

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

**BOARD MINUTES – June 10, 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, June 10, 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 June 10, 2022. The meeting was called to order at 9:06 a.m. by Thomas Estep, M.D., 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
Robin Durrett, D.O.	present
Thomas Estep, M.D.	present
Steven Gould, D.C.	present
Camille Heeb, M.D.	present
Steve Kelly, PhD, public member	present
Jennifer Koontz, M.D.	present
John Settich, PhD public member	present
Stephanie Suber, D.O.	present
Ronald Varner, D.O.	present
Sherri Wattenbarger, public member	present

Staff members present were Susan Gile, Acting Executive Director and Operations Manager; Courtney Cyzman, General Counsel; Warran Wiebe, Deputy General Counsel and Steven Lehwald, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Katie Baylie, Deputy Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammie Mundil, Deputy Litigation Counsel; Matthew Gaus, Associate Litigation Counsel; Lydia Hornbaker, Associate Litigation Counsel; James McSweyn, Associate Litigation Counsel; Ruslan Ivanov, Associate Litigation Counsel; John McMaster, M.D., Medical Director; Rebekah Moon, Licensing Administrator; Chandni Bhakta, Deputy Licensing Administrator; Kathy Moen, Medical Litigation Support Specialist; Dametrea

Lockhart, Litigation Legal Assistant; Jackson Hermann, Litigation Legal Assistant; Brittani Potter, Litigation Intern; Michael Sparrow, Disciplinary Administrative Specialist; 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.

## **APPROVAL OF AGENDA**

Motion to approve agenda with deletion – conference hearing currently set for 11:00 a.m. (*In the Matter of Elise DeCarlo, M.D.*, KSBHA Docket No. 22-HA00036) will be continued to the October board meeting. (Kelly, Abebe). Carried.

## **APPROVAL OF 4/8/2022 BOARD MEETING MINUTES**

Motion to approve board meeting minutes from April 8, 2022, with no changes. (Varner, Abebe). Carried.

## **II. OTHER BUSINESS**

### **New Staff Introductions**

By Susan Gile, Acting Executive Director

Josee Neiberger, who is a CNA, is joining the Licensing Department as a licensing analyst. Vicki Morgan has joined the Administration Department in accounting. Michael Sparrow is new in Disciplinary as an administrative specialist. Teresa Sparrow Smith has moved from her position as an extern in the General Counsel Department to an intern in the Litigation Department. There is an opening in the Disciplinary Department for a Deputy Disciplinary Attorney as Katie Baylie has resigned with today being her last day.

This will be the last board meeting for both Dr. Kelly and Dr. Settich. Dr. Kelly is moving to Virginia and concluded his term. Dr. Settich has concluded his third and final term. We greatly appreciate both of their service. We are awaiting new appointments from the Governor's office.

## **III. STAFF REPORTS**

### **Executive Director:**

#### **Report and Updates on Agency by Susan Gile, Acting Executive Director**

CE Broker demonstration (9:15 a.m.) – CE Broker demonstration by Ms. Catherine Como regarding CEU compliance platform. General discussion and questions following presentation. Board formed a working group to look into the

program further: Dr. Estep, Dr. Durrett, Dr. Gould, Courtney Cyzman, Susan Gile, and Rebekah Moon.

### ED Report

Report in Board packet. No questions.

### Legislative Update

Update in Board packet.

### FSMB & FCLB Conference Update

The Federation of State Medical Boards (FSMB) was held in New Orleans April 28 - April 30, 2022. Courtney Cyzman, General Counsel and Susan Gile, Acting Executive Director attended, along with Dr. Estep, KSBHA Board President, who served as the voting delegate for the Kansas State Board of Healing Arts. Several policies were considered, debated, and ultimately adopted at this meeting:

1. Professional Expectations Regarding Medical Misinformation and Disinformation.
  - There are many aspects of this policy that we agree with, but we had concerns with slight overreaching implications. When this policy was up for a vote to approve, KSBHA, through Dr. Estep as our voting delegate, voted no.
2. The Appropriate Use of Telemedicine Technologies in the Practice of Medicine. KSBHA, through Dr. Estep as our voting delegate, voted yes.
3. Diversity, Equity and Inclusion in Medical Regulation and Patient Care. KSBHA, through Dr. Estep as our voting delegate, voted yes.
4. Emergency Preparedness and Response. KSBHA, through Dr. Estep as our voting delegate, voted yes.

The Federation of Chiropractic Licensing Boards (FCLB) meeting was held in Denver May 4 – May 7, 2022. Susan Gile, Acting Executive Director and Courtney Cyzman, General Counsel attended, as did Dr. Gould (voting delegate) and Dr. DeGrado (alternate voting delegate). There were no policy matters for vote; election vote occurred.

### Ratification of FSBPT Delegates for July 2022 and October 2022 meetings.

Motion to ratify Susan Gile (voting delegate) who will attend in July and Courtney Cyzman (administrative delegate) who will also attend in October. (Gould, Bradbury). Carried.

Follow-up on KSBHA Letter in response (approved at the April 8, 2022 meeting) to a Kansas Senator's letter on S Sub for HB 2280.

General discussion regarding some misinformation in the public regarding Board's position on off label prescribing, sponsoring research, and threatening licensees.

Motion for Executive session to 10:35 a.m. pursuant to K.S.A. 75-4319(b)(2) for attorney/client consultation with the General Counsel for the purpose of matters that would be deemed privileged. Acting Executive Director will also remain in the room. (DeGrado, Durrett) Carried.

Motion to return to open meeting of the Board. (Heeb, Bradbury). Carried.

Motion to authorize the Executive Director and General Counsel to proceed forward as discussed in executive session related to attorney-client consultation. (Heeb, DeGrado). Carried.

**General Counsel:**

**General Counsel Report by Courtney Cyzman**

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

Pending regulations – HB 2087 has become law which alters the regulation process. Regulations now begin with the Department of Administration and do not have to be approved by the Department of Budget unless they meet certain monetary levels. An Economic Impact Statement is still required. If Department of Budget's approval is required, then that department is the last step in the process. Otherwise, regulations now require only two stamps – Department of Administration and Attorney General. The Board has several proposed and proposed amended regulations at a variety of different steps in the promulgation process. This has created some additional work for the regulations that were already mid-process.

Appellate Case Update:

*Bejar v. Kansas State Board of Healing Arts* – Dr. Bejar has appealed the District Court's order (upholding our Final Order denying reinstatement) to the Kansas Court of Appeals. His brief has been submitted and ours is due June 27, 2022.

*Trust Women v. Bennett et al* – On May 20, 2022, the Kansas Court of Appeals issued an unpublished opinion finding the District Court erred in dismissing the Board President and Executive Director (Durrett & Lippert) from the suit for lack

of standing and the District Court abused its discretion in denying temporary injunctive relief for Trust Women against the remaining defendants. We have 30 days from the date of the opinion to Petition for Review to the Kansas Supreme Court.

Motion for Executive Session until 11:00 a.m. pursuant to K.S.A. 75-4319(b)(2) for attorney/client consultation to discuss pending appellate cases. (Gould, Durrett). Carried.

Motion to return to open meeting. (Varner, DeGrado). Carried.

Motion for Executive Session until 11:10 am pursuant to K.S.A. 75-4319(b)(2) for attorney/client consultation to discuss pending appellate cases. (Durrett, Gould). Carried.

Motion to return to open meeting. (Balderston, Abebe). Carried.

#### **IV. ADMINISTRATIVE PROCEEDINGS**

(Durrett, DeGrado) Motion to recess the open meeting of the Board to conduct administrative proceedings under the Kansas Administrative Procedures Act. Carried.

Brian Lahey, M.D., Docket #19-HA00005 - Hearing on Review of Request for Approval of Chaperone.

Mr. Matthew Gaus and Mr. Todd Hiatt appeared for the Board. Dr. Lahey appeared in person, *pro se*.

Recusals: Courtney Cyzman

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. (Varner, Gould). Carried.

(Abebe, Varner) Motion to go into Executive Session for attorney/client consultation.

(DeGrado, Bradbury) Motion to return to closed session.

(DeGrado, Durrett) Motion to return to open hearing. Carried.

(Durrett, Gould) Motion to approve chaperone. Carried.

(Durrett, DeGrado) Motion to change his license from inactive to active status, with chaperone and requirements therein. Carried.

Dr. Varner, KSBHA Vice President, takes over presiding the open Board Meeting as Dr. Estep, KSBHA President temporarily departs.

### **Consent Orders**

Dennis Scharenberg, D.C. Review of Proposed Consent Order.

Mr. Ruslan Ivanov appeared for the Board. Dr. Scharenberg appeared in person, via teleconference, *pro se*.

Recusals: None

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. (DeGrado, Durrett). Carried.

(Durrett, Gould) Motion to return to open hearing. Carried.

(Durrett, Abebe) Motion to approve Consent Order. Carried.

Recess for lunch break.

### **V. Staff Reports Continued/New Business Items continued from 9:15 a.m. block**

Motion to reconvene the open Board Meeting. (Durrett, DeGrado). Carried.

Dr. Estep has returned and returns to presiding over the open Board meeting.

Motion to go into Executive Session until 12:45 p.m. pursuant to K.S.A. 77-4319(b)(1) to discuss nonelected personnel matters with only the General Counsel present. (DeGrado, Durrett). Carried.

Motion to proceed with Susan Gile as the Executive Director subject to Senate confirmation. (Durrett, Settich). Unanimously carried.

### **General Counsel Report (cont'd)**

Review/approve revised attestation questions.

The edits to the attestation questions are for clarification purposes. Motion to approve revised attestation questions. (Abebe, Varner) Carried.

Final adoption of K.A.R. 100-28b-3, K.A.R. 100-28b-6, K.A.R. 100-28b-14, and K.A.R. 100-28b-20.

Motion to go into Executive Session for 5 minutes for attorney/client consultation for matters which would be deemed privileged pursuant to K.S.A. 75-4319(b)(1) (Durrett, Gould). Carried.

Motion to return to open meeting. (Durrett, DeGrado). Carried.

Roll call vote on each proposed regulation.

K.A.R. 100-28b-3 – unanimously adopted.

K.A.R. 100-28b-6 – unanimously adopted.

KA.R. 100-28b-14 – unanimously adopted.

K.A.R. 100-28b-20 – unanimously adopted.

Initial approval of temporary and permanent K.A.R. 100-54-13. Professional liability insurance (OT).

This proposed regulation implements part of SB 440 and sets the minimum level of professional liability insurance required for occupational therapist. Motion for initial approval for temporary and permanent K.A.R. 100-54-13. (Abebe, Varner). Carried.

Discuss OT transition into professional liability insurance requirement (implementation of SB 440)

Consider and approve/deny (or propose alternative) of a one-year waiver of enforcement to allow for the transition of the professional liability insurance requirement for occupational therapists who already have an Active license in Kansas. No audits on OTs for professional liability coverage until after June 10, 2023. The next OT renewal cycle begins on Feb. 15, 2023 – this would still be within the 1-year waiver of enforcement; on the Feb. 15, 2024, renewal cycle we will add an attestation that they have the minimum professional liability coverage as set by regulation. Motion to approve one year waiver of enforcement as outlined. (Durrett, Abebe). Carried.

Discuss proposed amended K.A.R. 100-6-3.

The proposed amendments to this regulation will not get attorney general approval. Solution would likely be legislative or rewriting a new proposed amended regulation. Requesting not proceeding forward on current proposed amendments. Motion to not proceed with current proposed amendments to K.A.R. 100-6-3. (Durrett, Abebe). Carried.

Discussion on telemedicine waiver holders and whether they are a “healthcare provider” under K.S.A. 40-3401.

Consideration on whether a physician holding a telemedicine waiver in Kansas under K.S.A. 65-28,135 is considered a “healthcare provider” under K.S.A. 40-3401 and is thereby required to have minimum professional liability coverage and be compliant with the Kansas Healthcare Stabilization Fund. (“KHCSF”) annual premium. Yes. A physician holding a telemedicine waiver in Kansas is considered a “licensee” and one who may render professional services in Kansas and is therefore a “healthcare provider” under K.S.A. 40-3401. *See* K.S.A. 65-28,135, K.S.A. 40-3401(f). Accordingly, the physician must maintain minimum levels of professional liability coverage and maintain compliance with the KHCSF annual premium. *See* K.S.A. 40-3402, K.S.A. 40-3404.

Requesting revisions to KSBHA Board Policy #21-05 to reflect this determination. Motion to approve revised KSBHA Board Policy #21-05. (Durrett, Abebe). Carried.

Discussion of S Sub for HB 2279 and consideration of options.

S Sub for HB 2279 amends only K.S.A. 65-1130 of the Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq.* (and modifies the definition of a mid-level practitioner in the Pharmacy Act and Uniform Controlled Substances Act to conform with the amendments to the written protocol). A person prescribing medication is deemed to be practicing medicine under the Healing Arts Act. *See* K.S.A. 65-2869(b). However, this session, the Kansas legislature in S Sub for HB 2279, made a policy decision to remove the requirement that an APRN have a written protocol with a physician for prescribing. In most pertinent part, S Sub for HB 2279 does the following:

- (1) APRNs are now required to have a current APRN certification in their “specific role and population focus;”
- (2) It allows APRNs to prescribe, procure, and administer medication (including controlled substances) consistent with their specific role and population focus without a written protocol as authorized by a supervising physician, excluding abortion;
- (3) Allows APRNs to prescribe durable medical equipment; and
- (4) APRNs are required to maintain malpractice insurance coverage.

Any additional practice of the healing arts or practice of medicine and surgery is not included in S Sub for HB 2279. Any practice of the healing arts (which includes the practice of medicine and surgery) outside of prescribing within an APRNs specific role and population focus must be under a supervising physician.

Motion for Executive Session for attorney-client consultation on matters that would be deemed privileged K.S.A. 75-4319(b)(2) until 1:45 p.m. to consider and discuss options. (Koontz, Bradbury). Carried.



Motion to return to the open meeting of the Board. (Koontz, Bradbury). Carried.

Motion to request an Attorney General opinion on S Sub for HB 2279. (Durrett, DeGrado). Carried.

Recess the open meeting of the Board for five minutes.

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

**Licensing Administrator Rebekah Moon:**

**Licensing Report**

The statistical report for the Licensing Department was included in the Board's packet of materials for their review.

**Approval of Licensee/Registrant List**

Approve licensee/registrant list. (Varner, DeGrado). Carried.

**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.

Consideration/Approval of a new Review Committee #5 member – Dr. Jason Kimball. Motion to approve and appoint Dr. Kimball on Review Committee #5. (Durrett, Varner). Carried.

Motion to go into Executive Session until 2:05 p.m. pursuant to K.S.A. 75-4319(b)(2) for attorney/client consultation on disciplinary department updates. (Durrett, Varner). Carried.

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

Motion to go into executive session until 2:10 p.m. pursuant to K.S.A. 75-4319(b)(2) for attorney/client consultation on disciplinary department updates. (Durrett, DeGrado). Carried.

Motion to return to the open meeting of the Board. (Durrett, DeGrado). 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. There were no questions.

Motion to go into Executive Session for 5 minutes pursuant to K.S.A. 75-4319(b)(2) for attorney/client consultation on department updates. (DeGrado, Abebe). Carried.

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

**VI. ADJOURNMENT**

Motion to adjourn meeting. (Settich, Abebe). Carried.

The meeting adjourned at 2:25 p.m.



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Thomas Estep, M.D.  
President



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Susan Gile  
Acting Executive Director