

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

BOARD MINUTES – December 12 and 13, 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. Ayes, nays, abstentions and recusals are recorded when requested.

Thursday, December 12, 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 Thursday December 12, 2019. The meeting was called to order at 1:00 p.m. by Steven Gould, D.C., President.

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| Mark Balderston, D.C. | present | |
| Molly Black, M.D. | present | |
| Jerry DeGrado, D.C. | present | |
| Robin Durrett, D.O. | present | |
| Thomas Estep, M.D. | | absent |
| Steven Gould, D.C. | present | |
| Joel Hutchins, M.D. | present | |
| Steve Kelly PhD, public member | present | |
| David Laha, DPM | present | |
| Garold O. Minns, M.D. | present | |
| John Settich, PhD., public member | present | |
| Kimberly Templeton, M.D. | present (by phone intermittently) | |
| Ronald Varner, D.O. | | absent |
| Sherri Wattenbarger, public member | | absent |

Staff members present were Tucker Poling, Interim Executive Director and General Counsel; Courtney Manly, Deputy General Counsel; Warran Wiebe, Assistant General Counsel; Reese Hays, Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammie Mundil, Deputy Litigation Counsel; Katie Baylie, Meg Markey, Steven Lehwald, and Matthew Gaus, Associate Litigation 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.

APPROVAL OF AGENDA

(Balderston/Durrett) Motion to approve agenda with the following changes: Review and consider the proposed regulations and provide an update on the Executive Director search. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Hutchins/Minns) Motion to approve minutes of October 2019 board meeting. Carried.

II. OTHER BUSINESS

Topic-New Staff Introductions

Each department head introduced new staff and staff position changes since the last board meeting.

Topic-New Member Introductions

New Board Members were introduced. Dr. Black was present. Ms. Wattenbarger will be present for tomorrow's portion of the meeting.

STAFF REPORTS

Licensing Administrator:

Approval of Licensee/Registrant List

(Minns/Hutchins) Approve licensee/registrant list. Carried.

Licensing Report

The statistical report for the Licensing Department was included in the Board's packet of materials, for review. No questions were received. The following was discussed: Licensing Administrator presented to the Board. She explained the Licensing Department recently re-structured. The department now has a trainer. This will result in all staff receiving consistent training. All applications are being reviewed for accuracy and consistency. The Athletic Trainer initial application is revised and live in paper and online as of November 18, 2019. At this time, the department is fully staffed. The licensee list is in the packet. There were no questions or topics for discussion.

Disciplinary Counsel:

Disciplinary Report

The statistical report for the Compliance and Regulation Department was included in the Board's packet of materials, for review. No questions were received.

The following was discussed: It is necessary to determine who will be appointed to Disciplinary Panel 35. Dr. Varner, Dr. Estep, Dr. DeGrado, and Dr. Settich were appointed to Disciplinary Panel #35.

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 review. No questions were received.

The following was discussed: The budget was submitted in September 2019. This begins the review process. In November 2019, the Division of Budget notified the agency, the budget as submitted was approved and would be submitted to the Governor's Office for consideration. The agency took exception to a small portion of the narrative submitted by the Division of Budget. The agency appealed this narrative portion and the appeal was sustained. The next step is for the Governor to submit her budget and the legislature to approve.

A question was asked about the fee increases. General Counsel explained the draft statute was received from the revisors office today.

A Board member inquired as to whether any of the Governor's actions would have impact to the agency. General Counsel stated there were none to report on at this time.

Physician Assistant Compact Legislation

Interim Executive Director Tucker Poling attended a meeting in Washington D.C. with Dr. Durrett. It was an information sharing opportunity about how a proposed PA compact might work. In the past, there was a PT compact proposed in KS and it did not pass, partly due to liability insurance issues. Board members received information about this issue in their packets.

Website Update

Sheila Rice, Human Resource Manager and Todd Standeford, Information Technology Director, presented on the agency's current website. Both recommend a content management system. With this type of system, permission levels can be given at the department level to add and/or edit information on the website. This will streamline the process to upload and edit information. The current website is already hosted by this type of company. If it is desired to move to this type of system, the agency needs to upgrade the current services from the company. It would also make the website more mobile friendly. The initial cost would be approximately \$30,000-\$40,000 and an annual hosting fee of approximately \$4,500 dollars/year. Board members recommend reviewing other board websites. (Durrett/Hutchins) Motion to move forward with a new website system and design. Carried.

Stem Cell Therapy Discussion

Todd Hiatt presented on Stem Cells in general and prosecution of stem cell cases generally at the administrative agency level.. There was discussion about a need for clarity about a policy when the board is hearing these cases. There were questions as to where the stem cells come from. Mr. Hiatt explained some practitioners get them from a supplier and some come from the patient. Dr. Templeton was appointed to be the Board member to work with the Interim Executive Director on legislative issues regarding stem cell therapy. The Board asked for a MD/DO Review Committee to be created, to look exclusively at stem cell investigations. Dr. Durrett, Dr. Minns, Dr. Gould, and Dr. Hutchins were designated as potential Presiding Officers to hear stem cells cases as they come through.

Executive Director Search Discussion

Dr. Black volunteered to be on the Executive Director search committee. The Board recommends reviewing the salary range to determine if it may be raised in order to attract more qualified candidates. The Board also wants to ensure the salary is comparable with other like agencies. The plan is for the search committee to interview 5 people in person and bring the top two candidates to the full Board. The goal is to have interviews completed by the April Board Meeting.

Review and Consider Regulations

(Durrett/Kelly) Motion to review and consider regulation updates under the 12:30 agenda item on 12/13/2019. Carried.

Annual ED and GC HR Performance Management Process

(Laha/Minns) Motion that the Board recess to an executive session 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 4:10pm. Carried.

III. Recess

The meeting Recessed at 4:40 p.m.

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FRIDAY, December 13, 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 December 13, 2019. The meeting was called to order at 8:30 a.m. by Steven Gould, D.C., President.

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|------------------------------------|---------|
| Mark Balderston, D.C. | present |
| Molly Black, M.D. | present |
| Jerry DeGrado, D.C. | present |
| Robin Durrett, D.O. | present |
| Thomas Estep, M.D. | present |
| Steven Gould, D.C. | present |
| Joel Hutchins, M.D. | present |
| Steve Kelly PhD, public member | present |
| David Laha, DPM | present |
| Garold O. Minns, M.D. | present |
| John Settich, PhD., public member | present |
| Kimberly Templeton, M.D. | present |
| Ronald Varner, D.O. | present |
| Sherri Wattenbarger, public member | present |

Staff members present were Tucker Poling, Interim Executive Director and General Counsel; Courtney Manly, Deputy General Counsel; Warran Wiebe, Assistant General Counsel; Reese Hays, Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammie Mundil, Deputy Litigation Counsel; Steven Lehwald, Katie Baylie, Meg Markey, 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; LeeAnn Hunter-Roach, 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.

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

II. Other Business

Introduction of New Member(s):

Sherri Wattenbarger, J.D. and Dr. Molly Black were introduced as new members to the Board.

A plaque was presented to honor Dr. Milfeld for his many years of service to the Board. A letter from Dr. Milfeld to the Board was read. Dr. Milfeld was not present. Dr. Estep has agreed to take the plaque to Dr. Milfeld.

FSMB voting Delegate

The FSMB national meeting is April 30 to May 2, 2020. Need to have a representative who can attend and represent the Board.

(Durrett/Estep) Motion to have Dr. Gould represent KSBHA at the FSMB as the voting delegate. Carried.

Board Policies

Revisions to Board Policies #10-02 (Petition for Reconsideration Delegated Authority) and #95-01 (Press Releases Regarding Disciplinary Actions) were reviewed and proposed to the Board. The Board approved both revised policies unanimously.

Board Pictures

(Estep/Varner) Motion to recess for Board pictures. Carried.

III. ADMINISTRATIVE PROCEEDINGS

Lea Franklin, P.T.A., DOCKET # 20-HA00027– Conference Hearing on Application for Licensure. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Ms. Franklin appeared in person, *pro se*.

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

Ms. Franklin offered her Diversion Agreement as an exhibit. There were no objections. The Exhibit was entered.

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

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

The Board continued the application, with the recommendations to Applicant prior to appearing before the Board again on this application.

Craig Schwartz, D.O., DOCKET # 20-HA00009– Conference Hearing on Summary Order. Ms. Katie Baylic, Associate Litigation Counsel appeared for the Board. Dr. Schwartz appeared in person, with counsel Mark Stafford.

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

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

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

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

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

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

Conference Hearing on the Summary Order is continued to the February Board meeting.

Manek Anklesaria, M.D., Docket #20-HA00008– Conference Hearing on Application for Licensure. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Anklesaria appeared in person, *pro se*.

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

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

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

(Varner/Wattanbarger) Motion to deny licensure-motion is withdrawn with no objections.

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

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

(Estep/Laha) Motion to allow Dr. Anklesaria to withdraw. Carried with one opposed.

A letter from the OK Licensing Board regarding Dr. Anklesaria was admitted into evidence with no objections.

Amanda Jarchow, L.R.T., Docket #19-HA00109– Conference Hearing on Petition. Ms. Katie Baylie, Associate Litigation Counsel appeared for the Board. Ms. Jarchow appeared in person, with counsel Matthew Williams.

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

(Durrett/DeGrado) 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.

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

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

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

A written order will be issued within thirty days.

Jordan E. Luttjohann, L.R.T., Docket #20-HA00017– Conference Hearing on Summary Order. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Mr. Luttjohann appeared in person, *pro se*.

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

(Durrett/Kelly) Motion to convert to a Formal Hearing. Carried.

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

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

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

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

(Durrett/Varner) Motion to go into a closed session for confidential information.

(Minns/Varner) Return to open meeting.

The Summary Order is dismissed.

Roya N. Molloy, M.D., Docket #20-HA00032– Conference Hearing on Application for Change of Designation. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Molloy appeared in person, *pro se*.

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

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

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

(Durrett/Wattenbarger) Motion to appoint Dr. Minns to review and approve a plan submitted by Dr. Molloy within 30 days. Carried.

Kristan Todd, A.T., Docket #19-HA00082– Conference Hearing on Reconsideration of Final Order. Ms. Katie Baylie, Associate Litigation Counsel appeared for the Board. Ms. Todd appeared in person, with counsel, Diane Bellquist.

Recusals: Dr. Balderston, Dr. Hutchins, Dr. Kelly and Courtney Manly

(Durrett/Estep) Dismiss Summary Order. Carried.

IV. CONSENT ORDERS

Timothy Warren, D.C., Docket No. 19-HA00075– Review of Proposed Consent Order. Ms. Katie Baylie appeared for the Board. Dr. Warren appeared in person, with counsel, Mackenzie Baxter.

(Minns/DeGrado) Motion to accept the Consent Order. Carried.

Joseph Bosiljevac, M.D., Docket No. 19-HA00091– Review of Proposed Consent Order. Mr. Matthew Gaus, Associate Litigation Counsel appeared for the Board. Dr. Bosiljevac appeared in person, with counsel Kelli Stevens.

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

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

Proposal to amend the Consent Order to include a fine of \$2500.00 instead of \$500.00. This amendment is accepted by Dr. Bosiljevac.

(Minns/Laha) Motion to accept the Consent Order as amended. Carried.

V. Continuation of Discussion

CPEP 2020 Learning Summit

The Learning Summit is February 10-11, 2020, in Denver. This is a great experience for new board members. Dr. Minns and Dr. Black are interested. Others should email Interim Executive Director, Tucker Poling if interested.

Licensing Audit

Each year, Licensing conducts audits of licensees. In the past, the audits have been conducted based on a random sample to review both continuing education and fund compliance. This year, based on coordination with the HCSF, audits were conducted with a 100% review and were focused solely on fund compliance. Historically, based on the random sample, litigation will receive a few cases and will send these licensee's a letter and will suspend those licensee's who are not fund compliant. This year, during the MD audit only, litigation received 418 cases. This leads to questions about how to handle these cases and whether they can be handled differently. With the 100% review, the audit resulted in a 95.5% fund compliance rate. The Board wishes for the agency to work the HCSF on a solution. Two issues remain: 1. How to process the current cases and 2. Whether there should be a committee for audits. There is already a process in place to handle the current cases. Dr. Laha, Dr. Estep and Dr. Gould will be appointed to the audit committee. Interim Executive Director Tucker Poling recommends a random sample.

Consent Orders

Board members want to ensure when a Consent Order is presented to the Board, it is representative of what the Disciplinary Panel recommended. A presentation was made explaining the Consent Order process. There was discussion that at times the Consent Order seems different than what was agreed upon by the DP. The decision is to continue the current process. All agree, more communication is needed if there are concerns about a particular case. The chain of command was made clear. The DP can go to the Litigation Counsel if they have concerns.

Regulations

There are a number of regulations for Board final approval:

Physical Therapy – K.A.R. 100-29-4 puts a limit on the number of exam attempts for PT's. (Varner/Durrett) Motion to adopt. Adopted via a roll call vote.

K.A.R. 100-29-9 requires a juris prudence assessment as part of the continuing education cycle. (Durrett/Varner) Motion to adopt. Adopted via a roll call vote.

Athletic Trainers – K.A.R. 100-69-7 provides a definition of unprofessional conduct. (Varner/Minns) Motion to adopt. Adopted via a roll call vote.

K.A.R. 100-69-10 Relates to License Renewal and Continuing Education. Specifically, it addresses emergency cardiac care procedures. (DeGrado/Varner) Motion to adopt. Adopted via a roll call vote.

Independent Certified Nurse Midwife – K.A.R. 100-28b(1) provides multiple definitions (Durrett/Templeton) Motion to adopt. Adopted via a roll call vote.

K.A.R. 100-28b(5) Addresses license expiration and cancellation. (Minns/Templeton) Motion to adopt. Adopted via a roll call vote.

K.A.R. 100-28b(15) relates to transport and transfer protocol requirements. (Durrett/Minns) Motion to adopt. Adopted via a roll call vote.

K.A.R. 100-28b(16) relates to the duty to consult, refer, transfer and transport. (Durrett/Templeton) Motion to adopt. Adopted via a roll call vote.

K.A.R. 100-28b(17) relates to the immediate transfer of the woman. (Durrett/Varner) Motion to adopt. Adopted via a roll call vote.

K.A.R.100-28b(18) relates to the immediate transfer of the newborn. (Balderston/Minns) Motion to adopt. Adopted via a roll call vote.

RT Council Member

Dr. Hutchins volunteered and was appointed to be on the RT Council.

Acupuncture Council Member

Dr. Kelly volunteered and was appointed to be on the Acupuncture Council.

KTRACS Board Appointment

Dr. Estep is willing to represent the Board on the KTRACS committee. This needs to be ratified.

(Durrett/DeGrado) Motion for Dr. Estep to represent the Board on the KTRACS committee. Carried.

Appellate Case Update

Information is contained in the supplemental packet. No questions or comments.

Legislative Committee

The Board needs to form a legislative committee. This committee should meet soon in December, before the 19th. Dr. Gould, Dr. Templeton, Dr. Estep and Dr. Durrett volunteered to form this committee.

Executive Director Position Description

The committee worked on the Executive Director position description yesterday. The position should be posted this afternoon. Tucker will send a link to the Board members when posted.

VI. ADJOURNMENT

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

The meeting adjourned at 3:20 p.m.



Steven Gould, D.O.
President

D.C.



Tucker Poling
Interim Executive Director