

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

BOARD MINUTES – April 9, 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, April 9, 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 April 9, 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.		absent
Thomas Estep, M.D.	present	
Steven Gould, D.C.	present	
Camille Heeb, M.D.	present	
Steve Kelly, PhD, public member	present	
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; Jennifer Cook, Paralegal to General Counsel; and Susan Gile, Operations Manager.

APPROVAL OF AGENDA

(Balderston/Varner) Motion to approve agenda with the following changes: *In the matter of James Brockenbrough, M.D.* Conference Hearing has been continued and is removed from the agenda. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Balderston/Estep) Motion to approve minutes of February 12, 2021, Board meeting. Carried.

II. OTHER BUSINESS

New Staff Introductions

Britani Potter is the new legal intern with the Disciplinary Department. She is a second-year law student at Washburn and will be with the agency part-time. Steven Lehwald is transferring from the Litigation Department to the General Counsel Department as the new Assistant General Counsel. He will start his new duties in May and August will be his first Board meeting.

Executive Director:

Report and Updates on Agency

The agency continues to focus on remote work and social distancing protocols when in the office. We are looking toward increasing the in-office presence but will continue remote work at some level. Staff enjoy it and have remained very productive.

Vaccinations have been made available to all staff. It is not mandatory, but we have strongly encouraged it. Vaccinations have been made available at sites in Topeka. Through distribution of vaccines available for state employees, staff have been offered either the Moderna or Johnson & Johnson.

Any transition back to the office will be gradual and well planned.

The Board had a discussion related to how to move forward with Board meetings.

(Kelly/Varner) Motion to allow Board Meetings to become a hybrid of in person and virtual moving forward. Carried.

Legislative/Executive Order Update

Budget -The budget is in the process of being approved for FY 22 and FY 23. Generally, we agree with the Governor's Office recommended budget. We have one area of disagreement, which is the KTRACS transfer for FY 22 and 23. We have provided a recommendation in conjunction with the Board of Pharmacy to

use the funds the state will receive from the opioid settlement to fund KTRACS, at least in part.

HB 2066 is likely to pass. This bill facilitates licensure for professionals moving to Kansas.

Review and consider order(s) issued (if any) by Executive Director restoring statutory license renewal requirements pursuant to April 1, 2021 Executive Order 21-09, paragraph 8

Executive Order 21-09 continues the order allowing licensees to not renew their license and stays any late fees. EO 21-09 includes a provision for the head of any agency to reimpose the requirements suspended by the order if deemed necessary to continue funding the performance of an important public safety regulatory function. A proposed draft order including proposed findings and rationale supporting the order was included in the Board packet and reviewed on screen at the meeting by the Board with the screen sharing published publicly at the meeting.

(Estep/Black) Motion to authorize and direct Executive Director Poling to issue an order reinstating the requirements suspended by EO 21-09. Carried.

Consider proposed revised licensing application question relating to mental health and substance use impairment

Executive Director Poling proposed a revised impairment question to further conform with best practices as described by recent FSMB recommendations and to further the agency's recent efforts to de-stigmatize mental health and substance use treatment for healthcare providers:

“Do you currently have any physical or mental health condition (including alcohol or substance use) that impairs your ability to practice your profession in a competent, ethical, and professional manner? (yes/no).”

Suggestion to move the word “currently” to in front of the word “impairs”. This was an accepted change by the Board.

There was discussion about a Frequently Asked Questions document focused on impairment. The agency is developing and when complete, the FAQ document will be on the website.

The next step is to continue this discussion for hospital credentialing.

Consider updating public communication tools

Executive Director Poling proposed utilizing social media tools to push out Board information. This would involve Facebook and Twitter initially. There was some concern expressed that once something is on social media, it is out there, and the Board has no control over how it is used. General consensus was approval for Facebook and Twitter to be used as an outgoing stream of communication for policy communications, agency developments, and other public information, but not for disciplinary orders.

Continued discussion on Reentry and Rural Healthcare Access

During the February meeting, Dr. Templeton and Dr. Moser discussed using reentering physicians for rural healthcare access. A regulation is in the promulgation process for reentering physicians implementing the reentry active license. Requesting consideration of creating a list of physicians at KUMC and the new DO school of those who are willing to serve as supervising physicians to physicians reentering practice. Board provided positive feedback to this idea. A question arose as to how many physicians reenter practice annual – no solid data at this time, a bit unknown.

Consider authority for staff to prepare and negotiate new contracts with IPP's for FY22

Discussed brief overview of the IPP contracts with state professional associations and the plan to create a uniform contract for all IPPs. Requested permission from the Board to move forward negotiating with the IPP's to enter into agreements and bring signed contracts to the June meeting for approval.

(Estep/Varner) Motion to give agency staff authority to prepare and negotiate IPP contracts for FY22. Carried.

Executive Session for IT Security

(Estep/Varner) Motion that the Board go into an executive meeting to pursuant to K.S.A. 75-4319(b)(13) for the purpose of discussing additional IT security measures with the IT Director for a period of 10 minutes, and that the open meeting shall resume in the board room at 10:15 am (Executive Director, General Counsel, IT Director and Operations Manager to be included). Carried.

Board returned to open meeting from Executive session at 10:16 a.m.

General Counsel:

General Counsel Report

Board Approval

Kansas Jurisprudence Assessment Module (JAM) Proposed Content Outline 2020

Proposed content for the Kansas JAM is before the Board for approval. The PT council has approved the materials. Per FSBPT, the Board is also required to approve the content.

(Estep/Varner) Motion to approve the JAM Proposed Content Outline. Carried.

Policy Update

The agency is asking for three policies to be archived.

- 09-03 Field Employees -The agency no longer uses Field Employees and does not anticipate doing so in the near future.
- 09-04 Telecommuting -This is more appropriate as an internal agency policy. It is being drafted currently.
- 09-05 Acceptable Use Policy/Systems Security and Obligations -The agency has an updated internal policy in place now. The agency is asking for the Board policy to be archived so the policy can be easily updated when appropriate as an internal policy.

(Estep/Varner) Motion to archive all three policies. Carried.

Consider adoption of K.A.R. 100-6-2 and K.A.R. 100-8-3

Amendments to regulation K.A.R. 100-6-2 have been triple stamped by the Department of Administration, Department of Budget, and the Attorney General's office. The JCARR testimony and letter are included in the packet. The amended regulation has been through all the required public hearings and was posted for public comment. No comments have been received. The amendments to the regulation provides that those who graduate medical school (accredited or unaccredited) after January 1, 2021, must have 36 months postgraduate training for full licensure by examination.

(Estep/Varner) Motion to adopt regulation K.A.R. 100-6-2. Adopted by a verbal roll call vote.

Regulation K.A.R. 100-8-3 has been triple stamped by the Department of Administration, Department of Budget, and the Attorney General's office. The JCARR testimony and letter are included in the packet. This regulation has been through all the required public hearings and was posted for public comment. No

comments have been received. This regulation defines active practice for purposes of licensure by endorsement.

(Estep/Varner) Motion to adopt regulation 100-8-3. Adopted by a verbal roll call vote.

Consider adoption of K.A.R. 100-15-4 and K.A.R. 100-15-5

Amendments to regulations K.A.R. 100-15-4 and K.A.R. 100-15-5 have been triple stamped by the Department of Administration, Department of Budget, and the Attorney General's office. The JCARR testimony and letter are included in the packet. Both have been through all the required public hearings and were posted for public comment. No comments have been received. The amendments to these regulations include a definition for a category III (acute or chronic pain management, appropriate prescribing of opioids, or use of prescription drug monitoring program) and requirements for category III continuing medical education.

(Wattenbarger/Estep) Motion for adoption of both regulation K.A.R. 100-15-4 and K.A.R. 100-15-5. Each was adopted by a separate verbal roll call vote.

Executive session to discuss with legal counsel cases pending in district and appellate courts

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

Board returned to open meeting from Executive session following expiration of 15 minutes.

III. ADMINISTRATIVE PROCEEDINGS

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

Richard Panethere, M.D., Docket #21-HA00049 Conference Hearing on Reconsideration of a Final Order.

Mr. Matthew Gaus appeared for the Board. Dr. Panethere appeared in person via video conference, *pro se*.

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

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

(Wattenbarger/Templeton) Motion to go into closed hearing for confidential information pursuant to **CONFIDENTIAL** . Carried.

Petition for Reconsideration is granted, and Final Order is vacated.

Christopher Young, M.D., Docket #21-HA00053
Conference Hearing on Application. Dr. Young appeared in person via video conference, *pro se*.

(Templeton/Black) Motion to grant licensure by endorsement. Carried.

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

IV. STAFF REPORTS

Litigation Counsel:

Litigation Report

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

Litigation Counsel provided an update on the audit cases. To date, 294 cases have been closed. There are only 56 cases left to review and resolve. The goal is to have them completed by the next board meeting.

Licensing Administrator:

Approval of Licensee/Registrant List

(Balderston/Estep) 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 Licensing Administrator provided an update on the Licensing Department: the emergency temporary license is extended until March 31, 2022, the Resident Active application has been created and will be live soon, the LRT initial licensure application is in the process of being updated. These changes are intended to streamline the process.

Disciplinary Counsel:

Disciplinary Report

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

Disciplinary Counsel provided an overview of the Disciplinary Department. A question was raised about how long disciplinary records should be maintained on the agency website. This will be researched and re-visited.

V. ADJOURNMENT

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

The meeting adjourned at 12:30 p.m.



John Settich, PhD
President



Tucker Poling
Executive Director