

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

Friday, February 14, 2020

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 14, 2020

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, February 14, 2020. The meeting was called to order at 8:30 a.m. by Steven Gould, D.C. and President.

Mark Balderston, D.C.	present	
Molly Black, M.D.		absent
Jerry DeGrado, D.C.	present	
Robin Durrett, D.O.	present	
Thomas Estep, M.D.	present	
Steven Gould, D.C.	present	
Joel Hutchins, M.D.		absent
Steve Kelly, PhD, public member		absent
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 Cyzman, Deputy General Counsel; Warran Wiebe, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Katie Baylie, Associate Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammy Mundil, Deputy Litigation Counsel; Matthew Gaus, Meg Markey, and Steven Lehwald Associate Litigation Counsel; Rebekah Moon Licensing Administrator; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; 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.

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

APPROVAL OF AGENDA

(Estep/Varner) Motion to approve agenda
Carried.

APPROVAL OF BOARD MEETING MINUTES

(Minns/DeGrado) Motion to approve minutes of December 12-13, 2019 board meeting.
Carried.

II. OTHER BUSINESS

New staff introductions - There are no new staff to introduce, but a few staff have changed positions. Nancy Dodik is now the Disciplinary Counsel and Katie Baylie is the Associate Disciplinary Counsel. Presented Larry Bowles with his 10-year pin.

Agency Updates - The licensing department has made changes. Focus groups were held with staff in July and November. The results of the information gathered have led to the implementation of changes in the department. The training program and stability have led to the best processing times in two years. The agency also has recently implemented the Education and Outreach Committee. This committee includes the chair, Courtney Cyzman, Katie Baylie, and Rebekah Moon. The purpose of the committee is to proactively reach out to groups and offer a variety of presentations, including on licensing and professionalism. To date, the committee has given seven presentations and has 15 scheduled for March and April.
The agency is working to update and improve policies and procedures through the agency wide Policy Workgroup which meets every other week and has membership from all departments.

III. STAFF REPORTS

The Board President called the board meeting back to order.

Licensing Administrator:

Approval of Licensee/Registrant List

(Minns/Templeton) 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. The following was discussed:
The Certified Nurse Midwife-Independent Practice application went live in mid-January. To date, no applications have been received. The Education and

Outreach Committee is reaching out to education programs in Kansas to offer presentation on the licensing process. There has been a lot of interest in the last two months.

Wallet cards are now available on-line for the licensees to access and print.

Processing times have decreased to 10-12 days. The final reviews are at 7 business days or less.

Board members requested to know if the question previously drafted by the Board related to ADA is now on the application. Ms. Moon stated it is.

Board members inquired as to whether new licensees still get a wall certificate. Ms. Moon stated Healing Arts licensees receive a wall certificate upon initial licensure.

Disciplinary Report

The statistical report for the Compliance and Regulation Department was included in the Board's packet of materials, for their review. The following was discussed: Nancy Dodik provided the Board with information about number of open cases, those recently closed and those long term cases.

Board members had questions about what is being done to resolve old cases. Ms. Dodik explained that while the new cases are being worked, old cases continue to be reviewed and worked. Most still open are the difficult, intensive cases. Others are category 2 cases.

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.

Board Policy 02-02-Courtney Cyzman provided information related to Board Policy 02-02 which was drafted with Kansas Medical Society to address Office Based Surgery. In 2006, the elements of this policy were implemented into law. Ms. Cyzman recommends to the Board to either archive this policy or revise with supplemental provisions not already codified into law. If the Board chooses to revise, Ms. Cyzman would request at least one Board member to assist with the revisions.

The Board gives direction to staff to archive Board policy 02-02 and develop a new Office Based Surgery policy with Dr. Templeton assisting.

FCLB Delegate - Need to name a delegate for the national meeting. Has been Dr. Gould and Dr. DeGrado in the past. Dr. Balderston is also planning to attend the meeting.

(Settich/Minns) Motion for Dr. Gould to be the Delegate. Carried.

(Durrett/Estep) Motion for Dr. DeGrado to be the Alternate. Carried.

IV. ADMINISTRATIVE PROCEEDINGS

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

Craig Schwartz, D.O., Docket #20-HA00009 - Conference Hearing on Summary Order. Ms. M. Katie Baylie appeared for the Board. Dr. Schwartz appeared in person, with counsel Mark Stafford.

Recusals: Dr. Balderston, Dr. Hutchins and Dr. 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). Carried

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

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

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

The Summary Order is upheld. Journal Entry within 30 days.
Dr. Schwartz motioned to stay the decision until the next Board meeting.

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

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

Motion to stay the decision is denied.

Steven Simon, M.D., Docket #20-HA00038 - Conference Hearing on Summary Order. Mr. Todd Hiatt appeared for the Board. Dr. Simon appeared in person, with counsel Mark Stafford.

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

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

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

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

Summary Order is upheld. Journal Entry within 30 days.
Motion to stay pending further proceedings.

(Minns/Wattenbarger) Deny motion. Carried.

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

(Minns/Durrett) Return to open hearing. Carried

The following cases will all be heard together: Dempewolf, Morgan, Babb, Hufford, and Strickland

Michael Dempewolf, D.O., Docket #19-HA00102

Jon Morgan, D.P.M., Docket #20-HA00046

John Babb, M.D., Docket #20-HA00051

David Hufford, M.D., Docket #20-HA00053

Justin Strickland, M.D., Docket #20-HA00052 - Conference Hearing on Summary Order. Mr. Matthew Gaus appeared for the Board. Dr. Dempewolf, Dr. Morgan, Dr. Babb, Dr. Hufford and Dr. Strickland appeared in person, with counsel Mark Maloney.

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

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

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

(Minns/Templeton) Motion to recess into closed session to discuss non-public resolution.

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

Pat Do, M.D., Docket #20-HA00050 - Conference Hearing on Summary Order. Mr. Matthew Gaus appeared for the Board. Dr. Do did not appear in person, counsel Mark Maloney appeared in person. Mr. Malone stated a Motion for Continuance had been filed with the Board in this matter. Motion granted. Case will be continued to April 10, 2020 Board meeting.

Valentenia Daugherty, D.P.M., Docket # 20-HA00012 - Conference Hearing on Application for Reinstatement. Mr. Matthew Gaus appeared for the Board. Dr. Daugherty appeared in person, with counsel, Mark Stafford.

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

(Minns/Durrett) Go into closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under 45CFR.512
Carried.

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

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

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

Motion for continuance to convert to formal hearing. Granted. A Presiding Officer will be appointed.

Laura Bagdonaite-Bejarano, M.D, Docket # 20-HA00044 - Conference Hearing on Application for Licensure. Dr. Bagdonaite-Bejarano appeared in person, pro se.

Recusals: No Recusals

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

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

(Durrett/Minns) Motion to continue. Recommend Dr. Bagdonaite-Bejarano seek legal counsel. Carried.

Kimberli Wagner, O.T.A., Docket #20-HA00036 - Conference Hearing on Application for Licensure. Mr. Matthew Gaus appeared for the Board. Ms. Wagner appeared in person, pro se.

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

(Minns/Varner) 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

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

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

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

Ms. Wagner withdrew her application.

Sidrah Khawaja, P.A., Docket #20-HA00040 - Conference Hearing on Application for Licensure. Mr. Matthew Gaus appeared for the Board. Ms. Khawaja appeared in person, pro se.

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

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

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

Continue and appoint Board member as a presiding officer. Ms. Khawaja will submit an alternate plan regarding training within 30 days.

V. STAFF REPORTS

The Board President called the board meeting back to order.

General Counsel:

Statute Books - Agency legal intern provided updated statute books for each Board member for reference. They can be left here if preferred.

Peer Review Education - Hospitals use this as a weapon or don't do them when a person is important. Dr. Templeton suggests a day long discussion on the ethics of peer review. September is the target.

Temporary Regulations -100-78-1 and 100-78-2. Both were approved via a roll call vote.

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

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

Executive Director:

Budget Update

Interim Executive Director Tucker Poling provided a budget update. Board members have budget documents in the packet. There were no questions.

Legislative Report

Interim Executive Director Tucker Poling provides a legislative update. He informs the Board it has been a very active legislative session. The ED memo has a summary but there are a few things important to highlight:

- HB2506 - Interim ED Poling submitted written and oral testimony. There is significant support for this bill. Interim ED Poling is working to make adequate edits to make the bill palatable for the agency. For example, “completed application” needs to be defined in a manner acceptable to the agency. Board members are encouraged to contact stakeholders and legislators to express their opinions and concerns.
- SB350 - This bill is in response to a court case striking down civil damages cap. This bill changes the minimum medical malpractice caps to \$500,000 and 1.5million aggregate coverage. It also states if the medical malpractice damages cap is overturned by the supreme court, the Healthcare Stabilization Fund would cease to exist, thereby eliminating the requirement to have liability insurance for some of the regulated professions.
- HB2579 - KTRACS Advisory Committee - The committee wants to collect more data regarding referral information. If a patient needs a treatment referral, they may be referred to KDADS. The committee feels the bill is unclear. The current version of the bill codifies each physician position on the committee, and provides for a PA to be appointed by the Board and an APRN to be appointed by Board of Nursing.
- KTRACS funding - While testifying on the budget at the Senate Ways and Means committee, Interim ED Poling expressed concern about the KTRACS funding transfer. The committee struck the transfer from the FY2021 budget.
- APRN Independent Practice of Midwifery - This bill is from last session. It is expected to come up again. When it does, there will be a “round table” discussion. This agency will be included in discussions.
- SB341 - This bill has not yet had a hearing. This bill is important as it significantly increases the scope of practice of the Doctor of Naturopathy. Specifically, it allows an ND to prescribe drugs, including controlled substances, and increases the office procedures an ND can perform.
- Pelvic exams and informed consent - There is a pending bill to address pelvic exams being performed on patients under anesthesia for training purposes. This may be being done without proper informed consent. Interim ED Poling has had discussions about the best way to manage this. The Board suggests countering with the suggestion the Board will develop policy to address this practice. The Board feels this will create more widespread awareness in the medical community.

Annual ED and GC HR Performance Management Process

(Durrett/Balderston) Motion that the Board recess to an executive meeting 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 3:15pm (Interim Executive Director/General Counsel). Carried.

VI. ADJOURNMENT

(Balderston/Settich) Motion to adjourn meeting. Carried.

The meeting adjourned at 3:15p.m.



Steven Gould, D.C.
President

Tucker Poling
Interim Executive Director