Wiebe
Recusals: Ruslan Ivanov

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

(Estep/DeGrado) Motion to go into executive session for attorney-client consultation. Carried.

(DeGrado/Estep) Return to open hearing. Carried.

(DeGrado/Estep) Motion to accept Consent Order. Carried.

Conference Hearing on Motion to Stay:

(DeGrado/Estep) 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.

(Estep/Durrett) Motion to go into executive session for attorney client consultation. Carried.

(DeGrado/Estep) Return to open hearing. Carried.

Board denied the Motion to Stay.

Joseph Anderson, D.C., Docket No. 22-HA00028

Review of Proposed Consent Order.

Ms. Lyddie Hornbaker appeared for the Board. Dr. Anderson appeared in person and with counsel Diane Bellquist.

Gen Counsel: Warran Wiebe

Recusals:

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

Carried.

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

Jessica Craine, P.T, Docket # 23-HA00003

Review of Proposed Consent Order.

Mr. Matthew Gaus appeared for the Board. Ms. Craine appeared in person, *pro se*.

Gen Counsel: Warran Wiebe

(Estep/Abebe) 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. 4925 and K.S.A. 65-2839a(d). Carried.

(Gould/Abebe) Motion to go into executive session for attorney client consultation. Carried.

(Estep/DeGrado) Motion to accept Consent Order with modification (removing reference in paragraph 17 of Consent Order to violation of K.S.A. 65-2912(a)(1) PT Practice Act. Motion tabled.

(Gould/Balderston) Motion to go into executive session for attorney/client consultation. Carried.

(Balderston/Gould) Return to open hearing. Carried.

(Estep/DeGrado) Motion to accept Consent Order with modification (removing reference in paragraph 17 of Consent Order to violation of K.S.A. 65-2912(a)(1) PT Practice Act. Carried.

Reconvene the open Board Meeting

Call Board meeting back to order. (DeGrado/Estep). Carried.

VI. ADJOURNMENT

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

The meeting adjourned at 1:00 p.m.



Ronald Varner, D.O.
President



Susan Gile
Acting Executive Director