

NEBRASKA BOARD OF MEDICINE AND SURGERY

MEETING MINUTES

January 28, 2022

ROLL CALL

The meeting of the Board of Medicine and Surgery was called to order by Chairperson, Maria Michaelis, MD, at 9:04 a.m. on January 28, 2022, at the Hampton Inn & Suites, 7343 Husker Circle, Lincoln, Nebraska 68504. The meeting was conducted In-Person and by WebEx. The following members answered the roll call:

Maria Michaelis, MD, Chairperson
Brian Keegan, MD, Secretary, via WebEx
John Massey, MD
Rachel Blake, MD
Adam Kuenning
Jeffrey Howorth

Absent: Mark Goodman, MD
Jodanne Hedrick, DO, Vice- Chairperson

A quorum was present and the meeting convened.

Also present to participate in the meeting: Jesse Cushman, Program Manager, Jan Gadeken-Harris, Health Licensing Coordinator, Licensure Unit; Mindy Lester, Assistant Attorney General; Carla Cue, and Kathleen Krueger and Mark Meyerson Investigators with the Investigation Unit; Anna Harrison, Compliance Monitor from Licensing and Investigations via WebEx and Suzanna Glover-Ettrich, Department Attorney.

Dr. Michaelis announced that there is a copy of all the public documents being reviewed at this meeting available in the meeting room pursuant to the Open Meetings Act.

In accordance with Neb. Rev. Stat. § 84-1411 of the Nebraska Open Meetings Act, copies of the agenda were e-mailed to the Board members and other interested parties, posted on the DHHS web site at <https://dhhs.ne.gov/licensure/Pages/Agendas-and-Minutes.aspx>, and posted in the Licensure Unit on January 14, 2022 and revision posted on January 19, 2022.

REVIEW OF AGENDA

Massey moved, seconded by Howorth to approve adoption of the agenda with the Chair having the authority to rearrange agenda items as needed. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

Additions, Modification, Reordering

The Board requested the following applications to be removed from the Application Review Consent Agenda:

Samuelson, Rodney, MD – Initial License Application
Tambakis-Odom, Constance, MD – Reinstatement Application
Fraser, Jeffrey, MD – Reinstatement after Discipline Application
Johnson, Rajitha, MBBS – Reinstatement after Discipline Application
Khedir Al-Tiae, Tareq, MD – Reinstatement after Discipline

Massey moved, seconded by Howorth to approve adoption of the Application Review Consent Agenda. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

Kuenning moved, seconded by Blake to approve adoption of the Pharmaceutical Care Agreements Consent Agenda. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

PUBLIC PRESENTATION

Dr. Rodney Samuelson along with his Attorney, Denise Destache were present at the meeting. Dr. Samuelson addressed the Board regarding his Initial Physician Application that has been submitted for Board review.

2021 LEGISLATION UPDATES

Amy Reynoldson, Executive Vice President, with the NMA (Nebraska Medical Association) and Dexter Schrod, JD, VP Advocacy & Regulation, In-House Counsel, with the NMA, were present to discuss and provide updates to the Board on the Legislature. The 107th Legislature, Second Session convened January 5, 2022.

Dexter provided information on some of the legislative bills that the NMA is following that will be of interest to the Board:

- LB 753 Require health care practitioners to provide notification regarding stem cell therapy
(Requires a health care provider to obtain informed consent for human stem-cell based therapy that the patient understands the treatment is not approved by the FDA)
Referred to Health and Human Services Committee
Hearing held January 21, 2022
To learn more about LB753, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB753.pdf>
- LB767 Adopt the Pharmacy Benefit Manager Licensure and Regulation Act
(Prohibits PBMs and insurers from restricting pharmacies from disclosing any information they may deem appropriate for the patient to know, including the process of utilization review, any information on financial incentives or structures used by the insurer, the total cost of treatment or from presenting a more affordable alternative for the patient. PBMs are prohibited from requiring a patient to pay an amount greater than the lesser of the patient's cost-sharing or the amount a person would pay if paying for the cash price of the drug. Places restrictions on pharmacy auditing entities employed by PBMs. Prohibits PBMs from requiring information to be written on a prescription beyond what is required by law. Prohibits PBMs from placing a drug on a maximum allowable cost price list unless the drug is available for purchase from a wholesaler and is not obsolete. Prohibits PBMs from reimbursing a 340B entity at a rate lower than that paid for the same drug to similar pharmacies that are not 340B. Prohibits PBMs from excluding a pharmacy from the PBM's specialty pharmacy network if the pharmacy holds a specialty pharmacy accreditation.)
Advanced from the Banking, Commerce and Insurance Committee on January 25, 2022
To learn more about LB767, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB767.pdf>
- LB885 Require implicit bias training for certain applicants and credential holders under the Uniform Credentialing Act
(Requires implicit bias training be completed annually for health care professionals)
NMA opposes this bill
Referred to Health and Human Services Committee
To learn more about LB885, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB885.pdf>
- LB905 Provide for perinatal mental health screenings
(States that the Board of Medicine & Surgery may work with hospitals and licensed health professionals to develop policies, procedures, information, and educational materials on perinatal mental health disorders and screening)
Referred to Health and Human Services Committee
Hearing held January 19, 2022
To learn more about LB905, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB905.pdf>

- LB906 Require employers to provide for vaccine exemptions and provide duties for the Department of Health and Human Services
(Requires DHHS to create a vaccine exemption form for the public to fill out, and further requires employers who may institute a vaccine mandate to accept the exemption form as proof that an employee has a moral, ethical, or philosophical belief against the vaccine.)
Referred to Health and Human Services Committee
Hearing held January 27, 2022
To learn more about LB906, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB906.pdf>
- LB963 Adopt the Medical Ethics and Diversity Act
(Declares that health care practitioners, health care institutions, and health care payers have the right not to participate in or pay for any health care service which violates their conscience. Prohibits discrimination against such practitioners, institution, or payer for declining to provide a health care service based on their conscience. States that religious practitioners, institutions, and payers have the right to make employment, staffing, contracting, and admitting privilege decisions consistent with its religious beliefs.)
Referred to Health and Human Services Committee
To learn more about LB963, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB963.pdf>
- LB1007 Change provisions relating to the Rural Health Systems and Professional Incentive Act
(Makes clear that no local match is required when federal law does not require a local match for student loan repayment funds)
Referred to Health and Human Services Committee
To learn more about LB1007, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1007.pdf>
- LB1044 Adopt the Care Team Innovation Grant Pilot Project Act and state intent regarding federal funds
(Creates a grant program for innovation in delivery of health care by hospitals and the ability to improve the health care workforce in the state. Focuses on health professionals being able to work to the fullest extent of their credential in a hospital.)
Referred to Health and Human Services Committee
To learn more about LB1044, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1044.pdf>
- LB1249 Change provisions of the Medical Nutrition Therapy Practice Act
(Updates the scope of practice of nutrition therapists, and creates a license split depending on education and training)
Referred to Health and Human Services Committee
Notice of Hearing for February 2, 2022
To learn more about LB1249, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1249.pdf>
- LB1269 Appropriate federal funds to the Department of Health and Human Services for repayment of qualified educational debts owed by certain health professionals
(Appropriates \$10 million in ARPA funds for the student loan payment program for health professionals practicing in rural shortage areas)
Referred to Appropriations Committee
To learn more about LB1269, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1269.pdf>
- LB1275 Adopt the Medicinal Cannabis Act
(Establishes a medical cannabis program for the following conditions: Stage IV cancer, uncontrolled seizures, muscle spasms caused by multiple sclerosis or muscular dystrophy, or a terminal illness with probably life expectancy of under one year)
Referred to Judiciary Committee
Notice of Hearing for February 23, 2022
To learn more about LB1275, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1275.pdf>

Amy mentioned that “Life Bridge Nebraska” – a peer-to-peer wellness program that aims to help physicians address challenges that come with their medical career, has seen growing and expanding utilization rates. To learn more visit their website: <http://lifebridgenebraska.org/>

REGULATIONS UPDATE

The Board reviewed the proposed draft Regulations of Title 172 Chapter 88, Licensure of Medicine and Surgery and Osteopathic Medicine and Surgery - re-entry language has been added. Massey moved, seconded by Kuenning to approve the draft regulations as presented. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

APPROVAL OF MINUTES OF THE MEETING

Blake moved, seconded by Massey to approve the minutes for December 3, 2021 as presented. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS, APPLICATION REVIEW – CLOSED SESSION

Massey moved, seconded by Howorth, to go into closed session at 9:45 a.m. for the purpose of review and discussion of investigative reports, disciplinary reports, licensure applications, and other confidential information, and for the prevention of needless injury to the reputation of the individuals. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

Kuenning moved, seconded by Howorth, to open the session at 11:57 a.m. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

APPLICATION REVIEW – OPEN SESSION

BOARD RECOMMENDATIONS ON APPLICATIONS FOR LICENSURE AND REGISTRATION

Physician and Osteopathic Physician Initial Application(s) (5) – CONSENT

Physician and Osteopathic Physician Initial Application(s) (1)

SAMUELSON, RODNEY, MD – application for initial license to practice medicine and surgery. Blake moved, seconded by Massey, to recommend issuance of a license. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

Physician and Osteopathic Physician Reinstatement Application(s) (1)

TAMBAKIS-ODOM, CONSTANCE, MD – application for reinstatement of license to practice medicine and surgery. Massey moved, seconded by Howorth, to recommend reinstatement of the license. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

Physician and Osteopathic Physician Reinstatement after Discipline Application(s) (3)

FRASER, JEFFREY, MD – application for reinstatement after discipline with early release from probation and dismissal of the civil penalty of his Physician license to practice medicine and surgery. Massey moved, seconded by Blake, to recommend denial for early release from probation and dismissal of the civil penalty. The basis for the denial is that there is insufficient evidence to change the original probationary period and or terms. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

JOHNSON, RAJITHA, MBBS – application for reinstatement after discipline and approval of the proposed reentry program to practice medicine and surgery. Massey moved, seconded by Blake, to recommend denial of the reentry program as proposed. Basis for the recommendation was that one of the proposed practice monitors is not acceptable due to active limitation of their license. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

KHEDIR AL-TIAE, TAREQ, MD – application for reinstatement after suspension of his Physician license to practice medicine and surgery. Massey moved, seconded by Howorth, to recommend denial for reinstatement after suspension. The basis for the denial is that there is insufficient evidence to support a return to practice at this time. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

PHARMACEUTICAL CARE AGREEMENT(S) (38) – CONSENT

FSMB 2022 ANNUAL MEETING

The FSMB's (Federation of State Medical Boards) Annual Meeting will be held in New Orleans, LA on April 28-30, 2022. Board members at this time that have expressed interest in attending the meeting are: Dr. Michaelis, Dr. Blake, Dr. Massey and Dr. Keegan. The Board will delay selection of the voting delegate until the next meeting.

COVID 19 DISCUSSION

Governor Pete Ricketts on December 20, 2021 issued Executive Order (EO) 21-18 with continued waivers to facilitate hospital planning and ensure additional healthcare workforce capacity in Nebraska. EO 21-18 extends EO 21-15 issued October 13, 2021 and EO 21-12, issued on August 26, 2021 when declaring a hospital staffing emergency. EO 21-18 will remain in effect through March 31, 2022.

You can view the EO's here: <https://dhhs.ne.gov/Pages/COVID-19-Nebraska-Guidance-Documents.aspx>

DESIGNATION OF THE METHOD BY WHICH THIS BODY WILL GIVE PUBLIC NOTICE OF ITS MEETINGS

Gadeken-Harris explained that the Board needs to inform the public each year the method by which the Board will provide notice of their meetings. In the past, the Board had chosen to post meeting agendas on the Bulletin Board at the Nebraska State Office Building, to e-mail agendas to the interested parties list, and to post agendas on the Department's website. Massey moved, seconded by Kuenning, to continue the same method that the Department has been using to provide public notice of this Board's meetings by posting meeting agendas at the Nebraska State Office Building, by e-mailing agendas to the interested parties list, and by posting agendas on the Department's website. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

ELECTION OF OFFICERS

Massey moved, seconded by Howorth to elect new officers for 2022 as follows:

Chairperson: Jodanne W. Hedrick, DO

Vice-Chairperson: Brian J. Keegan, MD

Secretary: Rachel A. Blake, MD

Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

BOARD MEETING SCHEDULE

The next Board of Medicine and Surgery meeting is scheduled for February 25, 2022. To see a complete list of the 2022 projected schedule visit the DHHS website:

<https://dhhs.ne.gov/licensure/Pages/Agendas-and-Minutes.aspx>

ADJOURNMENT

There being no further business, Kuenning moved, seconded by Howorth to adjourn the meeting at 12:13 p.m. Voting aye: Blake, Howorth, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Goodman and Hedrick. Abstain: None. Motion carried.

Respectfully submitted,

signature available upon request

Brian Keegan, MD, Secretary
Board of Medicine and Surgery