

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

**BOARD MINUTES – Friday, June 12, 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, June 12, 2020**

**I. CALL TO ORDER - ROLL CALL**

The Kansas State Board of Healing Arts met electronically via GoToMeeting and conference call on Friday June 12, 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.	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
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, Interim Executive Director and General Counsel; Courtney Cyzman, Deputy General Counsel; Warran Wiebe, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Todd Hiatt, Litigation Counsel; Tammy Mundil, Deputy Litigation Counsel; Matthew Gaus, Associate Litigation Counsel; Rebekah Moon, Licensing Administrator; John McMaster, M.D., Medical Director; Jennifer Cook, Legal Assistant to General Counsel; and Susan Gile, Operations Manager.

Ksenija Zeltkalns, CSR, Appino and Biggs Reporting Service, took and recorded the administrative proceedings conducted for Mike Hall, PA KSBHA Docket #17-HA00062.

## **APPROVAL OF AGENDA**

(Varner/Durrett) Motion to approve agenda. Carried.

## **APPROVAL OF BOARD MEETING MINUTES**

(Estep/Black) Motion to approve minutes of April 2, 2020, and April 10, 2020, board meeting(s). Carried.

## **NEW STAFF INTRODUCTION**

Acting Executive Director Poling introduced Rebecca Rice as the new Complaint Coordinator. Ms. Rice was previously a Licensing Analyst in the Licensing Department.

Dr. Suber is introduced as a new Board member. This is her first Board meeting. Dr. Minns and Dr. Hutchins have both ended their tenures on the Board. Both were presented with appreciation plaques.

## **II. STAFF REPORTS**

### **Licensing Administrator:**

#### **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:

A revision has been made to the continuing education question on the MD renewal. This should lead to less confusion and more accurate responses. In the first seven days of the MD renewal cycle, 100% of renewals were submitted online.

The Education and Outreach Committee has completed 32 presentations. This is helpful to both the applicants and the licensing analysts.

Application processing time is currently at 10 business days from the date of receipt of all required documentation. This is a small increase due to graduation, which results in greater volume.

The Licensing Department is working on updating the DO renewal process and creating a Resident Active license application with General Counsel.

The Licensing Department will be working with KBI on the submission and retrieval of LiveScan fingerprints.

A Board member inquired how many Emergency Temporary Licenses have been issued; there have been approximately 100 Emergency temporary licenses granted since implementation.

### **Disciplinary Counsel:**

#### **Disciplinary Report**

The statistical report for the Disciplinary Department was included in the Board's packet of materials, for their review. There were no questions.

## **General Counsel/Executive Director:**

### **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.

### **Reports and Updates on Agency**

Licensing renewals have slowed down. There are approximately 18% fewer at this point than last year. This is most likely due to the pandemic and the Executive Order extending renewal deadlines. While this does have budget impact, at this time, Acting Executive Director is confident the agency will continue to operate with a positive budget forecast.

The agency continues to utilize primarily remote work for staff and has been doing so since March. Needed hardware was obtained from State Surplus. Productivity of staff is good. At this time, staff are slowly returning and increasing their time in the office. As this occurs, the agency is utilizing internal protocols for safety; temperature checks, masks in common areas, increased cleaning, and limiting the number of people in one location.

The Education and Outreach Committee has done a great job. To date, 32 presentations have been completed. These have been a combination of live presentations and distribution of recorded presentations. This includes; 100% of the graduating PAs (WSU), 90% of the RT programs in Kansas, 4 out of 6 of the LRT programs in Kansas, 8 out of 13 of the AT programs in Kansas. Some presentations were recorded. All feedback has been positive. There are plans for future presentations with Cleveland Chiropractic and KOTA. Moving forward, the committee will be focusing on at least three types of additional presentations: (1) general overview of the agency; (2) investigations; and (3) a presentation for the public about submission of complaints.

### **Legislative update**

House Bill 2016 passed on June 4<sup>th</sup> and most of the provisions affecting KSBHA are in effect until January 26, 2021.

The most concerning provision allows healthcare professionals licensed and in good standing in another state, to practice in Kansas without a license. Bill does not clearly specify or define who is a "healthcare professional" in the context of this provision. The core issue is, as written, there is no jurisdiction for KSBHA (or other state agency) to regulate individuals practicing under this waiver.

The bill also impacts the scope of care and supervision for PAs and APRNs. It changes/removes supervision requirements for PAs and APRNs. It allows the employer to determine the scope of supervision needed.

The bill also allows for a "Respiratory Therapy Extender." This allows a provider to provide services based on the experience determined by the employers. There is no definition of a Respirator Therapy Extender.

The bill allows Pharmacists to practice routine medical care without physician supervision. This creates a lot of uncertainty.  
The bill also provides liability immunity related to COVID response. This could be raised as a defense for Board actions relating to a provider, response to COVID-19.

**Exempt Licensees - Consider whether they may hold shares in professional corporations.**

Years ago, the Board took the position an exempt licensee was not eligible to hold shares in a professional corporation. Based on information gathered and this issue arising again now is a good time for the Board to re-visit this decision. KMS takes the position an exempt licensee should be eligible to own shares. Additional written comment was submitted by outside counsel with the same position that under Kansas law, exempt licensees can hold shares in a professional corporation.

(Settich/Wattenbarger) Motion to move forward to allow exempt licensees to hold shares in professional corporations. Carried.

**Designated representatives to the Federation of State Boards of Physical Therapy (FSBPT)**

The Board needs to appoint a delegate, and alternate delegate to attend the annual meetings. Both meetings are virtual this year.

(Estep/Laha) Motion for Dr. Gould to be the delegate and Dr. DeGrado to be the alternate delegate. Carried.

**PT Council appointment**

(Durrett/Varner) Motion to appoint Dr. Wheeler to the PT Council. Carried.

**Process/Policy discussions**

The agency has been using Certified mail for second audit notices pursuant to Board Policy #08-03 Guidelines for imposing discipline for failure to respond to a continuing education or malpractice insurance licensure audit request. It is recommended to archive this policy. This change will be economical for the agency overall and provide more discretion for the prosecution of cases where a Licensee fails to respond to an audit.

(Durrett/Varner) Motion to archive Board Policy #08-03 policy. Carried.

**Update on Regulations in Promulgation**

There are many regulations pending. Updates on promulgation process have been provided.

Discussion on the Reentry Active license and amending the fee regulation to include a fee for Reentry Active license (and renewal) and Resident Active license.

In drafting the Reentry Active regulation, it became clear, largely based on resources for providers reentering practice, that there will need to be separate reentry active license regulation for chiropractors. So, Reentry Active license will be available for MDs, Dos and DCs, but chiropractors will have a separate regulation tailored more specifically to best suit their profession and the reentry into chiropractic practice.

The Reentry Active regulation for MDs and DOs would allow for practitioners who have not been in the practice of medicine for the past two years (and such cessation was not a result of revocation or voluntary surrender of license) to submit a reentry plan, subject to Board approval. This license type would be renewable once, without Board approval. Subsequent renewals would require Board approval. If the reentry plan is approved, the reentry plan would be incorporated in a non-disciplinary resolution.

(Durrett/Balderston) Motion for initial approval of Reentry Active License; medicine and surgery and osteopathic medicine regulation renewal. Carried. Dr. Balderston will work with Deputy General Counsel on the reentry active regulation for chiropractors.

Regulation in promulgation (K.A.R. 100-6-2a) Resident Active License. Need to develop a fee for this license type, which will require amendment of fee regulation. Suggest 100.00.

(Templeton/Durrett) Motion to set Resident Active license fee at \$100.00. Carried.

Recessed to Executive Session by acclimation pursuant to K.S.A. 75-4319(b)(1) for attorney client consultation relating to contracts with third parties, for a period of 20 minutes.

(Minns/Black) Motion to return to open meeting from executive sessions. Carried.

In regard to the IPP contracts, the Board directs agency staff to work address potential updates/revisions to IPP contracts consistent with elements discussed, with board to ultimately approve any revisions to contracts .

### III. ADMINISTRATIVE PROCEEDINGS

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

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

**Mike Hall, P.A., Docket #17-HA00062**

**Conference Hearing on Remand from District Court.** Mr. Todd Hiatt appeared for the disciplinary panel of the Board. Mr. Hall appeared by teleconference and with counsel Diane Bellquist, present virtually via GoToMeeting.

Recusals: Dr. DeGrado, Dr. Durrett, Dr. Hutchins and Dr. Laha

Mr. Hiatt requested 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).

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

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

A written order will follow in 30 days.

**Brian Lahey, M.D., Docket #19-HA00005**

**Review of Proposed Consent Order.** Mr. Todd Hiatt appeared for the disciplinary panel of the Board. Dr. Lahey appeared via virtual meeting with counsel Diane Bellquist.

Recusals: Dr. DeGrado, Dr. Estep, Dr. Settich, Dr. Varner, Dr. Durrett, Courtney Cyzman, and Tucker Poling

(Varner/Wattenbarger) Recess evidentiary portion to gather additional information. Carried.

Dr. Lahey case is recalled and moved back to closed session.

(Minns/Varner) Motion to accept Consent Order. Carried.

**Kurt Guindon, M.D., Docket #20-HA00059**

**Conference Hearing on Request for Status Change.** Mr. Matthew Gaus appeared for the disciplinary panel of the Board. Dr. Guindon appeared via virtual meeting with counsel Kelli Stevens.

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

Mr. Gaus requested a closed hearing pursuant to K.S.A. 77-523(f) for the presentation of information which is confidential under K.S.A. 65-4915 and K.S.A. 65-4925.

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

**Stephanie de Vere, M.D., Docket #19-HA00097**  
**Conference Hearing on Application for Licensure.**  
Dr. de Vere appeared via virtual meeting with counsel Kelli Stevens.

(Templeton/Estep) Motion to grant license by endorsement. Carried.

**Jamie Herrera Caceres, M.D, Docket # 20-HA00043**  
**Conference Hearing on Application for Licensure.**  
Dr. Herrera Caceres appeared via virtual meeting with counsel Megan Moseley.

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

The Board recommends Dr. Herrera Caceres withdraw his application as he does not qualify for licensure by examination or endorsement.

**Guillermo Herrera, M.D., Docket # 20-HA00075**  
**Conference Hearing on Petition for Reconsideration.** Mr. Todd Hiatt appeared for the disciplinary panel of the Board. Dr. Herrera appeared via virtual meeting, *pro se*.

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

(Wattenbarger/Laha) Return to open hearing. Carried.

(Templeton/Minns) Motion to grant Petition for Reconsideration and vacate the amended Summary Order. Carried.

#### IV. CONSENT ORDERS

**Clinton Humphrey, M.D.**

**Review of Proposed Consent Order.** Ms. Tammie Mundil appeared for the disciplinary panel of the Board. Dr. Humphrey appeared via virtual meeting and with his attorney Mark Cole and Julie Roth.

The hearing is closed with no objection.

(Durrett/Estep) Motion to approve Consent Order. Carried.

**Kimberly Yoo, D.C.**

**Review of Proposed Consent Order.** Ms. Tammie Mundil appeared for the disciplinary panel of the Board. Dr. Yoo appeared via virtual meeting, *pro se*.

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

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

(Templeton/Varner) Motion to deny Consent Order. Carried.

**Jeff Drake, D.C.,**

**Review of Proposed Consent Order.** Ms. Tammie Mundil appeared for the disciplinary panel of the Board. Dr. Drake appeared via virtual meeting, *pro se*.


(Durrett/Black) Motion to approve Consent Order with amendment. Carried.

(Durrett/Laha) Motion to return to open meeting from recess for administrative hearings. Carried.

#### V. ADJOURNMENT

(Hutchins/Laha) Motion to adjourn meeting. Carried.

The meeting adjourned at 3:40 p.m.

  
Steven Gould, D.C.  
President

  
Tucker Poling  
Acting Executive Director