

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

BOARD MINUTES – Friday, August 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, August 14, 2020

I. CALL TO ORDER - ROLL CALL

The Kansas State Board of Healing Arts met electronically via GoToMeeting, and conference call on Friday August 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.	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.		absent
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, Acting 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, Meg Markey, John Kitchens, and Steven Lehwald Associate Litigation Counsel; Katie Bailey, Associate 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

(Estep/Varner) Motion to approve agenda with the following changes: Addition of discussion of Ad hoc committee on sexual misconduct. Carried.

APPROVAL OF BOARD MEETING MINUTES

(Estep/Varner) Motion to approve minutes of board meeting(s) with no changes Carried.

New Staff Introductions

John Kitchens was introduced as a new Associate Litigation Counsel, Jessica Kreutzer as introduced as a new member in the Disciplinary Department. She is the new Renewal Coordinator. Dametrea Lockhart was introduced as the new Legal Assistant in the Litigation Department. Internally, Ivan Perez will be moving from the Disciplinary Department to the Litigation Department as the new Compliance Coordinator.

ELECTION OF BOARD OFFICERS

(DeGrado/Black) Motion for John Settich, PhD for President by Acclimation. Carried.

(Varner/DeGrado) Motion for Dr. Estep for Vice President.

(Wattenbarger/Varner) Motion to close nominations and accept Dr. Estep as Vice President by Acclimation. Carried.

II. Staff Reports

Licensing Administrator:

Approval of Licensee/Registrant List

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: MD renewals are 90% complete with almost 100% of those renewing doing so online. Incoming documents are being processed within five business days. Final Reviews are completed within 14 business days of submission. The Department worked with IT to add a button to the homepage leading to the online portal. This makes it easier for those wishing to renew online. All post graduate licenses have been issued in a timely manner. Temporary and student permits are now all funneled to one analyst. This is helpful in getting the temporary licenses to Final Review more quickly. Licensing and Administration worked to implement new mail and accounting processes.

There was a recommendation from Board members to get information about Licensing processing times out to stakeholders. The Education and Outreach meetings help accomplish this goal.

Disciplinary Counsel:

Disciplinary Report

The statistical report for the Disciplinary Department was included in the Board's packet of materials, for their review. The following was discussed: There are two reports in the Board materials. One is the Closed Investigations Aging report. The department is doing a good job closing investigations in a timely manner. There are currently nine investigators each having between 70-75 open investigations. There was a question about the general process of a complaint. It was explained, that on a high level, a complaint is received, it is processed into the system and then reviewed by Disciplinary Counsel. If a possible violation of the applicable practice act is alleged, it is assigned for investigation; otherwise summarily closed. Once the investigation is complete, a final report is drafted, and it is sent to a Review Committee or Council and then possibly a Disciplinary Panel.

Litigation Counsel:

Litigation Report

The statistical report for the Litigation Department was included in the Board's packet of materials, for their review. The following was discussed: The department has recently concluded an emergency hearing which was conducted by Steven Lehwald. There has been an uptake in impaired provider referrals. The department is currently working a case with the CDC. Hester and Kady, the two legal assistants are covering the Compliance Coordinator position while it is vacant.

Executive Director/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. Board members expressed no comments or concerns.

Report and Updates on Agency

Staff continue to work remotely. This will continue into the near future.

The agency has been conducting department Focus Groups. The Licensing Department was completed first, then the Disciplinary and most recently completed the Litigation Department. The Focus Groups are looking for ways to do things better, looking for both time and fiscal efficiencies.

The Education and Outreach Committee continues to improve relationship building and information sharing with stakeholder groups.

- 1. Council Appointments: CNM-I, RT, OT, Lac**

The CNM-I requires the Board President or designee sit on the Council-Dr. Settich; Board President will represent the Board.
Respiratory Therapy Council requires the Board President or a designee. Dr. Varner will represent the Board.
Occupational Therapy requires the Board President or designee. Dr. Black will represent the Board.
Lac requires the Board appointed MD/DO. Dr. Suber will represent the Board.
- 2. Continuing Education Discussion**

Various boards are allowing live online sessions to replace in person CME. Board approved waiving enforcement of any in-person continuing education requirements that are replaced by live, online continuing education until March 1, 2021
(Black/Templeton) Motion to allow online CME without restriction until 3/1/2021. Carried.
- 3. Appoint member to IMLC Commission**

Dr. Templeton is on the IMLC commission currently, but would like to conclude her service. Dr. Durrett was appointed to replace Dr. Templeton on the IMLC Commission.
- 4. Appoint Ad Hoc group for the ACGME issue**

The Acting Executive Director would like the Board to consider appointing a committee to review how the Board addresses applicants from non-ACGME accredited postgraduate programs. To date, these cases have been handled on a case by case basis. This creates difficulty in having any consistency. Board members agreed there is a need for such a committee. After discussion, Dr. Estep, Dr. Templeton, Dr. Suber and Dr. Black agreed to serve on the committee.
- 5. Discuss potential training for Board and Staff Members**

The Acting Executive Director explored whether Board members may be interested in an Unconscious Bias training. Board members expressed many of them have received it through their employment but would welcome a training specific to unconscious bias training in medical regulation. And, Board members encouraged unconscious bias training in general for Board staff.
- 6. Discussion of physician mental health resources**

There is a memo in the Board packet about healthcare providers wellness. Courtney will work with Dr. Templeton to develop a general guidance document on the universal impairment question. Acting Executive Director Tucker Poling, Courtney Cyzman, and Dr. Templeton intend to co-authoring an article for publication about how KS implemented its universal question on

all its applications, renewals, and reinstatement . Previously, KMS and the Board have sent a letter on National Physician Suicide Awareness Day. Approval to send out letter this year, on Sept. 17, 2020.

7. (Estep/DeGrado) Motion to go into executive session for 10 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(1) for the purposes of discussion with General Counsel regarding non-elected personnel matters (Executive Director and Director of Operations to be included). Nancy Dodik, Todd Hiatt, and Courtney Cyzman also remained in the room. Carried.

(Durrett/Balderston) Motion to reconvene open meeting. Carried.

8. (DeGrado/Durrett) Motion to go into executive session for 20 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(2) for the purposes of discussion with General Counsel regarding the process for disciplinary cases (Executive Director and Director of Operations to be included). Courtney Cyzman also remained in the room. Carried.

(Estep/Durrett) Motion to reconvene open meeting. Carried.

(Estep/Durrett) Motion to go back into Executive Session for 20 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(2) for the purposes of discussion with General Counsel regarding the process for disciplinary cases (Executive Director and Director of Operations to be included). Courtney Cyzman also remained in the room. Carried.

(DeGrado/Varner) Motion to return to open meeting. Carried.

III. ADMINISTRATIVE PROCEEDINGS IN RECESS OF BOARD MEETING

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

Chad Sharp, M.D., Docket #19-HA00017

Conference Hearing on Motion to Modify Mr. Matthew Gaus appeared for the Board. Dr. Sharp appeared, *pro se*.

Recusals: Courtney Cyzman, Dr. DeGrado and Dr. Settich

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

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

Dr. Sharp's Motion to Modify will be continued and a Journal Entry will be filed indicating what additional materials the Board would like to see for its consideration on the Motion to Modify.

Scott Johnson, M.D., Docket #12-HA00035

Conference Hearing on Motion to Terminate. Mr. Matthew Gaus appeared for the Board. Dr. Johnson appeared, *pro se*.

Recusals: Dr. Settich, Dr. Templeton

(Estep/Minns) Motion to terminate the Consent Order. Carried.

Jeffrey Dunn, D.O., Docket #20-HA00090

Conference Hearing on Application for Change in Designation. Mr. Matthew Gaus appeared for the Board. Dr. Dunn appeared, with counsel Kelly Stevens.

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

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

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

(Wattenbarger/Minns) Motion to order Dr. Johnson to complete CPEP re-entry program. Carried.

Julian Diaz Abele, M.D., Docket #21-HA00001

Conference Hearing on Application for Licensure. Dr. Abele appeared in person, *pro se*.

Recusals: None

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

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

(Gould/Kelly) Motion to grant License by examination. Carried.

IV. CONSENT ORDERS

Kelli Pair, O.T.A.

Review of Proposed Consent Order Ms. Tammie Mundil appeared for the Board. Ms. Pair appeared in person, *pro se*.

Recusals: N/A

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

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

(Minns/Laha) Motion to accept the Consent Order with a flag in MLO if she returns to Kansas for licensure. Carried.

Dawn Pabst, O.T.A.

Review of Proposed Consent Order Mr. Matthew Gaus appeared for the Board. Ms. Dawn Pabst appeared by phone, *pro se*.

Recusals: N/A

(Minns/Laha) Motion to accept the Consent Order. Carried.

Janet Enzbrenner, L.R.T.

Review of Proposed Consent Order Ms. Tammie Mundil appeared for the Board. Ms. Enzbrenner appeared in person, with counsel, John W. Fresh.

Recusals: Dr. Settich

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

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

(Minns/Wattenbarger) Motion to deny the Consent Order and return the case to the Disciplinary Panel for additional recommendations. Carried.

V. RETURN TO OPEN MEETING OF BOARD.

(Balderston/Varner) Motion to reconvene open board meeting. Carried.

The Board President called the board meeting back to order.

Discussion on developing an ad hoc group to discuss sexual misconduct cases. Dr. Balderson, Dr. Templeton, and Dr. Black agreed to serve on the group.

(Estep/Minns) Motion to go into executive session for 15 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(12)(C) for the purposes of discussion with General Counsel regarding IT Security Audit (Executive Director and Director of Operations to be included). Courtney Cyzman and Todd Standeford were also in the room. Carried.

Motion to return to open meeting. Carried.

(Estep/Varner) Motion to go into Executive Session for 10 minutes to consult with General Counsel in a privileged attorney-client communication pursuant to K.S.A. 75-4319(b)(2) for the purposes of discussion with General Counsel regarding Board contracts with third parties. (Executive Director and Director of Operations to be included). Courtney Cyzman also remained in the room. Carried.

Motion to return to open meeting. Carried.

(Durrett/DeGrado) Motion to go into executive session for 10 minutes to consult pursuant to K.S.A. 75-4319(b)(1) for the purposes of discussion regarding non-elected personnel matters. Carried.

(Durrett/Balderston) Motion to reconvene open meeting. Carried.

(Durrett/DeGrado) Motion to move forward with the nomination of Tucker Poling as the Executive Director of the Board of Healing Arts. Carried unanimously.

VI. ADJOURNMENT

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

The meeting adjourned at 3:15p.m.



John Settich, PhD.
President



Tucker Poling
Acting Executive Director