

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

BOARD MINUTES – December 9 and 10, 2021

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.

THURSDAY, December 9, 2021 – 1:02 p.m.

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 a hybrid in-person and virtual meeting on Thursday, December 9, 2021. The meeting was called to order at 1:02 p.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.		absent
Thomas Estep, M.D.	present	
Steven Gould, D.C.	present	
Camille Heeb, M.D.		absent
Steve Kelly, PhD, public member	present	
Jennifer Koontz, M.D.		absent
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, Interim Executive Director and Operations Manager; Courtney Cyzman, General Counsel; Warran Wiebe, Deputy General Counsel; Steven Lehwald, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammy Mundil, Deputy Litigation Counsel; Matthew Gaus, Associate Litigation Counsel; Ruslan Ivanov, Associate Litigation Counsel; Lydia Hornbaker, Associate Litigation Counsel; Katie Baylie, Deputy Disciplinary Counsel; Kady Curtis, Supervisor Legal Support Staff; James McSweyn, Law Clerk; Jackson Hermann, Legal Assistant, Litigation; Rebekah Moon, Licensing Administrator; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist;

Jennifer Cook, Paralegal to General Counsel; and LeeAnn Hunter-Roach, Legal Assistant to General Counsel.

II. NEW BUSINESS

APPROVAL OF AGENDA

(Varner/DeGrado) Motion to approve agenda with the following changes: delete agenda item regarding initial approval of amendment to K.A.R. 100-69-10 and add new items regarding IMLCC Commission Appointment and FSMB Audit. Carried.

APPROVAL OF 10/8/21 BOARD MEETING MINUTES

(DeGrado/Varner) Motion to approve minutes of October 8, 2021, with no changes. Carried.

New Staff Introductions by Susan Gile.

Becky Berg has joined Licensing as a licensing analyst. Nikki Schumann, who is a nurse, has joined the Disciplinary Department as a medical investigator. Briana Hogan has joined the General Counsel Department as a law clerk.

III. STAFF REPORTS

Executive Director:

Report and Updates on Agency by Susan Gile, Interim Executive Director

Report and updates on agency and old business

Interim Executive Director Susan Gile reports remote work within agency is going very well. Processes necessary to implement HB 2066 are in place. Change in how we are going to process renewals answering the Fund participation question negatively will be handled differently starting the next MD renewal cycle. The Board approved a website re-design in December 2019 and work is currently ongoing after being put on hold due to COVID. Our new website should be up in the next few months. No questions.

Appoint a Legislative Working Group.

Dr. Estep, Dr. Varner, Dr. Gould, and Ms. Wattenbarger are appointed for the legislative working group.

(Balderston/Varner) Motion to approve new members. Carried.

Discussion - Licensees disseminating misinformation about COVID-19.

FSMB issued statement on July 9th regarding discipline related to COVID misinformation. Statement from the FSMB was read. No further discussion.

FSMB Audit.

Dr. Estep reports FSMB is well-funded and no concerns.

General Counsel:

General Counsel Report by Ms. Courtney Cyzman

Sajadi v. KSBHA. Concluded in our favor. Published Kansas Court of Appeals decision will be binding on future cases with the same issues.

Estivo v. KSBHA. We are waiting on the Kansas Court of Appeals for a summary decision or a setting for oral argument.

KSBHA v. Parcels. Kansas Court of Appeals has set this case for oral argument on February 10, 2022.

Current projects include Continuation of Operations Plan (“COOP”), Office Based Surgery (“OBS”) workgroup, electronic recordkeeping plan, and Perceptive software database project.

Information provided on Education and Outreach for CY2021 – 48 presentations total – and 5 new presentations created. We will be doing a joint presentation with KUMC and Board of Pharmacy which will meet Category III CME requirement and will be offered to all KS licensed physicians, chiropractors, physician assistants, and podiatrists.

Reassess in-person continuing education requirement waiver

Board members are asked about the need to continue this waiver which was originally initiated due to COVID. Several Board members expressed the opinion that virtual meetings are here to stay and are a good alternative. There was some discussion of whether an individual learns as much virtually as they would in person. Dr. Varner asks that the waiver be extended another year.

(Varner/Wattenbarger) Motion to extend the in person continuing education requirement waiver for another year, until Dec. 31, 2022. Carried.

Review/Approval of the Kansas Jurisprudence Assessment Module Exam for PTs.

Colleen Lettvin from FSBPT joins meeting to answer questions or concerns. Steven reviews the JAM overall. The PT Council was consulted and made their recommendations to the exam questions. No questions regarding form of exam. Lehwald asks Board to approve form, designate Board member to work on final review of exam, to set cut score, and test time allotments.

(Wattenbarger/Varner) Motion to approve form, cut score of 80%, and time allotment of 90 minutes. Dr. Gould will work with PT Council on final review. Carried.

Initial discussion on who is a “licensed practitioner” authorized to give vaccine exemptions under 86 Fed Reg. 61572

General Counsel is recommending no action at this time. The CMS issued their interim final rule on November 5th. This mandate has been appealed and is currently at the 8th Circuit Court of Appeals. There are several other vaccine mandates by federal agencies that have also been appealed and are actively being litigated. All cases are moving very quickly. We are following this issue very closely and may need a special board meeting. Several questions from Board members. No action was taken at this time.

Appointment of Disciplinary Panel #37

Information provided by Courtney Cyzman and Todd Hiatt. Appoint Dr. Koontz, Dr. Suber, Dr. Balderston, Ms. Wattenbarger, and Dr. Bradbury as DP #37.

(Varner/DeGrado) Motion to appoint members to DP #37. Carried.

Appoint PA Council Member

Dr Abebe volunteers to serve and replace Dr. Durrett’s current position.

(Varner/Bradbury) Motion to appoint Dr. Abebe to PA Council. Carried.

Appoint LAc Council Member

Dr. Black offers to continue in this role; however, she would like to discuss changing the time of meeting which will be addressed at the next Council meeting.

(DeGrado/Bradbury) Motion to (re)appoint Dr. Black to LAc Council. Carried.

Discussion on being Presiding Officers in Board cases by Courtney Cyzman.

Ms. Cyzman gives general information regarding procedure and need for Board members to be able to serve as Presiding Officers in administrative cases.

Proposed OT legislation regarding limited direct access – KOTA

Presentation by Travis Grauerholz and Brian Mills, President, Kansas OT Association regarding proposed legislation on OT limited direct access. Kansas OT Association is seeking legislation for limited direct access. Multiple questions from Board members regarding length of non-referral treatment, insurance acceptance issues, diagnosing, limits on numbers of self-referrals, and wound care limitations. Board members feels these items need to be addressed further.

IMLCC Commissioner Appointment.

Dr. Estep volunteers to be the Board’s IMLCC Commissioner to replace Dr. Durrett’s position.

(Varner/DeGrado) Motion to appoint Dr. Estep to IMLCC Commission. Carried.

Executive session(s) to discuss General Counsel staff cases pending in District and Appellate courts.

(Varner/Balderston) Motion to go into executive session for 15 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(2) for the purposes of discussion with General Counsel regarding pending district court and appellate cases (Interim Executive Director and Director of Operations to be included). Carried.

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

Licensing Administrator by Ms. Rebekah Moon:

Approval of Licensee/Registrant List

(Varner/DeGrado) 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.

Ms. Moon reports questions have been added to the attestation portion of the renewal forms to help streamline process when licensees have previously disclosed. The licensing department has been maintaining processing times and has also been working on a cleanup of the server. There was a supply issue concerning the wall certificates; however, this has been resolved. Dr. Varner shares his appreciation for how easy it was to renew his license.

Disciplinary Counsel by Ms. Nancy Dodik:

Disciplinary Report

The statistical report for the Disciplinary Department was included in the Board's packet of materials, for their review. There were 88 closed investigations, 50% were closed within 60 days. There are 561 open cases.

Consideration/Approval of a new Review Committee

The Disciplinary Department would like to add an MD Review Committee with an oncologist, general surgeon, and a hospitalist. Questions regarding need for specialists.

(Varner/DeGrado) Motion to approve new Review Committee. Carried.

(DeGrado/Balderston) Motion to approve Dr. Resch as general surgeon on the new Review Committee. Carried.

Litigation Counsel by Todd Hiatt:

Litigation Report

The statistical report for the Litigation Department was included in the Board's packet of materials for their review. Todd reports Litigation Department is done with all audit cases.

Presentation by Kansas Healthcare Stabilization Fund

General overview of KHCSF given by Clark Schultz, Executive Director, including brief legislative history of organization. KHCSF has no authority for action over providers who are not in compliance. Information on how they handle the renewal process and inform providers of their obligation to pay into the Fund. Mr. Schultz indicates they can run reports for us, if needed, to identify providers who are non-compliant. Part of issue with non-compliance may be that in-state the base insurance provider takes care of charging the provider for the KHCSF surcharge, but this may not always be the case with out-of-state providers or smaller insurance companies. Questions to Mr. Schultz from Board members regarding loss of caps and the viability of the Fund, how they track non-compliant providers and renewal processes.

Recess until December 10, 2021, at 8:30 a.m.

(Settich/Wattenbarger) Motion to recess the open meeting at 3:36 p.m., until December 10, 2021, at 8:30am. Carried.

FRIDAY, December 10, 2021

IV. 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 a hybrid in-person and virtual meeting on Friday, December 10, 2021. The meeting was called to order at 8:30 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.		absent
Thomas Estep, M.D.	present	
Steven Gould, D.C.	present	
Camille Heeb, M.D.	present	
Steve Kelly, PhD, public member	present	(arrives at 8:45 a.m.)
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, Interim Executive Director and Operations Manager; Courtney Cyzman, General Counsel; Warran Wiebe, Deputy General Counsel; Steven Lehwald, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Matthew Gaus, Associate Litigation Counsel; Ruslan Ivanov, Associate Litigation Counsel; Lydia Hornbaker, Associate Litigation Counsel; Katie Baylie, Deputy Disciplinary Counsel; James McSweyn, Law Clerk; Rebekah Moon, Licensing Administrator; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook, Paralegal to General Counsel; and LeeAnn Hunter-Roach, Legal Assistant to General Counsel.

Continuation of Executive Director report from December 9, 2021

Susan Gile, Interim Executive Director, reports the budget was submitted September 15, 2021 for FY 2022-2023 for total expenditures of approximately \$6.5 Million. The Department of Budget accepted the budget but did delete an expenditure of \$75,000 for KTRACS since the Attorney General's office is able to use part of the opioid settlement to cover this.

V. Other Business

Executive Session for attorney-client consultation regarding a pending matter

(Varner/DeGrado) Motion to go into executive session for 5 minutes to consult with Deputy General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(2) for the purposes of discussion on a pending administrative matter. Ms. Cyzman and Mr. Lehwald are recused. Carried.

Policy update

KSBHA Board Policy #11-02 has been revised and addresses complaints, investigations, and litigation cases regarding Board Members, Review Committee Members, and Council Members.

(Settich/Abebe) Motion to approve revised KSBHA Board Policy #11-02. Carried.

Initial approval of amendment to K.A.R. 100-69-10

Deleted from agenda.

Initial approval for amendment to K.A.R. 100-15-1

Ms. Cyzman gives overview of requested amendment to this regulation, which would make resident active license renewal cycle consistent with the MD renewal cycle.

(Settich/Varner) Motion for initial approval of amendment to K.A.R. 100-15-1. Carried.

Board Pictures

VI. ADMINISTRATIVE PROCEEDINGS

(Varner/Wattenbarger) Recess open meeting of the Board and go into to administrative proceedings under the Kansas Administrative Procedures Act. Carried.

Sayed Hussain, M.D., Docket #21-HA00098– Conference Hearing on Petition for Reconsideration.

Mr. Matthew Gaus appeared for the Board. Dr. Hussain appeared in person via teleconference, *pro se*.

Recusals: None.

(Wattenbarger/Abebe) Motion to recess into closed session for Attorney Client Consultation. Carried.

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

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

(Varner/DeGrado) Motion to vacate the Final Order. Carried.

Dustin Parker, A.T., Docket #22-HA00017– Conference Hearing on Application for Licensure.

Mr. Parker appeared in person via teleconference, *pro se*.

Recusals: None.

(Settich/Wattenbarger) Motion to grant application for licensure. Carried.

Lisa Drake-Pickering, O.T.A., Docket #22-HA00012– Conference Hearing on Application for Licensure.

Mr. Matthew Gaus appeared for the Board. Ms. Drake-Pickering appeared in person, *pro se*.

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

(Varner/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. 65-4925. Carried.

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

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

(Varner/Wattenbarger) Motion to grant temporary license and a full license once her passing test scores are confirmed. Carried.

Brenda Krier, P.T.A., Docket #22-HA00019– Conference Hearing on Application for Licensure.

Continued.

VII. CONSENT ORDERS

Farah Gohari, P.T., Docket No 22HA-00022– Review of Proposed Consent Order.

Mr. Matthew Gaus appeared for the Board. Ms. Gohari appeared in person via teleconference, *pro se*.

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

(Varner/Bradbury) 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.

(Varner/Abebe) Motion to go into open session. Carried.

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

VIII. Discussion of Disciplinary Panel Processes by Todd Hiatt

(VarnerDeGrado) Motion to go into executive session for 55 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(2) for the purposes of discussion disciplinary panel process. (Litigation Counsel and Interim Executive Director to be included). Carried.

IX. Working Lunch, Presentation: Dr. McMaster, KSBHA Medical Director

Dr. McMaster, who has practiced Emergency Medicine for 38 years, serves as the Medical Director for KSBHA. He has held the position for 10 years. Dr. McMaster presents an overview of the position, his duties and responsibilities, and its legislative history.

**X. Staff Reports Continued/New Business
Items continued from Dec. 9, 2021, 1:00 p.m. block and Dec. 10, 2021, 8:30 a.m. block**

None.

XI. ADJOURNMENT

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

The meeting adjourned at 12:30 p.m.



Thomas Estep, M.D.
President



Susan Gile
Interim Executive Director