

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

BOARD MINUTES – June 11, 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, June 11, 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, June 11, 2021. The meeting was called to order at 8:30 a.m. by John Settich, Ph.D. and President.

Mark Balderston, D.C.		absent
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.		absent
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; Todd Hiatt, Litigation Counsel; Tammy Mundil, Deputy Litigation Counsel; Matthew Gaus, Associate Litigation Counsel; Katie Baylie, Deputy Disciplinary Counsel; Rebekah Moon, Licensing Administrator; John McMaster, M.D., Medical Director; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook, Paralegal to General Counsel; and Susan Gile, Operations Manager.

APPROVAL OF AGENDA

(Durrett/Templeton) Motion to approve agenda with the following additions:

Add an Executive Session to discuss contract negotiations with third parties and Executive Session to discuss non-elected personnel members. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Varner/Estep) Motion to approve minutes of April 9, 2021 board meeting with no changes or additions. Carried.

II. OTHER BUSINESS

New Staff Introductions

Kady Curtis has been promoted to the Head Paralegal for the litigation department.

Executive Director:

Report and Updates on Agency

The agency has begun to open up as it relates to COVID. We are no longer requiring masks for staff who are fully vaccinated. We will continue to use telework as a tool for many staff where it is productive. A telework policy has is being implemented.

Legislative Report

The PT Compact passed. Agency staff are working hard to put in place necessary requirements to implement. Executive Director Poling and General Counsel Cyzman met with the chair of the PT compact commission. Executive Director Poling feels the agency is ahead of schedule as it relates to readiness to implement this legislation. The only real issue is approval for FBI background checks. Even though the agency already conducts background check on some of the other professions, the FBI needs to separately approve it for PTs. We have been given an estimate 2-3 months for FBI approval. The goal of the PT Compact legislation is to increase licensure portability across states while maintaining quality assurance regarding training, education, and liability insurance. The agency believes we may be able to implement without promulgating regulations on the front end but will be amending existing regulations for clarification.

HB 2066 passed and will become law on July 1. It will be a significant amount of work for implementation. This legislation sets tighter licensure timelines and makes it a bit easier for those holding a clean license in another state, who have practiced at least one year, to gain licensure in Kansas. There are some controls in the bill so that those licensed by the KSBHA will still need to have substantial equivalent qualifications.

The Medical Marijuana bill passed the house but did not pass the senate this year. This is a two-year session so it will be alive next year.

Delegated/supervised practice of Certified Anesthesiologist Assistants in Kansas

Previously, the practice of CAA has been a discussion of licensure. This is a different issue than our topic for today, which is a legal question directly relating to the statutes that we're required to enforce, which has been presented to the Board by the Kansas Society of Anesthesiologists. The topic for discussion today is delegated supervised practice. Under K.S.A. 65-2872g and K.S.A. 65-28,127 and K.S.A. 65-2837(b), (26) and (30) there is a structure for delegated supervised practice of professionals who are not licensed to practice. We are an executive body. Our role is to abide by and enforce the law. The Board does not decide what the law should be. Executive Director Poling has provided a draft letter to the Board containing a draft analysis and proposed answer to the question. .

Representatives of CAA's and anesthesiologists are available for questions about the question they're asking the Board to consider.

Board members discussed the question.

(Durrett/Templeton) Motion to approve the draft letter as the Board's response on this topic. Carried.

Questions were raised about whether the Board should implement rules and regs or some sort of tracking protocols to oversee the practice of CAAs in KS. Executive Director Poling noted that his understanding is that there are few if any CAAs practicing in Kansas at this time and it's unclear if that will change anytime in the near future. Although K.S.A. 65-28,127 provides authority for the Board to implement regs on this topic, his recommendation is the Board decline to immediately move forward with promulgating rules or regulations regarding CAA practice in deference to the legislature but continue to evaluate this issue. If problems arise and it becomes apparent regs are needed (before the legislature provides statutory direction on the contours of CAA practice in Kansas), we can move forward with rules and regs. The board formed a working group which includes Dr. Black, Dr. Durrett, and Dr. Templeton to monitor any issues that may arise.

Final approval of IPP contracts

(Durrett/Black) Motion to approve IPP contracts. Carried.

Discussed the KMS contract.

(Varner/Black) Executive Session for the purpose of privileged communication with legal counsel relating to legal advice and analysis relating to third party contracts for 10 minutes. Return to open meeting at 9:50. Carried.

Discussion of whether KU Med Non-ACGME accredited fellowships qualify as programs “approved” by the Board.

KUMC presented their non-ACGME fellowship programs for approval by the Board for purposes of K.S.A. 40-3401(r).
(Durrett/Estep) Motion to approve KUMC non-ACGME accredited fellowships and non-ACGME accredited fellowship programs that are affiliated with an ACGME accredited residency program and/or are approved by their respective specialty boards for purposes of K.S.A. 40-3401(r). Carried.

Appoint PT compact delegate (Poling or KSBHA Board Public Member)

The PT compact requires the board to appoint a compact delegate. Executive Director Poling is appointed.

Appointment of FSBPT Voting Delegate

FSBPT would like the board to appoint a voting member, an alternate and an administrative member. Dr. Gould (voting), Dr. DeGrado (alternate) and Warran Wiebe (administrative member) are appointed.

Report from Dr. Estep regarding FSMB annual meeting

The annual FSMB meeting was held on May 1st. There were 71 state and regulatory boards present. They reviewed the challenges of the past year. FSMB is 108 years old. The treasurer’s report and budget were accepted for 2022. They discussed emergency preparedness, physician impairment, and expert reviews. Election of a new board and new nominating committee. The new chair is an ophthalmologist.

Board meeting recessed to go into hearings pursuant to the Kansas Administrative Procedure Act.

III. ADMINISTRATIVE PROCEEDINGS

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

Alisha M. Coulson, M.D., Docket #21-HA00065 (in-person) Conference Hearing on Motion to Set Aside, or in the Alternative to Amend the Final Order.

Mr. Matthew Gaus appeared for the Board; Dr. Coulson appeared in person, with counsel Brooke Bennett Aziere.

Recusals: Courtney Cyzman

(Templeton/Durrett) Motion to vacate the Final Order. Carried.

(Black/Kelly) Motion to reconvene Board meeting. Carried.

IV. STAFF REPORTS

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 their review. The Court of Appeals decision came out today regarding *Shine v. KSBHA*, reinstating revocation and assessment of board costs. Oral arguments are scheduled for July 14, 2021 in the Court of Appeals for *Sajadi vs. KSBHA*. The Board is in the briefing for the *Board of Healing Arts vs. Shawn Parcels* with the Court of Appeals.

Consider adoption of K.A.R. 100-28a-5 and K.A.R. 100-28a-16

(Durrett/Black) motion to adopt K.A.R. 100-28a-5

Roll call vote-adopted

(Kelly/Estep) motion to adopt K.A.R. 100-28a-16

Roll call vote-adopted

Initial approval for regulation K.A.R. 100-6-7 to implement HB2066 and update PT fee, continuing education, and professional liability regulations to incorporate compact privilege

The proposed regulation for approval is related to HB 2066. Sets the application requirements for individuals who qualify for licensure by endorsement under HB 2066. Applicants will be required to pay a fee, provide a current photograph, complete the application form we provide, and provide verification of the license in the home state. The regulation also includes the requirement for liability insurance/KHCSF where applicable.

(Durrett/Varner) Motion for initial approval of proposed regulation K.A.R. 100-6-7. Carried.

The PT Compact legislation is effective July 1. The initial analysis shows no regulations will be required. The Board should consider amending the fee, continuing education, and professional liability insurance regulations simply to incorporate the compact language for clarification. The Board has to set a fee for the compact privilege. General Counsel and Executive Director would like the board to give authority for approval for between \$50.00 and \$80.00 for the compact privilege. Authority given.

(Estep/Varner) Motion for initial approval to amend K.A.R. 100-29-7, K.A.R. 100-29-9, K.A.R. 100-29-15 to incorporate compact privilege language. Carried.

Policy update

Policy #21-05-Telemedicine waiver- This policy sets the initial application fee at 97.00 plus 3.00 NPDB fee. The same fee will be charged for renewal. The policy sets the renewal consistent with MD renewal cycle. Will begin May 15th of each year and the waiver would expire on August 1.

(Estep/Varner) Motion to approve KSBHA Board Policy #21-05. Carried.

Policy #21-02-Telemedicine Policy- This policy was initially approved in October 2020. The policy has been revisited due to updates in clinical practice and law. This policy has gone through the policy work workgroup and has been sent to professional associations for feedback.

(Estep/Black) Motion to adopt revisions to KSBHA Board Policy #21-02. Carried.

Policy #06-01-This is a revised policy for approval. It is a general agency practice not to provide refunds of fees paid barring exceptional circumstances. The revision delegates the approval of refunds to the Licensing Administrator.

(Estep/Black) Motion to accept revised KSBHA Board Policy #06-01. Carried.

Policy #07-01- This policy directed from a Governor Sebelius directive asking that all agency computers etc. be turned off each evening. This practice makes remote work very difficult or impossible due to the need to connect to the vpn. Agency staff are asking for this policy to be archived.

(Durrett/Estep) Motion to archive KSBHA Board Policy #07-01. Carried.

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

ADMINISTRATIVE PROCEEDINGS-CON'T

James Brockenbrough, M.D., Docket #21-HA00048 Conference Hearing on Summary Order.

Mr. Matthew Gaus appeared for the Board; Dr. Brockenbrough appeared in person, via virtual conference with counsel Wesley Smith.

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

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

(Templeton/Black) Motion back to admin hearing. Carried.

(Templeton/Black) Motion to go back into closed hearing pursuant to K.S.A. 65-2838a. Carried.

(Templeton/Heeb) Motion to dismiss the Summary Order. The Board makes a strong recommendation for Dr. Brokenbrough to back pay the KHCSF. Carried.

David H. Payne, M.D., Docket #21-HA00071 Conference Hearing on Summary Order.

Mr. Matthew Gaus appeared for the Board; Dr. Payne appeared in person via virtual conference, *pro se*.

Recusals: Dr. Black, Dr. Durrett, Dr. Gould, Dr. Kelly, Steven Lehwald and Dr. Templeton

Wattenbarger/Estep) Motion to dismiss the Summary Order. Carried.

Sally Sartin, M.D., Docket #21-HA00067 Conference Hearing on Summary Order.

Mr. Matthew Gaus appeared for the Board; Dr. Sartin appeared in person via virtual conference, *pro se*.

Recusals: Dr. Black, Dr. Durrett, Dr. Gould, Dr. Kelly, Steven Lehwald and Dr. Templeton

(Wattenbarger/Estep) Motion to dismiss Summary Order. Carried

(Durrett/Estep) Return to open meeting of the board. Carried.

STAFF REPORTS CON'T

Litigation Counsel:

Litigation Report

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

The department is close to completing the MD audit. Three attorneys have been hired and will be starting by the end of the summer.

Licensing Administrator

Licensing Report

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

New analyst starting on Monday and will be working with the healing arts team. Another analyst is leaving. Everyone is working at full capacity to keep the turnaround time for applications as short as possible.

Licensing will have a lot of work to implement some of legislation changes made this session.

Approval of Licensee/Registrant List

(Durrett/Estep) Approve licensee/registrant list. Carried.

Disciplinary Counsel:

Disciplinary Report

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

Sexual Misconduct Cases

The goal is to increase the number of cases reported as only about 15% of cases are reported. It is also a goal to make the system move faster. It was discussed to form a review committee that can meet on an ad hoc basis with members specially trained. FSMB put out a great report last year on physician misconduct. One issue is the report focuses solely on conduct to patients and family members. It misses conduct toward trainees and co-workers. There needs to be training on what sexual harassment is and what it looks like. The reasons victims don't report is they don't know how, and they don't think they will be supported. The training needs to address these topics as well. One of the recommendations of the FSMB is that there be ramifications for those institutions who have physicians working with allegations of sexual harassment with no follow-up or investigation. This would require KDHE involvement. The Board is not able to regulate facilities, but we do have some ability to include past misconduct in our orders.

Executive Director Poling sent some material published by the NC Medical Board related to what to expect from a physical exam, red flags, and what to look out for. The group will be bringing some materials forward for review and possible adoption.

The Board needs to be mindful of what we do with a licensee who has been found have committed sexual misconduct.

A question was raised at to what the healthcare providers responsibility is if they suspect a peer, but the victim is an adult and the victim does not want the misconduct reported-is it a violation of patient privilege, etc. It is felt this could be a very important education element for medical professionals.

Healing Arts Act contains a duty to report fellow licensees when you have a reason to believe a violation of the healing arts act has occurred. The definition states direct involvement or knowledge of a violation.

(Black/Estep) Recess open meeting to Administrative Hearing.

V. CONSENT ORDERS

Brandon M. Martino, A.T., Docket #21-HA00082 Review of Proposed Consent Order.

Ms. Mundil appeared for the Board; Mr. Martino did not appear in person but thought his counsel Barry Clark.

Recusals: Dr. Black, Dr. Durrett, Dr. Gould, Dr. Kelly, Steven Lehwald

(Wattenbarger/Templeton) Motion to accept consent order. Carried.

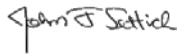
(Durrett/Estep) Reconvene Open Meeting

VI. ADJOURNMENT

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

The meeting adjourned at 1:31p.m.

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John Settich, PhD
President



Tucker Poling
Executive Director