

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

BOARD MINUTES – August 13, 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, August 13, 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 August 13, 2021. The meeting was called to order at 8:30 a.m. by Tom Estep, M.D. and Vice President.

Abebe Abebe, M.D.		absent
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		absent
Stephanie Suber, D.O.	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; Steven Lehwald, Assistant General Counsel; Nancy Dodik, Disciplinary Counsel; Katie Baylie, Deputy 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; Kathy Moen, Medical Litigation Support Specialist; Jennifer Cook, Paralegal to General Counsel; and Susan Gile, Operations Manager.

APPROVAL OF AGENDA

(Estep/Black) Motion to approve agenda with the no changes. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Estep/Varner) Motion to approve minutes of the June 11, 2021, board meeting with the no changes. Carried.

II. OTHER BUSINESS

New Staff Introductions

Ruslan Ivanov is a new attorney in the litigation department. He comes to the agency with much experience. He received his law degree from KU School of Law. He has worked as a public defender in NM and KS and will put those litigation skills to work here. He has also worked for the Disability Rights Center in Kansas.

Shelly Andrews is a new licensing analyst in the licensing department. She has a lot of great work experience to draw on that will translate well into this position. She started during the departments busiest time of year and has hit the ground running and hasn't yet slowed down.

Jennifer McArthur is the support staff supervisor in the Disciplinary Department. She comes back to the Board after working here for a number of years. Most recently, she worked for the KHCSF. She is a great fit for this position and is putting her experience to great use.

Jackson Hermann is the new legal assistant in the litigation department. He is our newest member and has been here for 5 days. He is a Topeka native and graduated from Washburn University with a degree in Communications. He comes to us with experience at KDHE in the Presumptive Eligibility team doing training and program coordination related to Medicaid compliance.

Patti Welty is a new support staff in the Disciplinary Department. She completes renewals and completes other background information related to licensees and applicants.

Shane Creason is the new legal intern in the General Counsel Department. He will be working with the GC attorneys and paralegals on research and other projects as assigned.

Introduction of New Board Member

Dr. Abebe was introduced as the newest member of the Board. He was on the meeting for a few moments via Zoom.

Executive Director:

Elect Board President and Vice President

Board members received the information about the election process from Executive Director Poling.

(Durrett/Gould) Nominates Dr. Estep for President.

(Gould/Durrett) Moves nominations cease. Carried.

Dr. Estep abstains in voting. By acclamation Dr. Estep is the president of the Board.

(Durrett/Estep) nominates Dr. Varner for Vice President.

(Gould/Durrett) Moves nominations cease. Carried.

By acclamation Dr. Varner is Vice President of the Board.

Report and Updates on Agency and Old Business

Memo from Executive Director Poling on agency business. There were no questions from Board members.

Service of Dr. Templeton

Dr. Templeton has been a member of the board for 12 years. She was statutorily limited from serving another term. She is willing to continue to be involved and is an incredible resource to the Board. Executive Director Poling would like to give her the title of Special Advisor to the Board so she can work with staff on special projects and be a liaison when we want her to work with other organizations on behalf of the Board.

(Durrett/Balderston) motion to approve the title of Special Advisor for Dr. Templeton. Carried.

Dr. Estep questioned whether there is a specified period for this position. Dr Estep suggests a 5-year time limit and then review.

(Estep/Black) Motion to institute a 5-year limit on the Special Advisor. The same person can be re-appointed for another term. Carried.

Certified Anesthesiologist Assistants

At the last meeting the Board answered a very specific question regarding practice of the Certified Anesthesiologist Assistants in Kansas. Executive Director Poling has gotten some feedback about the answer/opinion provided. A lot of positive feedback but also some criticism. There was a letter in your packet from Nurse anesthetists expressing their view. There has also been some inaccurate statement made by some organizations on social media that overstated the action we took at the last meeting. The Board only stated it's view of the current law which is that

Kansas law discussed in our letter in response to the question does not prohibit CAAs from practicing in Kansas as long as all other applicable laws are followed. The Board also recommended the legislature provide some statutory guidance on this issue. There has been some objectively false information spread about the Board's action, alleging that we were attempting to usurp the legislature. That is clearly false. We did the opposite by specifically requesting legislative attention and statutory clarification rather than holding hearings and promulgating regulations on the subject ourselves. We specifically declined to move forward with promulgating regulations on this topic at this time although we have the authority to do so under K.S.A. 65-28,127. We also declined to hold hearings and public debate involving the various stakeholders who have opinions on this issue because, as we noted in the letter, we believe the legislature is the more appropriate venue for those policy oriented discussions. Our action was limited to responding to a question about our interpretation of laws we are tasked with enforcing and requesting statutory clarification relating to the same.

Will continue to monitor the issue.

Appoint LAc Council Member

Must be an MD/DO. Dr. Black is appointed.

General Counsel

General Counsel Report

The General Counsel report is in the Board Packet. Board members had no questions.

Appellate Case Updates

At the last Board Meeting, the Board was made aware of the decision on *Shine vs. KSBHA*. The Kansas Court of Appeals affirmed the revocation of Dr. Shine's license and reinstated the assessment of costs. Dr. Shine has petitioned the Kansas Supreme Court for review. The agency filed our response.

Oral arguments were heard before the Kansas Court of Appeals on July 14, 2021 in *Sajadi vs. KSBHA*.

Trust Women v. Bennet et. al is scheduled for oral argument before the Kansas Court of Appeals on September 9, 2021.

KSBHA vs. Parcels is now at Kansas Court of Appeals. Mr. Parcels has filed his brief and we have filed a response. We are currently waiting for summary decision or to be set for oral argument.

Consider Adoption of temporary regulation K.A.R. 100-6-7

This temporary regulation was initially approved at the June meeting. This regulation sets the application requirements for those who apply for licensure pursuant to HB 2066.

(Wattenbarger/DeGrado) Motion to approve for temporary regulation.

Approved via a roll call vote.

KSBHA Board Policy #21-03

This policy addresses postgraduate training accreditations that are substantially equivalent to ACGME/AOA for medicine and surgery licensure in Kansas. For applicants to be qualified for licensure by examination they must have completed an ACGME or AOA accredited residency training, or the substantial equivalent. The Board has previously approved the Royal College of Physicians and Surgeons of Canada and at the April meeting the Board approved the Australian version. In Canada family physicians have a different accrediting body, the College of Family Physicians of Canada. The Board packet included the standards for the College of Family Physicians of Canada and the ACGME standards so the Board can consider their substantial equivalence.

(Estep/Varner) Motion to approve the College of Family Physicians of Canada as substantially equivalent to the ACGME for purposes of licensure by examination. Carried.

KMS Contract

Information in the Board Packet about this IPP contract.

(Estep/Durrett) Motion that the Board recess to an executive meeting for a period of 10 minutes to discuss third party contracts pursuant to K.S.A. 75-4319(b)(2), and that the open meeting shall resume in the board room at in 9:19am.

(Executive Director, General Counsel, and Operations Manager to be included). Carried.

Impaired Provider Program presentation

A presentation was given from Acumen, Kansas Medical Society and Heart of America Professionals' Network regarding the Impaired Provider Programs and how they work with the Board and independently to evaluate and serve impaired providers of professions regulated by the Board.

(Estep/Durrett) Motion to recess the open meeting to Administrative Hearings.

III. ADMINISTRATIVE PROCEEDINGS

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

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

(Degrado/Varner) Motion to go back into administrative proceedings. Carried.

Ekaterina Castano, M.D., Docket #21-HA00094

Conference Hearing on Summary Order.

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

Recusals: None.

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

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

Summary Order is vacated. Board recommends contacting the HCSF to become compliant.

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

(Varner/DeGrado) Motion to move to administrative hearings. Carried.

Robert Jensen, M.D., Docket #21-HA00099

Conference Hearing on Summary Order.

Mr. Matthew Gaus appeared for the Board. Dr. Jensen appeared in person, *pro se*.

Recusals: None.

(Durrett/Balderston) Motion to vacate the Summary Order and recommend he contact the HCSF. Carried.

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

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

Jose Bejar, M.D., Docket #21-HA00081

Conference Hearing on Application for Reinstatement.

Mr. Todd Hiatt appeared for the Board. Dr. Bejar appeared in person, with counsel Vincent Cox.

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

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

(DeGrado/Bradbury) Return to open hearing. Carried.

(Varner/DeGrado) Motion to deny the application for reinstatement. A written order to follow in 30 days. Carried.

(Balderston/Varner) Motion to return to the Open Meeting. Carried

The meeting of the KSBHA returned to order from recess for administrative hearings.

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.

The department has closed 128 cases since the last meeting and currently has 238 cases open. This is getting closer to the historical number of open cases. Kady Curtis is now the lead paralegal. Another paralegal has been hired. Matt Gaus will move over into a strict litigation role. Two more attorneys are coming on board in September.

Licensing Administrator:

Approval of Licensee/Registrant List

(Varner/Gould) 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 department has a new analyst and will have another new one by next meeting. The department is now using KCHAT to receive KBI background check

results. The results are now received in 2-5 business days. Rebekah attended and presented at the IMLCC summit. The department is removing the peer recommendation form from the Healing Arts application.

Disciplinary Counsel:

Disciplinary Report

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

The department has closed 185 investigations since the last meeting and currently has 560 investigations open. Both numbers are relatively stable. There are two new support staff members, and a new Medical Investigator will be on board by the next meeting.

(Varner/DeGrado) Motion recess the open meeting into Administrative Proceedings.

Administrative Proceedings Continued

Megan McCoy, P.T., Docket #21-HA00093

Conference Hearing on Application.

Mr. Matthew Gaus appeared for the Board. Ms. McCoy appeared in person via virtual conference, *pro se*.

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

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

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

(Bradbury/Wattenbarger) Motion for Applicant to complete 35 hours of CE prior to receiving licensure. Carried.

Stephanie Anderson, M.D., #21-HA00084

Conference Hearing on Summary Order.

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

Recusals: None.

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

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

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

(Wattenbarger/Balderston) Motion to vacate the Summary Order and recommend Dr. Anderson contact the KHCSF and pay any back funds owed. Carried.

(Varner/Balderston) Return to open meeting.

(Durrett/Varner) Recess to closed session for Attorney Client consultation.

(Estep/Koontz) Return to open session. Carried.

Vandana Sharma, P.T.A., Docket #22-HA00004

Conference Hearing on Application

Mr. Matthew Gaus appeared for the Board. Ms. Sharma appeared in person via virtual conference, *pro se*.

Recusals: None.

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

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

The case is continued so it may be sent back to the PT council for input.

Donald Brown, Jr., D.O., Docket #21-HA00083

Conference Hearing on Application.

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

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

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

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

Continue to October Board Meeting to provide Dr. Brown an opportunity to see if an exempt license is suitable. The case will be sent back to the Disciplinary Panel at the next regularly scheduled meeting for consideration. The Board will not accept the SPEX exam for active licensure in this case. If an exempt license is not suitable for Dr. Brown's situation, Dr. Brown should propose an alternate solution or program.

(Durrett/Varner) Motion that the Board recess to an executive meeting for attorney/client discussion pursuant to K.S.A. 75-4319(b)(2) for a period of 15 minutes (Executive Director, General Counsel and Operations Manager to be included). Carried.

(Balderston/Estep) Motion to return to open meeting.

V. CONSENT ORDERS

Amelia C.W. Rodrock, D.C.

Review of Proposed Consent Order

Mr. Hiatt appeared for the Board. Dr. Rodrock appeared in person via virtual conference, with counsel Greg Forney.

Recusals: None.

(Wattenbarger/Durrett) Motion to accept Consent Order as written. Carried.

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

VI. ADJOURNMENT

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

The meeting adjourned at 3:45p.m.



Thomas Estep, M.D.
President



Tucker Poling
Executive Director