

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

BOARD MINUTES – February 11, 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, February 11, 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 and in person meeting on Friday, February 11, 2022. The meeting was called to order at 8:34 a.m. by Thomas Estep, M.D., President.

Abebe Abebe, M.D.	absent
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, Ph.D, public member	present
Jennifer Koontz, M.D.	present
John Settich, Ph.D 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; 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; John McMaster, M.D., Medical Director; Britani Potter, Law Clerk; Briana Hogan, Law Clerk; Theresa Sparrowsmith, Extern; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook, Paralegal to General Counsel; LeeAnn Hunter-Roach, Legal Assistant to General Counsel; and Ali Diaz, Administrative Specialist, General Counsel.

APPROVAL OF AGENDA

(Varner/Suber) Motion to approve agenda with the following changes: Delete licensing update/overview. Carried.

APPROVAL OF BOARD MEETING MINUTES – 12/9-10, 2021, and 1/20/2022

(Varner/Heeb) Motion to approve minutes of 12/9 – 12/10, 2021, and 1/20/2022 board meeting(s). Carried.

II. OTHER BUSINESS

New Staff Introductions

Briana Hogan, Law Clerk, and Theresa Sparrowsmith, Extern from Washburn, are introduced by Courtney Cyzman, General Counsel.

Executive Director:

Report and Updates on Agency – Budget has been approved by Department of Budget and is moving through legislative process. Budget approved with cautionary language regarding spending Agency funds on investigations concerning off-label prescribing.

Legislative Update

Acting Executive Director Gile gives update on SB 381 (now S Sub HB 2280) which includes language regarding off-label prescribing for COVID. Passage would require the agency to review prior disciplinary actions retroactive to March 12, 2020 and reconsider them. The Senate Public Health and Welfare Committee is working on the bill. The agency provided handouts for legislators and media with general information to counter recent misinformation, to include information on case processing, off-label prescribing, and agency overview. To date, 94.3% of investigations are not related to COVID. General Counsel Cyzman gives general information on off-label prescribing and standard of care. Acting ED Gile reviews HB 2477 which was passed concerning out-of-state waivers for COVID related services. Providers must notify the agency within 7 days of initiating practice in Kansas that they are practicing in the state under this waiver. The bill clarifies that those practicing in the state performing COVID related services fall under KSBHA jurisdiction and removed the fee waiver for renewals.

FCLB Attendance May 4 – 7; Appoint Federation of Chiropractic Licensing Board Voting Delegate and Alternative

(Varner, Black) Motion to Appoint Dr. Gould as Voting Delegate. Carried.

(Varner, Wattenbarger) Motion to Appoint Dr. DeGrado as alternate. Carried.

Appoint FSMB Voting Delegate

(Gould, Varner) Motion to Appoint Dr. Estep as FSMB Voting Delegate. Carried.

Appoint new MD to serve on DP #37

Dr. Koontz previously appointed; however, she is unable to serve at this time.

(Gould, Black) Motion to Withdraw Dr. Koontz as new MD on DP #37. Carried.

(Gould, Varner) Motion to Appoint Dr. Heeb as new MD on DP #37. Carried.

Appoint Special Disciplinary Panel Member.

This member would serve ad hoc as needed for older cases when none of the original DP members are on the board any longer.

(Kelly, Varner) Motion to Appoint Dr. Estep as Special Disciplinary Panel Member. Carried.

Remind Board Members sign-in & out/pick-up/drop-off badges

Acting Executive Director Gile reminds members of procedure for signing in when attending Board meetings in-person.

Licensing Department Update

Continued to April Board meeting.

III. STAFF REPORTS

General Counsel:

General Counsel Report

Estivo v. KSBHA. Court of Appeals has set this case for oral argument on March 7, 2022.

Bejar v. KSBHA. The briefing schedule has been set on this appeal.

KSBHA v. Parcels. Court of Appeals heard oral arguments on February 10, 2022.

General Counsel Cyzman provides information on status of pending appellate cases, regulations, education and outreach program given in conjunction with Board of Pharmacy and KUMC, statistics on KORA requests, and Professional Corporation licensing requests in General Counsel department.

(Varner, Wattenbarger) Motion for 5-minute recess. Carried.

Introduction to KOMA by Warran Wiebe.

Initial Approval of amendment to K.A.R. 100-69-10. AT Continuing Education (Varner, DeGrado) Carried.

Initial Approval of amendment to K.A.R. 100-49-8. DPM continuing education to add in topical requirement of acute/chronic pain management, PDMP, or appropriate prescribing (Varner/DeGrado) Carried.

Initial Approval of amendment to K.A.R. 100-73-9. LRT Continuing Education. (Gould/Varner) Carried.

(Varner, DeGrado) Motion to go into Executive Session to discuss with General Counsel unlicensed practice of medicine cases pursuant to K.S.A. 75-4319(b)(2) for a period of 20 minutes and return to the open meeting of the Board at 10:30 a.m. Carried.

(Koontz, Settich) Motion to return to the open meeting of the Board at 10:30a.m. Carried.

(Koontz, DeGrado) Motion to go into Executive Session to discuss with General Counsel unlicensed practice of medicine cases pursuant to K.S.A. 75-4319(b)(2) for a period of 5 minutes to return to the open meeting of the Board at 10:35am. Carried.

(Settich, Varner) Motion to return to the open meeting of the Board at 10:35 a.m. Carried.

IV. ADMINISTRATIVE PROCEEDINGS

(Varner, Gould) Recess board meeting to conduct administrative proceedings under the Kansas Administrative Procedures Act. Carried.

William Swanke, M.D., Docket #21-HA00085– Conference Hearing on Petition for Reconsideration.

Mr. Gaus appeared for the Board. Dr. Swanke appeared virtually with counsel Courtney McCray.

Recusals: n/a

(Settich, DeGrado) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Varner, Gould) Motion to go into closed hearing pursuant to K.S.A. 65-2838a. Carried.

(Varner, Black) Return to open hearing. Carried.

(Varner, Durrett) Motion to Vacate Final Order. Carried.

Eric Thomas, M.D., Docket #22-HA00023 – Conference Hearing on Application for Licensure.

Mr. Gaus appeared for the Board. Dr. Thomas appeared virtually, *pro se*.

Recusals: Dr. Black, Dr. Durrett, Dr. Gould and Dr. Kelly

(DeGrado/Black) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Varner, Heeb) Motion to return to open hearing. Carried.

(Wattenbarger/Heeb) Motion to grant license with limitations – no prescribing, dispensing or otherwise professional use of controlled substances; limitation must remain in place for at least one year before he can request removal. Carried. Koontz, Dr. DeGrado and Dr. Bradbury vote in opposition.

Caridad Padron, M.D., Docket #22-HA00027 – Conference Hearing on Application for Licensure.

Ms. Hornbaker appeared for the Board. Dr. Padron appeared virtually, *pro se*.

Recusals: Ms. Wattenbarger, Dr. Balderston, Dr. Bradbury, Dr. Koontz.

(Varner, DeGrado) Motion to Grant Licensure. Roll call vote was unanimous. Carried.

Iris Gonzalez, M.D., Docket #20-HA00081 – Conference Hearing on Motion to Terminate Consent Order.

Mr. Gaus appeared for the Board. Dr. Gonzalez appeared virtually, *pro se*.

Recusals: Courtney Cyzman and Steven Lehwald

(Settich/Varner) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Gould, Varner) Return to open hearing. Carried.

(Gould/Balderston) Motion to Terminate Consent Order. Carried.

V. CONTINUATION OF STAFF REPORTS/NEW BUSINESS FROM 8:45AM BLOCK

(Varner, Balderston) Motion to reconvene the open Board Meeting. Carried.

5-minute recess.

Staff Reports Continued/New Business
Items continued from 8:45 a.m. block

Licensing Administrator:

Approval of Licensee/Registrant List
(Gould/Black) 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:

Disciplinary Report
The statistical report for the Disciplinary Department was included in the Board's packet of materials, for their review. Since the last meeting 99 cases have closed. There are 559 open cases. There were no questions or discussion.

Consider Dr. Dennis Moore for MD Review Committee (oncologist)
(Gould/Balderston) Carried.

Consider Dr. Brian Hunt for MD Review Committee (hospitalist)
(Varner/Gould) Carried.

Litigation Counsel:

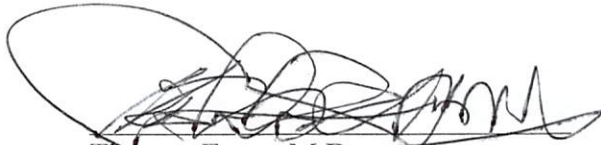
Litigation Report
The statistical report for the Litigation Department was included in the Board's packet of materials, for their review. There are 253 open cases. Since the last board meeting 71 cases have been closed. There were no questions or discussion.

Other: Acting Executive Director Gile shares card of support from legislator.

VI. ADJOURNMENT

(Gould/Varner) Motion to adjourn meeting. Carried.

The meeting adjourned at 12:08 p.m.



Thomas Estep, M.D.
President



Susan Gile
Acting Executive Director