

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

BOARD MINUTES – Friday, February 12, 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.

FRIDAY, February 12, 2021

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, February 12, 2021. The meeting was called to order at 8:30 a.m. by John Settich, Ph.D., and President.

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		absent
Jennifer Koontz, M.D.	present	
John Settich, PhD public member	present	
Stephanie Suber, D.O.	present	
Kimberly Templeton, M.D.	present	
Ronald Varner, D.O.	present	
Sherri Wattenbarger, public member	present	

Staff members present were Tucker Poling, Executive Director; Courtney Cyzman, General Counsel; Warran Wiebe, Deputy General Counsel; Nancy Dodik, Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammy Mundil, Deputy Litigation Counsel; Matthew Gaus, and Steven Lehwald, Associate Litigation Counsel; Katie Baylie, Deputy Disciplinary Counsel; Rebekah Moon Licensing Administrator; John McMaster, M.D., Medical Director; LeeAnn Hunter-Roach, Legal Assistant to General Counsel; and Susan Gile, Operations Manager.

APPROVAL OF AGENDA

(Estep/Varner) Motion to approve agenda with the following changes: Delete the Disciplinary Department Review. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Durrett/Estep) Motion to approve minutes of December 11, 2020. Carried.

II. OTHER BUSINESS

New Staff Introductions

Sheila Krumrey is introduced to the Board as the new Senior Administrative Assistant. She will be working primarily as the front desk staff, handling mail, and answering phones.

Executive Director:

Report and Updates on Agency

Executive Director Tucker Poling's appointment was ratified on January 21, 2021 by the full senate.

Agency staff is continuing with primarily remote work. Internal protocols have not changed. We are looking forward to increased distribution of the vaccine and getting closer to back to "normal". Staff are in a rhythm of remote work and know when they need to be in person.

Legislative Updates

Executive Director Poling provided an update on the legislative process. Executive Director Poling has provided testimony on a variety of topics, including:

- The Kansas Emergency Management Act
 - To date, this has passed out of the Senate with an extension to March 31, 2021.
 - Part of this bill is the emergency temporary license. The agency takes no issue with this portion of the bill. The portion of concern to the agency is subsection (h) which allows a practitioner to come to Kansas and practice. This allows for the agency to have no knowledge of the providers presence in Kansas and gives the Board no jurisdiction over them. The agency has requested those practicing under subsection (h) provide a waiver form; this is strictly voluntary. To date the agency has approximately 20 voluntary waiver forms and 215 Emergency Temporary Licenses.
- Budget
 - The approval process is going smoothly. The only difference between the agency submitted budget and the Governor's proposed budget is for FY 2022 and FY 2023, the Governor added a \$75,000 transfer from our Fee Fund for KTRACS. It continues to be our

position this transfer is a violation of statute. If not the letter of the law, then certainly the spirit.

- Opioid Settlement Funding
 - The state will receive some Opioid Settlement Funding, and this is an appropriate resource to fund KTRACS. Executive Director Poling has sought and received approval to encourage this as a funding stream for KTRACS.
- Professional Licensing Bill (HB 2066)
 - The agency wants to maintain the portion of this bill stating those coming to Kansas from other states must have substantially equivalent licensing and training.
- Other bills on the general topic of regulation
 - There is a national movement for regulation reform and to reduce state-based regulation on professions. Executive Director Poling is tracking them and actively working with the appropriate people to represent the Board's position.
- Telemedicine Act
 - The bill is not being worked in its current form.
 - The committee chair recognized the complexities and directed the stakeholders to come together and work the bill further.
- Physical Therapy Compact
 - The main issue was the requirement for PTs to hold professional liability insurance. This issue has been addressed by an amendment.
- Advanced Practice Registered Nurse
 - Executive Director Poling will send a copy of this bill to the Board members.
 - Expands the scope of APRN practice.
- Medical Marijuana
 - This bill has a very large impact on the agency. It will require multiple regulations and a new certificate type.
 - To date it is unfunded.
 - It is unclear whether it is likely to pass.

USMLE

The Step 2 clinical skills portion will be discontinued. The USMLE sought input from state boards with such input generally expressing doubt to the value of the step 2 clinical skills.

The NBOME (osteopathic exam) has not, (to date), cancelled their step 2 clinical skills version of that exam. This has generated some correspondence and some concerns.

Board staff and members have received questions about whether the board can do anything about this; the answer is no. This is not Board jurisdiction.

Education and Outreach

General Counsel, Courtney Cyzman continues to do a lot of work on education and outreach. Executive Director Poling completed a presentation on recent and upcoming legislative issues on professional licensing on 12/30/2020. The presentation received positive feedback. In mid-December Courtney Cyzman, Rebekah Moon and Executive Director Tucker Poling completed a 2020 year in review presentation. Ms. Moon completed a presentation for Washburn Physical Therapy Assistants, focusing on licensing. Upcoming presentations include social media for healthcare professionals, interstate medical licensure compact, and healthcare professional wellness. The agency is excited about the prospect of improving the messaging and outreach regarding wellness for healthcare providers.

Continuing Education Discussion

At the April 2020 meeting the board decided to waive enforcement of any in-person continuing education requirement; in-person continuing education could be completed by live, online continuing education. This is set to expire March 1, 2021. We need to decide whether we can continue this and if so, for how long. Live, in person CE's are very difficult to find right now. Agency staff recommendation is to continue until the end of the year.

(Degrado/Estep) Motion to adopt agency recommendation. Carried.

Discussion on Re-entry information and Rural Healthcare Access

Six months ago, the board approved moving forward with a re-entry regulation. This regulation allows for those who have stepped away from practice for over two years for reasons not related to discipline to re-enter their field of practice without discipline. The agency continues working to get that regulation passed. It will be presented to the Attorney General soon. General discussion on utilizing medical school GME staff to serve as possible supervising physicians for those reentering into practice.

K.A.R. 100-6-2a

K.A.R. 100-6-2a is the Resident Active License. This has been approved by all agencies and JCARR. Board final adoption is the final step in the process. The Resident Active License was created by statute in anticipation of a change to the post graduate training requirements to mandate 3 years of ACGME/AOA or substantial equivalent of post graduate training. There was some concern the change of postgraduate training requirement would eliminate the ability for postgraduates to "moonlight" after one year of training; this license type was the statutory and regulatory solution. Additionally, there was a desire to have some direction and supervision of residents who moonlight.

(Durrett/Estep) Motion to adopt this regulation. Carried.

Adopted via a voice roll-call vote.

III. STAFF REPORTS

Licensing Administrator:

Approval of Licensee/Registrant List

(Estep/Varner) Motion to 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.

Application processing times continue to be good; the average processing time is seven days.

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 board meeting 76 cases have been closed, of those, 36 closed in 60 days or less. COVID complaints are being tracked separately from the other complaints. The agency has received 51 COVID complaints from March 2020 to January 2021. These complaints involve 30 licensees.

Litigation Counsel:

Litigation Report

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

Audit cases continued to be processed. To date, approximately 230 have been closed. Most recently, they have contacted 93 licensees and 53 of them came back into compliance. This leaves a balance of 121 cases to address. Litigation Counsel anticipates they may have the audit cases completed by the April board meeting.

General Counsel:

General Counsel Report

Riley vs. KSBHA – The Court of Appeals issued its decision affirming the Board's Final Order. Dr. Riley did not appeal. This matter has concluded in the Board's favor.

Myers vs. KSBHA -The Court of Appeals issued its decision affirming the Board's Final Order denying reinstatement. Dr. Myers did not appeal. This matter has concluded in the Board's favor.

Panwar vs. KSBHA-The District Court has affirmed the Board order denying licensure. Dr. Panwar did not appeal. This matter has concluded in the Board's favor.

Shine vs. KSBHA is scheduled for oral arguments on April 5th at the Court of Appeals.

KSBHA vs. Shawn Parcels is now at the Court of Appeals.

The General Counsel report includes a Table of regulations. General Counsel anticipates having two to four additional regulations for final adoption at the April Board Meeting.

IV. ADMINISTRATIVE PROCEEDINGS

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

Chad Sharp, M.D., Docket #19-HA00017
Conference Hearing on Motion to Terminate Limitations and Conditions. Mr. Matthew Gaus appeared for the Board. Dr. Sharp appeared via video conference, *pro se*.

Recusals: Courtney Cyzman, Dr. DeGrado, and Dr. Settich

(DeGrado/Durrett) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under
CONFIDENTIAL Carried.

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

(Durrett/Black) Motion to go back into Administrative hearing. Carried.

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

(Varner/Durrett) Motion to go back into Administrative hearing. Carried.

(Wattenbarger/Varner) Motion to take Administrative notice of the prior agency record involving Dr. Sharps record. Carried.

A written order will be issued within 30 days.

Bruce Parsa, D.O., Docket #21-HA00036

Conference Hearing on Application.

Mr. Matthew Gaus appeared for the Board. Dr. Parsa appeared via video conference, with counsel Kelli Stevens.

Recusals: Dr. Estep, Dr. DeGrado, Dr. Settich and Dr. Varner

(Durrett/Templeton) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under **CONFIDENTIAL** . Carried.

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

(Durrett/Koontz) Motion to go back into Administrative hearing. Carried.

Application for Reinstatement is granted.

Douglas Brooks, M.D., Docket #17-HA00048

Conference Hearing on Motion to Terminate Consent Order.

Mr. Matthew Gaus appeared for the Board. Dr. Brooks appeared via video conference, with counsel John Hicks.

(Estep/Templeton) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Estep/Varner) Return to Administrative hearing. Carried.

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

(Estep/Varner) Return to Administrative hearing. Carried.

The Motion to Terminate the Consent Order is granted as written.

Lea Ann Franklin, P.T.A., Docket #20-HA00027

Conference Hearing on Application.

Mr. Matthew Gaus appeared for the Board. Ms. Franklin appeared via video conference, with counsel Kelli Stevens.

(Varner/Black) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under **CONFIDENTIAL** . Carried

(Estep/Templeton) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Estep/Varner) Return to Administrative hearing. Carried.

(Varner /Estep) Motion to go into executive session for Attorney Client Consultation. Carried.

(Estep/Varner) Return to Administrative hearing. Carried.

An order will be issued within 30 days.

Clifford Arnold, M.D., Docket #21-HA00035

Conference Hearing on Application.

Mr. Matthew Gaus appeared for the Board. Dr. Arnold appeared via video conference, with counsel Kelli Stevens.

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

(Durrett/Balderston) Return to Administrative hearing. Carried.

Application is granted.

V. CONSENT ORDERS

Wendy Allen, L.R.T.

Review of Proposed Consent Order.

Mr. Matthew Gaus appeared for the Board. Ms. Allen appeared via video conference, with counsel Colin Gotham.

(Durrett/Estep) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under **CONFIDENTIAL** . Carried

(Estep/Varner) Motion to approve consent order. Carried.

Bryan Allen, L.R.T.

Review of Proposed Consent Order.

Mr. Matthew Gaus appeared for the Board. Mr. Allen appeared via video conference with counsel Colin Gotham.

(Durrett/Estep) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under **CONFIDENTIAL** . Carried

(Estep/Varner) Motion to approve consent order. Carried.

Janet Enzbrenner, L.R.T.

Review of Proposed Consent Order

Ms. Tammie Mundil and Todd Hiatt appeared for the Board. Ms. Enzbrenner appeared via video conference, with counsel John W. Fresh.

(Koontz/Degrado) Motion to recess into executive session for Attorney Client Consultation. Carried.

(Varner/Baldertson) Return to Administrative hearing. Carried.

The Consent Order is approved as amended.

Meeting is back to open meeting from recess.

Licensees not renewing

It has been almost one year since the Emergency Declaration went into effect. Some professions are approaching their second renewal cycle. This is creating a new issue for the renewal process. More information on this topic in April.

Training


Executive Director Poling will schedule a separate closed session for training. It will be recorded for those unable to attend.

(Durrett/Varner) Motion to go into Executive Session pursuant to K.S.A. 75-4912 for 5 minutes. Carried.

VI. ADJOURNMENT

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

The meeting adjourned at 3:26p.m.



John Settich, PhD.
President



Tucker Poling
Executive Director