

NEBRASKA STATE BOARD OF HEALTH MEETING
DRAFT MINUTES – MARCH 20, 2023

ATTENDANCE NOTIFICATION. Dr. Timothy Tesmer, Chair, called a regular meeting of the State Board of Health to order at 1:00 PM on March 20, 2023, in Conference Room Lower Level B of the Nebraska State Office Building in Lincoln. Copies of the agenda were mailed electronically to board members and other interested parties prior to the meeting, and posted on the Health and Human Services website and bulletin board. The following members were present: Heather Cramer, RN; Russell Crotty, OD; Jaime Dodge, MD; Diane Jackson, APRN; John Kuehn, DVM; Mark Patefield, PharmD; David Reese, MHA; Robert (Bud) Synhorst; Timothy Tesmer, MD; Doug Vander Broek, DC; Dan Vehle; Josh Vest, DPM. Quorum met.

Staff and others in attendance: Monica Gissler, Ryan Burbach. DHHS attorney Teresa Hampton attended via Webex.

Board members not in attendance: Doug Bauer, DO (via Webex); Michael Kotopka, DDS; Donald Ostdiek, DPT; Daniel Rosenthal, PE.

APPROVAL OF AGENDA AND MINUTES. Dr. Tesmer asked if there were any changes to the agenda for the meeting today and the minutes from the January 17, 2023 regular meeting and the January 19, 2023 special meeting. Mr. Reese made a motion to approve the agenda, seconded by Ms. Jackson; voting yes: 12 (Cramer, Crotty, Dodge, Jackson, Kuehn, Patefield, Reese, Synhorst, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.

UPDATES, REPORTS

Public Health Update – Charity Menefee reported that Public Health submitted statements on over 110 Impact Statements, from the over 300 bills handled by the DHHS. This is the last week of committee hearings. She reported that the Nebraska Public Health Conference will be held in Lincoln on April 4-5. As new Chief Medical Officer, Dr. Tesmer will attend the first day.

Dr. Matt Donahue, Interim Chief Medical Officer, Division of Public Health presented an epidemiologic update on three main areas:

Respiratory Diseases – Influenza, RSV, and COVID -19 and the current variants;

Covid-199 Media; and

HIV & Syphilis

Dr. Donahue's report is available here:

https://www.icloud.com/iclouddrive/015hlEqkt4tlwoprw84Lvcabw#BOH_3_20_23_MD

He also reviewed the Credentialing Review reports for Optometry and issued his report. He recommended against the proposal due to Criterion 1.

Legislation – Nicole Barrett, JD, Director of Legislative Services. LB 181 is an HHS Priority Bill. So far, four other bills have been incorporated into this bill: LBs 202, 611, 458 and 548.

Licensure Unit – Lindsay Braddock, Unit Administrator, reported that after serving over 40 years, Kris Chiles has retired. She and Matt Gelvin are covering her programs. They have

several health care facility regulations scheduled for public hearings in the next two months. Board of Health Chair – Dr. Tesmer reported the following:

1. Professional board meetings: Board of Health members are each assigned as liaisons to various professional boards. They will let staff know in advance when they plan to attend a meeting. Upon arrival at a meeting, they will introduce themselves to the Board staff, and then to the full Board as the Board of Health liaison. This applies to both in-person and WebEx meetings. Board of Health members are allowed to remain during closed session meetings, and must comply with all rules of confidentiality. Ms. Jackson reported that she attended the January 30, 2023 Nebraska Center for Nursing meeting, via Webex, and the January 31, 2023 Board of Occupational Therapy meeting where they discussed LB431 for fingerprinting for criminal background checks under the Uniform Credentialing Act.
2. Kris Chiles, long time program manager in the Licensure Unit, has retired. Lindsay Braddock and Matt Gelvin are covering the professional boards from the Behavioral Health and Consumer Services area until a new program manager is hired.
3. The documents for the meeting today were posted on the Sharepoint Partner site for Board of Health members. Let Monica know if you had difficulty accessing this site.
4. Dr. Tesmer reminded all members to let Monica know if they will not be able to attend a Board of Health meeting or committee meeting.
5. Today is Dr. Tesmer's last Board of Health meeting as a Board member. He will become the Chief Medical Officer at DHHS starting March 27, and will resign from the Board of Health effective March 22, 2023. There will be an election at the end of this meeting to elect a new Chair.

Credentialing Review (407) Committee – Mr. Rosenthal, Committee Chair, presented. <https://dhhs.ne.gov/licensure/Pages/Credentialing-Review.aspx>

- Action on the Credentialing Review Committee recommendations for Anesthesiologist Assistants Proposal. This application proposes to create education, training, certification, supervision, and scope of practice requirements for individuals to be eligible for licensure in Nebraska to practice as a Certified Anesthesiologist Assistant (CAA).

Their report was reviewed at the morning Credentialing Review Committee meeting. All reports are available on the Credentialing Review website link above. Dr. Tesmer offered guests to speak on this issue.

- Dr. Cale Kassel came forward to present testimony in support of the proposal. Dr. Cale Kassel came forward to provide testimony on behalf of the applicant group.
- Holly Chandler, CRNA, came forward to present testimony against the proposal.

The committee motion is to not approve the proposal. Voting yes: 10 (Cramer, Crotty, Dodge, Jackson, Kuehn, Patefield, Reese, Synhorst, Tesmer, Vehle, Vest); voting no: 1 (Vander Broek); not voting: 1 (Tesmer). Motion carried.

Rules and Regulations Committee – Dr. Vest, Committee Chair, reported.

<https://dhhs.ne.gov/Pages/DHHS-Regulations.aspx>

1. Review the following proposed rules and regulations:

- 172 NAC 1 Rules of Practice and Procedure Governing Reinstatement of a Health Professional License. The proposed changes will eliminate the separate hearing process for reinstatement of a credential and, instead, use the general rules of practice and procedure for administrative hearings found in Title 184 NAC 1. Those hearing procedures are patterned after the uniform procedures adopted by the Attorney General pursuant to Neb. Rev. Stat. § 84-909.01. Other proposed changes include updating the title name; updating all citations referring to statutes; simplifying language; removing directions to agency staff; updating section headings and formatting; and restructuring the regulatory chapter. A public hearing was held September 6, 2022. There was one comment received. No changes are being made to the regulations after public hearing. https://www.nebraska.gov/nesos/rules-and-regs/regtrack/details.cgi?proposal_id=2568
- 172 NAC 131 – Wholesale Drug Distributors, and 134 – Delegated Dispensing Permits. The proposed regulation removes duplicative statutory and regulatory language. Changes to the regulations have been made to align better with federal law surrounding Wholesale licensure. Currently this chapter also applies to 503B outsourcing pharmacies which provide compounded medications to facilities or clinics for in office administration. A Public hearing was held on January 10, 2023. https://www.nebraska.gov/nesos/rules-and-regs/regtrack/details.cgi?proposal_id=2622
- 173 NAC 7 – School Health Screening, Physical Examination, and Visual Evaluation. The proposed changes update the regulations scope and authority; remove roles of school boards, Department of Health and Human Services, and schools from the regulations; update definitions; remove height and weight measurement from the required health screening schedule; remove requirements of physical examination and visual evaluation for school entry; update language and terminology; remove all duplicate statutory, unnecessary, and inconsistent language from the regulations; update formatting; and restructure the regulatory chapter.

The first public hearing was held September 6, 2022, with seven comments received. Substantial edits were made after the first public hearing. After the first hearing, additional proposed changes were incorporated. These changes include updating the term near vision to Hyperopia for vision screening and updating Hyperopia vision testing to be on the same frequency as distance vision testing. The second public hearing was held January 25, 2023, with two comments received. No changes were made to the proposed regulations. https://www.nebraska.gov/nesos/rules-and-regs/regtrack/details.cgi?proposal_id=2628

- 180 NAC 11 – Requirements for Radon and Radon Progeny Measurement and Mitigation Services. The proposed changes remove duplicate statutory, unnecessary, and inconsistent language from the regulations; update definitions and terminology; update operating requirements; specify examination and course provider requirements;

establish mitigation installation standards and requirements; remove directions to agency staff; update formatting; correct punctuation; and restructure the regulatory chapter.

The first public hearing was held March 3, 2022, with eight comments. After the first hearing, additional proposed changes were incorporated. These changes include updating electrical, fan, HVAC system, and measurement specialists' requirements; updating notifications to the Department, and primary label requirements; and adding clarification language. The second public was held January 10, 2023, with three comments received. https://www.nebraska.gov/nesos/rules-and-regs/regtrack/details.cgi?proposal_id=2623

184 NAC 1 – Rules of Practice and Procedure for Division of Public Health Administrative Hearings; 184 NAC 2 – Rules of Practice and Procedure of the Department of Health for Declaratory Orders; 184 NAC 3 – Rules of Practice and Procedure of the Department of Health for Petitions for Promulgation, Amendment, or Repeal of Regulations; 184 NAC 4 – Rules of Practice and Procedure for Petitions for Negotiated Rulemaking; 184 NAC 5 – Rules and Regulations Governing Negotiated Rulemaking Committees; and 184 NAC 6 – Removal of Appointed Board Members by the State Board of Health. Chapters 2 – 5 are proposed for repeal. Chapters 1 and 6 are being amended.

Title 184 currently governs the conduct of administrative hearings; petitions for declaratory orders; petitions for the promulgation, amendment, or repeal of regulations; and petitions for negotiated rulemaking involving the Division of Public Health, as well as the removal of members of appointed boards by the State Board of Health. The proposed amendments would update the provisions regarding the conduct of administrative hearings and removal of appointed board members, most notably by adopting the provisions of the Attorney General's "model rules" (Title 53 NAC) for administrative hearings whenever practicable. The proposed amendments would also repeal the provisions in Title 184 regarding petitions for declaratory orders; petitions for the promulgation, amendment, or repeal of regulations; and petitions for negotiated rulemaking. Instead of the repealed provisions, the Division of Public Health would rely on the Department-wide regulations on these topics in Title 465 NAC which, in turn, adopt the Attorney General's model rules (53 NAC 1-3). Title and chapter names have been updated. Statutory references have been updated and all duplicate statutory language has been removed from the regulations.

The first public hearing was held September 19, 2022. No oral, written, or email comments were received. After the first hearing legal services reviewed the drafts, and substantial edits were made. The hearing date to be held has been changed from 30 days to 15 days, the time to answer has been changed from 10 days of service of a petition or other initial pleading to within 20 days of personal service, and the time to file an answer has been changed from 5 days to 20 days. These changes were made to better align the regulations to the Attorney General's model rules (53 NAC 1 – 3). A second public hearing was held on January 30, 2023. No oral, written or email comments were received.

https://www.nebraska.gov/nesos/rules-and-regs/regtrack/details.cgi?proposal_id=2631

Dr. Vest made a committee motion to approve the proposed rules and regulations. voting yes: 11 (Cramer, Crotty, Dodge, Jackson, Kuehn, Patefield, Reese, Tesmer, Vander Broek, Vehle, Vest); voting no: 1 (Synhorst); not voting: 0. Motion carried.

2. Matt Gelvin provided Dr. Vest with an update on the status of draft regulations, which was shared. The Uniform Credentialing Act Regulation Status Report is available at: <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/index.cgi>

Professional Boards Committee. Ms. Jackson, Committee Chair, reported. They reviewed one application in the morning, and recommend the following appointment:

Physician Assistant Committee: Recommend Rachel Blake, MD for the Board of Medicine and Surgery member for the term March 20, 2023 through November 30, 2025.

Ms. Jackson made a Committee motion to approve the recommendation. Voting yes: 12 (Cramer, Crotty, Dodge, Jackson, Kuehn, Patefield, Reese, Synhorst, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.

There are 31 planned professional board vacancies in 2023. The announcement will post on the website on May 1, 2023.

Process for Removal of Professional Board Members in accordance with 184 NAC 6 and N.R.S. 38-160. When professional board members are appointed, they must be qualified for the specific appointment, and must remain qualified. If a member retires, relocates, or changes positions, they must remain qualified or be subject to removal from the board. Two members of the Board of Nursing have recently retired or resigned from their positions, and are no longer eligible to serve. Other boards are also being reviewed to ensure all members remain eligible to serve.

We are still seeking applicants for a few professional member positions.

<https://dhhs.ne.gov/licensure/Pages/Board-Requirements-and-Vacancies.aspx>

Public Health, Education and Legislation Committee: Dr. Kuehn, Committee Chair, reported.

Reviewed Legislative Bills of Interest to the Board of Health.

- LB 91. We will send a letter in support for motorcycle helmets.
- LB 810 Medical Ethics. The Board is tracking it, but has not taken a position.
- LB 586 Workforce issue.
- LB 574 The Let Them Grow Act. There was robust discussion at the morning committee meeting. Dr. Kuehn stated the goal is to provide a calming influence and bring down the rhetoric. Dr. Dodge recapped the bill and the mental health aspect for youth regarding gender reassignment and medical intervention for minors. Dr. Dodge shared a draft Board of Health position statement. Ms. Jackson proposed amending the first sentence of the first bullet to elevate the clinical focus for children and minors being the social and emotional development of youth and their mental health. Dr. Tesmer proposed

removing the first sentence of the last paragraph, but Mr. Reese suggested it remain.

Ms. Jackson made a motion to approve the draft statement, as amended with her modification to the first bullet; second by Dr. Vest. No further discussion. Voting yes: 11 (Cramer, Crotty, Dodge, Jackson, Kuehn, Patefield, Reese, Synhorst, Tesmer, Vehle, Vest); voting no: 0; not voting: 1 (Vander Broek). Motion carried. The approved statement will be attached to these minutes and will be submitted as an online comment to LB 574.

LB574: https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=49961

- Subgroup Updates
 - There will be continued discussion of the issues regarding complaints against professional boards, and gender neutrality in training materials.

PUBLIC COMMENTS.

- Amy Reynoldson, NMA, informed the Board about the Mainstreaming Addiction Treatment Act's and the MATE Act regarding DEA registration, and the impact to over 90# of prescribers in Nebraska and the PDMP. The NMA offers free CME and has information on their website.
- Holly Chandler, CRNA thanked the Board of Health members and DHHS staff for their assistance with the Credentialing Review process.

UNFINISHED BUSINESS.

- DHHS Professions and Occupations Investigations Overview – Dennis Scott, Program Manager, presented an overview of their program and the processes and forms used. They receive approximately 2,000 complaints per year, and open 800 investigations. His handout will be attached to these minutes.
- There was a suggestion that the Board of Health meeting outside of the State Office Building for the September 17, 2023 Professional Board interviews, and the September 18, 2023 meetings. Dr. Kuehn will follow up on invitations received from health care facilities. Monica will follow up with Caryn Vincent about the Board of Health budget for travel expenses.
- Healthcare Workforce Issues and LB503 – Mr. Reese presented on the workforce crisis in healthcare. Currently 73 of Nebraska's 93 counties have less than the national average ratio of registered nurses to patients, and 66 counties have been deemed medically underserved. It is more than just nurses: radiology, pharmacy, surgical are also greatly impacted. There are several bills this session addressing this issue with scholarships and accelerated education programs: LB 503, LB 586 and LB 794. Amy Reynoldson from the NMA spoke about a health careers pipeline initiative with community college, and invited the Board of Health to have a representative involved. Mr. Reese will do this. There will be a presentation at our June 12th meeting. Mr. Reese's handout will be attached to these minutes.

NEW BUSINESS.

- Election of Board of Health Chair. Dr. Tesmer will resign from the Board of Health this week. Dr. Vander Broek thanked Dr. Tesmer for his service, and recapped the Board's relationship with the DHHS Chief Medical Officer. Dr. Tesmer said he looks forward to continuing his working relationship with the Board of Health, and attending meetings. Dr. Vander Broek was the only candidate for the Chair position. Dr. Vest made a motion to elect Dr. Vander Broek, with a second by Ms. Jackson. All were in favor by voice vote.

Monica will send out the Board's committee list and professional boards liaison list, which will need to be revised.

TOPICS AND PREPARATION FOR NEXT MEETING. The next regular Board of Health meeting will be Monday, June 12, 2023 in the Nebraska State Office Building in Lincoln.

2023 remaining Board of Health meeting dates:

September 18, 2023

November 13, 2023

ADJOURN. There being no further business, Dr. Vest made a motion to adjourn, with a second by Mr. Reese; all in favor by voice vote. The meeting adjourned at 3:35 PM. Minutes were taken by Monica Gissler and are scheduled for approval by the State Board of Health on June 12, 2023.

NOTE: If you would like to receive these minutes electronically, please send a request to the email address below. Please also inform staff if you would like to be removed from this distribution list altogether.

If you would like any attachments mentioned in these minutes, or have other questions, please contact Monica Gissler, 402/471-2948, or email at: monica.gissler@nebraska.gov.

Board of Health: <https://dhhs.ne.gov/licensure/Pages/Board-of-Health.aspx>

Rev 3/29/23, mcg

Workforce Crisis in Healthcare

03/20/23

Current Status -- Nursing

- **Nationally:**

- According to the National Institute of Health, the United States has the highest number of Americans over the age of 65 than any other time in history. In 2029, the last of the baby boomer generation will reach retirement age, resulting in a 73% increase in Americans 65 years of age and older, 41 million in 2011 compared to 71 million in 2019.
- Currently approximately one million registered nurses older than 50 years, meaning one-third of the workforce could be at retirement age in the next 10 to 15 years. This number includes nurse faculty, and that presents its own unique problem, training more nurses with fewer resources.
- Total supply of RNs decreased by more than 100,000 from 2020 to 2021 – the largest drop than ever observed over the past four decades. A significant number of nurses leaving the workforce were under the age of 35, and most were employed in hospitals – per Dr. David Auerbach and colleagues [published a nursing workforce analysis](#) in [Health Affairs](#).
- The US Bureau of Labor Statistics projects that more than 275,000 additional nurses are needed from 2020 to 2030. Employment opportunities for nurses are projected to grow at a faster rate (9%) than all other occupations from 2016 through 2026.

Current Status -- Nursing

- Nursing shortfall in Nebraska:
 - According to data presented in LB 503:
 - 2025 – Nebraska will experience a shortage of more than five thousand nurses.
 - 73 of Nebraska's 93 counties have less than the national average ratio of registered nurses to patients.
 - 66 counties in Nebraska have been deemed medically underserved
 - 9 counties in Nebraska have no registered nurses and 4 counties only have 1.

Current Status – legislation

- LB 503
 - Scholarship program for incoming students
 - To qualify student enroll in bachelor of science in nursing
 - Work in Nebraska for three years upon completion of program
 - Scholarship used for 40% of the total amount of tuition and fees
- LB 586
 - Expand clinical training sites for nurses throughout the state.
 - Encourage the development of clinical nurse faculty.
 - Expand simulation training for clinical nursing education.
- LB 794
 - Similar to bill 503 but for accelerated nursing programs (12-month program)

Nursing = Others

- Nursing is in a workforce crisis, but there are other professions in the same situation:
 - Radiology
 - Pharmacists
 - Pharmacy Techs
 - Others
- Pharmacy
 - According to ASHP (American Society of Hospital Pharmacists):
 - Turnover rates for technicians – 21-30% in 2021 and nearly 1 in 10 hospitals lost 41% or more of technicians
 - 97% of hospitals reported using overtime to fill open positions
 - Average vacancy rate for inpatient technician is 22.2%

Nursing = Others

- Support coming?

- What is the current enrollment for the following first year class this fall, 2022:

- **UNMC** = 35 (traditionally it has been around 65)

- **Creighton** (in person) = 25 (historical data was over 100)

- Surrounding Universities:

- **Wyoming** (50% normal class size)

- **North Dakota** (65% normal class size)

- **Minnesota** (60% normal class size)

- **South Dakota** (33% normal class size)

- Over 20 pharmacies have closed across South Dakota since 2018. And over 55% of the state's counties either lack a pharmacy or only have one.

- The industry is facing a [pharmacy technician shortage](#), and a [looming pharmacist shortage](#).

Nursing = Others

- Allied professions -- Survey conducted by AMN Healthcare with over 1000 facilities:
 - Eighty-five (85) percent of the surveyed facilities reported a shortage of allied healthcare professionals — including imaging [technologists](#), laboratory technologists, and therapists.
 - A great deal – 34%
 - A lot – 21%
 - A moderate amount – 30%
 - When asked about the primary challenges they faced when seeking allied healthcare workers:
 - 80% – the current labor shortage
 - 71% – longer times to fill positions
 - 46% – staff burnout
 - 33% – high turnover
 - 12% – low morale
 - Another major obstacle cited by nearly 50% of facilities was burnout among these allied healthcare professionals.

Next steps – Board of Health

- Be aware/educated
- Encourage health care as a career and how the profession as a whole makes a difference
- Board of Health – encourage our legislators to put meaningful solutions together to change the trajectory of situation. Letter to promote additional legislation?
 - Current bills are a good start
 - Look beyond our state lines to see what other innovative ideas there are:
 - University of Utah -- We are delighted to announce the **University of Utah College of Pharmacy's First Year Free Program**. Beginning in 2023, students entering the program from everywhere will have the opportunity to take advantage of this unique initiative. Through the contributions of generous donors and with the support of the University, **every accepted student will receive a scholarship that covers their full first-year tuition**. This is NOT a deferred payment plan. As the name implies, every accepted member of our PharmD program, who start their first semester in the Fall of 2023, will receive a full-tuition scholarship. *Please note: This does not include housing, food, or other non-tuition expenses.*

The Nebraska State Board of Health Affirms:

- The mental health of children is of critical importance to their long-term health and well-being with a focus on social and emotional development. Evidence based clinical management should take priority in any clinical interventions with minors. Children experiencing gender questioning and gender dysphoria are particularly vulnerable to exploitation by social media and influences outside of medical practice.
- The medical community has significant gaps in our knowledge at present as to which behavioral, medical, and surgical interventions are the most effective in both the short and long term to address minors with gender questioning/dysphoria. The long-term outcomes of many interventions, especially irreversible endocrine axis, and surgical alterations, are at present unknown.
- At this time there is no standard approach to treatment of children experiencing gender dysphoria in the United States informed by long-term, well-designed studies. The preponderance of the evidence is anecdotal, short term, and uncontrolled.
- Patients, families, and clinicians cannot make informed healthcare decisions without knowing the likely benefits and harms of the proposed interventions. The irreversibility of surgery and the long- term impacts on future endocrine health and fertility are particularly problematic for children and minors.
- The Board recognizes the importance of mental health assessment and supports evidence-based care of children's mental health prior to any pharmaceutical or surgical interventions.
- The risk for suicide among children questioning their gender is of utmost importance. It is for that reason alone that caution, particularly regarding permanent physiologic and physical alterations, be taken with minors unable to consent to these irreversible interventions. The Board supports and encourages continued research and study into clinically verifiable strategies to improve mental health and reduce the risk of suicide. Current data does not support the claim that suicide rates diminish among youth following surgical intervention.

Therefore, the Nebraska Board of Health does not support irreversible surgical and hormonal manipulation of minors for the purposes of gender reassignment. The clinical focus for children and minors should be the social and emotional development of youth and their mental health. Further study on the long-term effects of medical and surgical interventions in consenting adults should form the basis of a robust body of medical knowledge regarding gender reassignment.

Approved by the Nebraska State Board of Health on March 20, 2023.