

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

BOARD MINUTES – Friday, October 11, 2019

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. Motions noted as carried are unanimous unless noted otherwise. Ayes, nays, abstentions and recusals of individual members are recorded when requested.

FRIDAY, October 11, 2019

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 on Friday, October 11, 2019. The meeting was called to order at 8:30 a.m. by Steven Gould, D.C. and President.

Mark Balderston, D.C.	present	
Jerry DeGrado, D.C.	present	
Robin Durrett, D.O.	present	
Thomas Estep, M.D.	present	
Steven Gould, D.C.	present	
Anne Hodgdon, public member	present	
Joel Hutchins, M.D.	present	
Steve Kelly, public member	present	
David Laha, DPM		absent
Douglas Milfeld, M.D.		absent
Garold O. Minns, M.D.	present	
John Settich, public member	present	
Kimberly Templeton, M.D.	present	
Ronald Varner, D.O.	present	

Staff members present were; Tucker Poling, General Counsel and Interim Executive Director; Courtney Manly, Assistant General Counsel; Todd Hiatt Litigation Counsel; Meg Markey, Katie Baylie, and Matthew Gaus, Associate Litigation Counsel; Nancy Dodik, Associate Disciplinary Counsel; Rebekah Moon Licensing Administrator; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook, Legal Assistant to General Counsel; and Susan Gile, Operations Manager. The attached sign-in sheet indicates those people who were present during portions of the meeting.

Laura Appino, CSR, Appino and Biggs Reporting Service, took and recorded the administrative proceedings conducted.

APPROVAL OF AGENDA

(Durrett/Minns) Motion to approve agenda

with the following changes:

Presentation of an award to Dr. Durrett for his year of service as Board President.

Carried.

APPROVAL OF BOARD MEETING MINUTES

(Minns/Durrett) Motion to approve minutes of August 9, 2019 board meeting(s)

with no changes. Carried.

II. OTHER BUSINESS

Topic

Announcement was made of the acceptance by the Board President of the resignation of current Executive Director, Kathleen Selzler Lippert. A motion was made for Tucker Poling to be the Interim Executive Director.

(Hutchins/Varner). Carried.

Annual ED and GC HR Performance Management Process

(Minns/Templeton) Motion that the Board recess to an executive meeting for the purpose of discussing personell matters relating to non-elected personell, to discuss HR/PMP for ED and GC pursuant to K.S.A. 75-4319(b)(1) for the need to discuss personnel matters of non-elected personnel, and that the open meeting shall resume in the board room at 9:50 a.m. (General Counsel to be included).

Carried.

(Hodgdon/Durrett) Motion that the Board ratify the Board President's acceptance of the resignation of Kathleen Selzler Lippert. Carried.

Topic

Cleveland Chiropractic University gave a presentation on their program. Mark Stafford presented on the statutory structure of the University. Dr. Cleveland provided an overview of the program. They were asked why the Board should take a position on this when the Board generally does not on pending legislation. The Cleveland University staff expressed they would be pleased to have the support of the Board but hope the Board does not oppose. Concerns were raised about this eliminating oversight by the Board.

(Durrett/Estep) Motion to maintain a neutral response. Carried.

Topic

Recommendation for a search committee for a new Executive Director.

Recommended members include; Ms. Hodgdon, Dr. Durrett, Dr. Minns, Dr. DeGrado, Mr. Kelly and Dr. Settich. (Minns/Varner) Carried.

III. STAFF REPORTS

The Board President called the board meeting back to order.

Executive Director:

Topic

Fee changes-Interim Executive Director provided an overview of the need to increase statutory fee caps and increase some licensing fees. It was explained fees have not kept pace with the rate of inflation, and some are out of reasonable balance with comparable professions and comparable states. It appears that prior to 2010, fees tended to be reviewed and adjusted every few years, but that has generally not occurred subsequent to 2010. In most cases, neither fee caps nor fees have been adjusted for a decade or more. Further, this spring/past summer, the legislature mandated an unsustainable increase in agency fee funds diverted to KTRACS funding. Specifically, approximately \$235,000 will be transferred out of agency funds to fund this statewide health and safety program. This was not anticipated. What began in approximately 2016 as a short term “funding bridge” in which the agencies would augment KTRACS funding while the legislature determined a permanent funding source, such as the general fund, has been extended into a burden on licensing fee funds far past what was ever contemplated or budgeted for. Meanwhile, our population of licensees is increasing, as is our correlating need for resources to fund effective operations. The difference between fees and statutory caps were explained. There was a question as to whether input has been received from the professional organizations. Associate General Counsel explained the Agency discussed the fee increases and received input from all the professional councils. KMS was represented in the audience and expressed support of the increases. Motion to authorize staff to move forward with fee caps and fee increases within the scope presented in the Board packet (Durrett/Degrado). Carried.

Topic

KMS Funding-The Agency has received an update request from KMS as it relates to their funding. KMS has reduced the amount of their annual budget request. Motion to accept the reduced amount (Durrett/Templeton) Carried.

Topic

K-TRACS and PDMP-Interim Executive Director explained written feedback was requested. There are a number of specific recommendations the K-TRACS Advisory Committee will be putting forth and feedback is requested on each.

The first is mandatory registration for prescribers and pharmacies. Requires all to register and to use the system if available.

The next issue is if there is a disciplinary action for a pharmacy or a prescriber, the Board of Pharmacy should be notified within 30 days. The same is true if there is a surrender of a license. The Board of Pharmacy is notified within 30 days.

The next issue is if a licensee is working with a PHP, the provider will be able to access K-TRACS data to see what medications the enrollees are actually prescribed.

The legislation uses the term “delegate” with no definition. The legislation cleans this up and provides a definition.

The next issue relates to research. In some states K-TRACS type data can be accessed in a de-identified manner for research purposes. Access is limited to a registered K-TRACS user who has an approved IRB study with oversight of the IRB.

The next issue is more technical and relates to data storage. Currently, K-TRACS maintains data for 5 years. This proposed legislation would maintain data forever. K-TRACS is making some technological changes to ensure the data is stored securely.

There is also a need to increase information to more closely track opioid overdose related deaths. Board members are not sure this measure will have the desired effect and feel this work may continue to be best impacted by the Board of Healing Arts.

Another recommendation is to have K-TRACS providers make treatment recommendations for individuals based on information a provider might access in K-TRACS. Board members did not find this recommendation compelling.

After discussion, the Board wishes to approve the recommendations related to K-TRACS with the exception of that related to tracking opioid related deaths and recommending treatment for patients if they are identified by the system.

Motion to support all recommendations with the two exceptions, and designate Dr. Templeton to work with Mr. Poling and staff to articulate the Board’s input on these proposals to KTRACs committee. (Durrett/Varner) Carried.

Topic

Child Death Review Board nomination-There is a nomination of Dr. Diane Peterson. Motion to nominate Dr. Peterson to represent the Board on the State Child Death Review Board (Durrett/Hutchins) Carried.

Topic

Collaborative Drug Therapy Management Committee-A replacement is needed for Dr. Durrett on this committee. Motion for Dr. Estep to represent the Board on the Collaborative Drug Therapy Management Committee (Hodgdon/Kelly) Carried.

Topic

K-TRACS Advisory Committee- The Board is allowed two members on this committee. One is currently vacant with Dr. Leinwetter’s departure from the Board.. Motion for Dr. Milfeld to represent the Board on the K-TRACS Advisory Committee (Durrett/Minns) Carried.

Topic

Healthcare Stabilization Fund and Malpractice Insurance-Clark Schultz, Executive Director of HCSF provided an overview of the fund. There were questions about how and if the fund is tied to the cap on judgements. Mr. Schultz explained the Act originated in 1976; the caps were put in place later. Without caps, he reports the fund is “shaky”. He is concerned with how the new ruling will affect the fund.

There was a question about the make-up of the fund. Mr. Schultz explained the HCSF is a state agency.

General Counsel:

General Counsel Report

An update of district and appellate cases involving the Board was included in the Board’s packet of materials, for their review. There were no questions.

Topic

American’s with Disabilities Act-The FSMB has recommended each state board review questions on the initial and renewal applications related to impairment. Kansas is one of the first to do so and changes are appropriate on the application. The proposed changes will promote mental health of providers and will increase the chances a practitioner will seek help if they are suffering from a problem rather than fear reprisal or stigma at licensure or renewal. Mr. Poling advised that input from professional organizations has been very supportive of changes. Representative from KMS Physicians Health Program gave public comments to the Board in support of changes, noting specific examples of highly qualified providers who have chosen not to come to Kansas due being required to annually report prior health issues that have no bearing on current competence. (Minns/Durrett) Motion for an Executive Session for 10 minutes for the purpose of attorney client consultation regarding liability exposure analysis regarding ADA issues pursuant to K.S.A. 75-4319(b)2. Carried.

(Minns/Varner) Motion to reconvene open meeting. Carried.

(Hutchins/Varner) Motion for an Executive Session for 10 minutes for the purpose of attorney client consultation regarding liability exposure analysis regarding ADA issues due pursuant to K.S.A. 75-4319(b)2. Carried.

(Hutchins/Balderston) Motion to reconvene open meeting. Carried

Specific language of revisions to application questions reviewed, discussed, and revised by Board on public display screen. (Durrett/Hutchins) Motion to direct Board of Healing Arts staff to move forward with implementation of the proposed revised licensing question with ADA appropriate language in the initial and renewal applications. Carried.

Licensing Administrator:

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. The Licensee/Registrant list was included in packet, and no objections to the list were made.

Disciplinary Counsel:

Disciplinary Report

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

IV. ADMINISTRATIVE PROCEEDINGS

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

Seyed Sajadi, M.D. Docket # 19-HA00095 – Conference Hearing on Summary Order. Mr. Todd Hiatt appeared for the Board. Dr. Sajadi appeared in person, with counsel Mark Stafford.

Recusals: Dr. Balderston, Dr. Hutchins, Mr. Kelly

(Durrett/Minns) 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(d), and/or K.S.A. 65-4915 and 65-4925. Carried.

(Templeton/Minns) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Minns/Estep Motion to go back into closed hearing. Carried.

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

Written order will be issued within 30 days.

Sergey Shushonov, M.D. Docket # 19-HA00081 – Application for Reinstatement of Inactive License.. Mr. Matthew Gaus Associate Litigation Counsel appeared for the Board. Dr. Shushonov appeared in person, with counsel Mark Stafford.

Recusals: Dr. Balderston, Dr. Hutchins, Mr. Kelly

(Templeton/Durrett) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Settich/Durrett) Motion to go back into closed hearing. Carried.

(Durrett/Minns) Return to open hearing. Carried.

(Varner/Templeton) Motion to reinstate Inactive license. Carried.

Christopher Stubbs, M.D. Docket # 19-HA00049 – Consent Order. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Stubbs appeared, with counsel Mark Stafford.

(Durrett/Minns) 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/Minns) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Minns/DeGrado) Motion to go back into closed hearing. Carried.

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

(Minns/Templeton) Motion to deny the consent order. Carried with one dissenting Board member.

(Minns/Hutchins) Motion for the case to be continued. Mr. Stafford requested a Board member be appointed to hear the case.

Vikram Panwar, M.D. Docket # 19-HA00113 – Petition for Reconsideration. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Panwar appeared, with counsel Kelli Stevens.

Recusals: Dr. Balderston, Dr. Hutchins, Mr. Kelly

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

(Minns/Templeton) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Minns/DeGrado) Motion to go back into closed hearing. Carried.

(Minns/Varner) Return to open hearing. Carried.

(Templeton/Minns) Motion to deny licensure. Carried with one board member dissenting.

Mary Takaishi, P.A. Docket # 14-HA00098 – Conference Hearing on Motion to Terminate Consent Order. Ms. Nancy Dodik, Associate Disciplinary Counsel appeared for the Board. Ms. Takaishi appeared in person, with counsel Megan Moseley.

Recusals: Dr. Minns, Ms. Hodgdon, Courtney Manly

(Minns/Varner) Motion to Terminate Consent Order. Carried.

Benjamin Davis, M.D., Docket # 19-HA00107– Conference Hearing on Petition for Discipline. Mr. Todd Hiatt, Litigation Counsel appeared for the Board. Dr. Davis appeared in person, pro se.

(Templeton/Varner) Motion to Deny the petition for Discipline. This motion was retracted.

(Hodgdon/Estep) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Minns/Varner) Motion to go back into closed hearing. Carried.

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

(Balderston/Durrett) Motion to Deny Petition for Discipline, finding Licensee has met his burden under K.S.A. 65-2836 (c). Carried.

Brenda Natalini Robinson, M.D. Docket # 20-HA00007– Conference Hearing on Change in Designation from Exempt to Active. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Robinson appeared in person, pro se.

Recusals: Dr. Balderston, Dr. Hutchins, Mr. Kelly

(Minns/Durrett) Motion to recess into closed session for Attorney Client Consultation. Carried.

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

The Board will deny the application for Change in Designation from Exempt to Inactive.

Valentenia Daugherty, D.P.M., Docket # 20-HA00012– Conference Hearing on Application for Licensure. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Ms. Daugherty did not appear in person.

Recusals:Dr. Balderston, Dr. Hutchins, Mr. Kelly

(DeGrado/Estep)Motion to continue. Carried.

Brittany Johnson, R.T., Docket # 20-HA00014– Conference Hearing on Application for Licensure. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Ms. Johnson appeared in person, pro se.

Recusals:Dr. Balderston, Dr. Hutchins, Mr. Kelly

(Templeton/Durrett) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Minns/Templeton) Return to open hearing. Carried.

Ms. Johnson elects to withdraw her application.

Muhammad Fareed, M.D., Docket # 20-HA00004– Conference Hearing on Application for Licensure. Dr. Fareed appeared in person, with counsel, Kirk Doan.

(Templeton/Durrett) Motion to recess into closed session for Attorney Client Consultation. Carried.

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

Dr. Fareed withdraws his application.

Erin Lockard, M.D., Docket # 20-HA00020– Conference Hearing on Application for Licensure. Dr. Lockard appeared in person, with counsel, Diane Bellquist.

Recusals: Dr. Balderston, Dr. Hutchins, Mr. Kelly

(Minns/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

(Templeton/Durrett) Motion to recess into closed session for Attorney Client Consultation. Carried.

(Minns/Durrett) Motion to go back into closed hearing. Carried.

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

The case is continued for the parties to confer.

V. CONSENT ORDERS

Christopher Kauffman, D.C.— Review of Proposed Consent Order/Ratification. Mr. Todd Hiatt, Litigation Counsel appeared for the Board. Dr. Kauffman appeared in person, pro se.

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

Leslie Dally, D.O.— Review of Proposed Consent Order. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Dally appeared in person, pro se.

(Varner/Minns) 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(d). Carried

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

(Minns/Durrett) Motion to lift the suspension. Carried.

Timothy Warren, D.C. Docket # 19-HA00075— Review of Proposed Consent Order. Ms. Katie Baylie, Associate Litigation Counsel appeared for the Board. Dr. Warren did not appear in person, there was an attempt to have him appear by phone. Due to technical difficulties, this was unsuccessful. His counsel Mackenzie Baxter appeared.

(Hodgdon/Varner) Motion to continue to the December meeting. Carried.

VI. ADJOURNMENT

(Hutchins/Templeton) Motion to adjourn meeting. Carried.

The meeting adjourned at 4:10p.m.



Steven Gould, D.C.
President



Tucker Poling
Interim Executive Director