

NEBRASKA BOARD OF MEDICINE AND SURGERY

MEETING MINUTES

March 25, 2022

ROLL CALL

The meeting of the Board of Medicine and Surgery was called to order by Chairperson, Jodanne Hedrick, DO, at 9:10 a.m. on March 25, 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:

Jodanne Hedrick, DO, Chairperson
Brian Keegan, MD, Vice-Chairperson, via WebEx
Rachel Blake, MD, Secretary
Maria Michaelis, MD
John Massey, MD
Mark Goodman, MD
Adam Kuenning

Absent: Jeffrey Howorth

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; Trevor Klaassen and Kathleen Krueger Investigators with the Investigation Unit; Suzanna Glover-Etrich, Department Attorney and Timothy Tesmer, MD, Chairperson of the Board of Health.

Dr. Hedrick 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 March 11, 2022.

REVIEW OF AGENDA

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

Additions, Modification, Reordering

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

Chang, Scott, MD – Initial License Application
Kahn, Bronwen, MD – Initial License Application
Anderson, David Eric, MD – Reinstatement License Application
Spencer, Jodi – Surgical First Assistant License Application

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

2021 LEGISLATION UPDATES

Dexter Schrodtt, JD, VP Advocacy & Regulation, In-House Counsel, with the NMA (Nebraska Medical Association), was present to discuss and provide updates to the Board on the 107th Legislature, 2nd Session.

Dexter provided information on some of the legislative bills that the NMA is following that may be of interest to the Board. He indicated that discussions are being held on recommendations for the use of the ARPA funds (American Rescue Plan Act of 2021).

LB 741 Change provisions of and provide for review of stillbirths under the Child and Maternal Death Review Act (Adds stillbirths to the scope of the Child and Maternal Death Review Team)

Referred to Health and Human Services Committee

Advanced to Enrollment and Review for Engrossment on March 23, 2022

To learn more about LB741, please visit:

<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB741.pdf>

LB752 Adopt the Alzheimer's Disease and Other Dementia Support Act, the Licensed Professional Counselors Interstate Compact, and the Occupational Therapy Practice Interstate Compact, require notifications regarding stem cell therapy, and redefine respiratory care under the Respiratory Care Practice Act (Updates the scope of practice for respiratory therapists to reflect their training on the ECMO machine)

Referred to Health and Human Services Committee

Priority Bill

To learn more about LB752, please visit:

<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB752.pdf>

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.)

Referred to Banking, Commerce and Insurance Committee

Approved by Governor on March 16, 2022

To learn more about LB767, please visit:

<https://nebraskalegislature.gov/FloorDocs/107/PDF/Slip/LB767.pdf>

LB 852 Require behavioral health points of contact for school districts (Requires school districts to designate a behavioral health point of contact who is to be a resource for providing students with available behavioral health resources and assistance in the community)

Referred to Education Committee

Priority Bill

To learn more about LB852, please visit:

<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB852.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
Approved by Governor on February 28, 2022
To learn more about LB906, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Slip/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
Notice of hearing March 2, 2022
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
Placed on Select File March 17, 2022
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
Notice of hearing February 11, 2022
To learn more about LB1044, please visit:
<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1044.pdf>

LB1086 Adopt the Chemical Abortion Safety Protocol Act

(Prohibits use, dispensing, and administering of an abortion inducing drug for the purpose of inducing an abortion by a physician if the pregnancy is more than 49 days of gestational age. Mandates a physician examine the pregnant woman in person, verify a pregnancy exists, document in the medical record the gestational age and intrauterine location of the pregnancy, determine the woman's blood type and if Rh negative offer to administer Rho GAM at the time the abortion inducing drug is administered. Requires a physician to schedule a follow-up appointment with the woman, and send notification to DHHS about the administration of the abortion inducing drug. Makes it a Class IV felony to intentionally and knowingly violate these requirements.)

Referred to Judiciary Committee

Priority Bill

To learn more about LB1086, please visit:

<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1086.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

Notice of hearing for February 22, 2022

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

NMA submitted opposition letter

To learn more about LB1275, please visit:

<https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1275.pdf>

REGULATIONS UPDATE

The proposed draft Regulations of Title 172 Chapter 87, Licensure of Surgical First Assistant are with the Governor's office for review as of March 23, 2022.

Title 172 Chapter 88, Licensure of Medicine and Surgery and Osteopathic Medicine and Surgery are currently being reviewed for revisions to the Re-entry sections.

Title 172 Chapter 89, Practice of Acupuncture, Chapter 90, Licensure and Supervision of Physician Assistants and Chapter 91, Licensure of Perfusionists are all currently being reviewed for revisions regarding the passing of LB390 regarding reciprocity.

APPROVAL OF MINUTES OF THE MEETING

Massey moved, seconded by Blake to approve the minutes for February 25, 2022 as presented. Voting aye: Blake, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS, APPLICATION REVIEW – CLOSED SESSION

Goodman moved, seconded by Blake, to go into closed session at 9:25 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, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

Board Break at 10:23 a.m.
Board Returned at 10:30 a.m.

The Board members returned to open the session at 10:45 a.m.

APPLICATION REVIEW – OPEN SESSION

BOARD RECOMMENDATIONS ON APPLICATIONS FOR LICENSURE AND REGISTRATION

Physician and Osteopathic Physician Initial Application(s) (2)

CHANG, SCOTT, MD – application for initial license to practice medicine and surgery. Massey moved, seconded by Kuenning to recommend to issue the license to practice medicine and surgery. Voting aye: Blake, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

KAHN, BRONWEN, MD – application for initial license to practice medicine and surgery. Goodman moved, seconded by Michaelis to recommend to issue the license to practice medicine and surgery. Voting aye: Blake, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

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

ANDERSON, DAVID ERIC, MD – application for Reinstatement license to practice medicine and surgery. Michaelis moved, seconded by Goodman, to table recommendation for additional information. Voting aye: Blake, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

Surgical First Assistant Initial Application(s) (1)

SPENCER, JODI – application for initial license to practice as a Surgical First Assistant. Goodman moved, seconded by Blake to recommend to issue the license to practice as a Surgical First Assistant. Voting aye: Blake, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

RECOMMENDATIONS for DRAFT PROPOSAL OF “LETTER OF CONCERN”

The Board is interested in the prospect of developing another avenue, in addition to the current Assurance of Compliance, to send a non-disciplinary notice to a licensee that has been investigated, to convey the Board’s opinion in the interest of public safety. Jesse Cushman, Program Manager and Suzanna Glover-Ettrich, Department Attorney will collaborate to draft a motion to present to the Legislature at the next session.

COMPARISON of the STANDARDS of the UNITED KINGDOM “GENERAL MEDICAL COUNCIL” (GMC) QUALIFICATIONS for LICENSURE as to ACGME (ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION) QUALIFICATIONS for LICENSURE

The Board reviewed the ACGME (United States) and GMC (United Kingdom) training programs and board certification requirements for licensure in Nebraska. Goodman moved, and Blake seconded the opinion of the Board that the GMC requirements meet the requirements for Nebraska licensure the same as the ACGME. Voting aye: Blake, Goodman, Hedrick, Keegan, Kuenning, Massey and Michaelis. Voting nay: None. Absent: Howorth. Abstain: None. Motion carried.

Cushman will propose a draft revision to include the GMC as an approved graduate medical education program in Title 172 Chapter 88.

COVID 19 DISCUSSION

Nebraska Governor, Pete Ricketts issued Executive Order 22-02, to expire on September 30, 2022. This Executive Order (EO) extends Executive Orders 21-12 and 21-15, which were due to expire on March 31, 2022 per Executive Order 21-18. The identical statutory waivers and conditions contained in Executive Order Nos. 21-12 and 21-15 shall continue through September 30, 2022, except that Medication Aide renewals will no longer be deferred after March 31, 2022.

To view all the Governor's EO's go to: <https://dhhs.ne.gov/Pages/COVID-19-Nebraska-Guidance-Documents.aspx#SectionLink2>

BOARD MEETING SCHEDULE

The next Board of Medicine and Surgery meeting is scheduled for April 15, 2022. To see a complete list of the projected schedule for 2022, visit the DHHS website:

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

ADJOURNMENT

There being no further business Hedrick, Chairperson adjourned the meeting at 11:30 a.m.

Respectfully submitted,

signature available upon request

Rachel Blake, MD, Secretary
Board of Medicine and Surgery