

**NEBRASKA STATE BOARD OF HEALTH MEETING**  
**MINUTES – JANUARY 17, 2023**

**ATTENDANCE NOTIFICATION.** Dr. Timothy Tesmer, Chair, called a regular meeting of the State Board of Health to order at 1:00 PM on January 17, 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: Doug Bauer, DO; Heather Cramer, RN; Russell Crotty, OD; Jaime Dodge, MD; Michael Kotopka, DDS; John Kuehn, DVM; Donald Ostdiek, DPT; David Reese, MHA; Daniel Rosenthal, PE; Timothy Tesmer, MD; Doug Vander Broek, DC; Dan Vehle. Quorum met.

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

Board members not in attendance: Diane Jackson, APRN; Mark Patefield, PharmD; Robert (Bud) Synhorst

**APPROVAL OF AGENDA AND MINUTES.** Dr. Tesmer asked if there were any changes to the agenda for the meeting today and the minutes from September 19, 2022. Dr. Kuehn made a motion to approve the agenda, seconded by Mr. Reese; voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.

**UPDATES, REPORTS**

Dr. Matt Donahue, Interim Chief Medical Officer, Division of Public Health presented an epidemiologic update on COVID -19 and the current variants, influenzz, ebola, and other respiratory viruses.

Legislation – Nicole Barrett, JD, Director of Legislative Services. Introduced new staff member Kyra Rumble. There are 14 new senators, and 3 returning senators, making for lots of change during these early session days. There were 812 bills and 31 resolutions introduced during the 10 days of bill introduction.

Licensure Unit – Lindsay Braddock, Unit Administrator, reported there were almost 70 introduced bills that pertain to the Licensure Unit. There was also a new Executive Order 22-08 regarding time-limited provisional licenses for healthcare workforce capacity and health care facilities. <https://dhhs.ne.gov/licensure/Documents/EO22-08ProvisionalApp.pdf> Executive Order 22-04 regarding criminal backgrounds for healthcare professionals remains in effect.

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 themself 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.

2. Sheri Dawson, DHHS Director of Behavioral Health, was planning to present on new 988 emergency system at our January meeting, but she has left the agency. Someone from her former area will present in March.
3. Thank you to Public Health Director Menifee and Chief Medical Officer Dr. Donahue for their updates. There are a lot of changes still happening within the Division of Public Health, and we appreciate the work everyone is doing during this challenging time.
4. The annual Statements of Disclosure and Interest will come out in February, so be aware and be sure to complete it right away.
5. Thank you to the PHEL Committee and their work with the bills. Any of us can be assigned as the Board of Health liaison to a bill. Over 160 bills were introduced this morning, and tomorrow is the last day of bill introduction. If you are assigned to take action on a bill, we appreciate a quick turnaround.
6. The Sharepoint Partner site should be running by the next Board of Health meeting, making it easier to share documents.

**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 Pharmacy Technicians Proposal. The Pharmacy Technicians Technical Review Committee held their last meeting on November 29<sup>th</sup>. Their report was reviewed at the morning Credentialing Review Committee meeting. There was no further discussion. Voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.
- Optometry – Dr. Crotty made a motion to untable the Optometry Technical Review issue from the November 14, 2022 meeting; second by Dr. Vander Broek. Voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.
- Dr. Vander Broek made a motion that the Board first hold a roll call vote on each of the six criteria used in considering a scope of practice change, followed by a roll call vote on the proposal as a whole; second by Dr. Crotty. Voting yes: 5 (Crotty, Rosenthal, Vander Broek, Vehle, Vest); voting no: 8 (Bauer, Cramer, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Tesmer); not voting: 0. Motion not carried.
- After discussion of the legality of a tie vote, Dr. Kuehn made a motion to not vote on the Optometry issue again today, and instead record the details in the Board of Health report of the two previous tie votes; second by Dr. Bauer. Voting yes: 4 (Bauer, Dodge, Kuehn, Reese); voting no: 9 (Cramer, Crotty, Kotopka, Ostdiek, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); not voting: 0. Motion not carried.

- Dr. Crotty made a motion to move forward with Optometry Technical Review issue by holding a third, new vote on the Board of Health position; second by Mr. Vehle. Voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.
- Mr. Rosenthal made a Committee motion to approve the application from the Optometry applicant group. Voting yes: 7 (Crotty, Kotopka, Ostdiek, Rosenthal, Vander Broek, Vehle, Vest); voting no: 6 (Bauer, Cramer, Dodge, Kuehn, Reese, Tesmer); not voting: 0. Motion carried.
- The Anesthesiologist Assistants Technical Review Committee held their public hearing on December 7<sup>th</sup>.

**Rules and Regulations Committee** – Mr. Vehle, Committee Vice Chair, reported.  
<https://dhhs.ne.gov/Pages/DHHS-Regulations.aspx>

1. Review the following proposed rules and regulations:

- 172 NAC 11, 12, & 13 – Licensure of Out of Hospital Emergency Care Providers; Emergency Medical Services; and EMS Training Agency – Tim Wilson.  
<https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2603.pdf> The proposed changes for all three chapters remove “Out of Hospital” when referring to Emergency Care Providers to be consistent with statutes. Proposed changes remove duplicative statutory language and fix grammar and misspellings.  
 Title 172 NAC 11 - Licensure of Out-of-Hospital Emergency Care Providers. Proposed changes provide for the licensure of critical care paramedic and community paramedic emergency care providers including what will be acceptable for licensing examinations for these two licensure levels, continuing competency requirements, and reinstatement processes. For initial credentials, the proposed regulations remove the successful completion of an approved education courses for Emergency Medical Responder, Emergency Medical Technician, Advanced Emergency Medical Technician, and Paramedic. This is due to the requirement that Nebraska required initial applicants to be National Registry of Emergency Medical Technicians (NREMT) certified and to receive this certification applicants must have completed an approved education course for NREMT certification. Reciprocity language was added to be compliant with LB 390. Proposed changes include moving expiration dates for licensee to be March 31 rather than December 31 to get out of the holiday season and be consistent with when NREMT expiration is.  
 Title 172 NAC 12 - Licensure of Emergency Medical Services. Proposed changes update the initial application process to be consistent with the Department application process. The regulations also propose an option for EMS Services to downgrade their license from advanced life support to basic life support if they no longer meet the requirements of an advanced life support service. Language is proposed on the

standards for an EMS Service to provide community paramedic services. Proposed changes will allow for EMS Services to apply for and receive a license prior to having a valid Drug Enforcement Agency Controlled Substance Registration. This is due to DEA enforcement that EMS Services must have a valid Nebraska license to receive the DEA registration. The proposed changes follow suite with the Clinical Laboratory Improvement Amendment certificates as it does with the DEA registration. Proposed changes outline the minimum staffing requirements for critical care transports as well as additional requirements for Physician Medical Directors whose services provide critical care transport. Renewal dates for EMS services have been moved to March 31 to be consistent with EMS Provider renewals and the proposed changes add in a section that provides for a minimum standard of care for the needs of patients.

Title 172 NAC 13 - Emergency Medical Services Training Agency. Proposed changes update approved Basic Life Support psychomotor testing requirements and increases aggregate pass rate for an EMS training agency from 70% to 75%. Proposed regulations have language to outline the types of disciplinary action that may be taken against an EMS training agency. Proposed changes also have the removal of requirement for the approval of Cardiopulmonary Resuscitation (CPR) organizations and the process for removal to be consistent with the removal of this requirement from statutes.

- Title 172 NAC 61 – Medical Nutrition Therapists – Jesse Cushman for Kris Chiles <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2607.pdf>. The proposed changes set the requirements for obtaining a license based on reciprocity; set out the requirements for documenting residency; and correct punctuation. New Section 003.04: provide direction to applicants regarding LB 390 (2021) effective August 28, 2021. LB 390, (2021) provides another method of reciprocity for several professions under the Uniform Credentialing Act, including medical nutrition therapy, thus the need to revise regulations. New Section 003.05 Sets out residency requirements for those applying under LB 390 (Neb. Rev. State. 38-129.02). A Public hearing was held on November 9, 2022; there were 10 written testimonials all in support of the proposed changes.
- Title 172 NAC 155 – Psychology Licenses – <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2606.pdf>. The proposed changes set the requirements for obtaining a license based on reciprocity; set out the requirements for documenting residency; clarify that post-doctoral hours must be completed in not less than 1 year in duration, and correct punctuation and acronyms (APIC to APPIC). Section 004.03 and 004.03(B): clarifies that the postdoctoral hours and experience must be completed in not less than 1 year in duration. This change is requested on behalf of the Nebraska Psychological Association to clarify and eliminate confusion in the regulations, that in addition to the hour requirements, the experience must be gained in at least one year.

Section 007: provides direction to applicants regarding LB 390 (2021) effective August 28, 2021. LB 390, (2021) provides another method of reciprocity for several professions under the Uniform Credentialing Act, including Psychology.

New Section 007.01 Sets out residency requirements.

A Public hearing was held on November 9, 2022; there was one testimony provided in writing and no testimony at the hearing.

- Title 180 NAC 5 – Radiation Safety Requirements for Industrial Radiographic Operations – Becki Harisis <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2599.pdf>. Title 180 NAC 5 outlines requirements for the issuance of licenses or registration, and the safety requirements, for the industrial use of radioactive materials or x-ray tubes. The proposed changes update the chapter name, update definitions; replace names of agencies with abbreviations; remove unnecessary and repetitive language from the regulations; correct typographical and punctuation errors; remove requirements for personnel dosimeters that require processing; update section headings and formatting; and restructure the regulatory chapter. The public hearing was held October 31, 2022. There were no oral or written comments, emails, or letters submitted for this hearing. No opposing testimony was presented.
- Title 180 NAC 7 – Medical Use of Radioactive Material – Becki Harisis <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2600.pdf>. Title 180 NAC 7 governs the production, preparation, compounding, and use of radioactive material in medicine. The proposed changes update definitions; replace names of agencies with abbreviations; remove unnecessary and repetitive language from the regulations; update certification date to October 24, 2005; update records requirements; remove attachment 1 - Application for Radioactive Material License-Medical from the regulations; correct typographical and punctuation errors; update terminology; update section headings; and restructure the regulatory chapter. The public hearing was held October 31, 2022. The public hearing was held October 31, 2022. There were no oral or written comments, emails, or letters submitted for this hearing. No opposing testimony was presented.
- Title 180 NAC 14 – Radiation Safety Requirements for Well Logging & Subsurface Tracer Studies – Becki Harisis <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2601.pdf>. Title 180 NAC 14 governs all licensees who use radioactive material including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging. The proposed changes update definitions; replace names of agencies with abbreviations; remove unnecessary and repetitive language from the regulations; remove requirements for personal dosimeters that require processing; correct typographical and punctuation errors; update section headings and formatting; and restructure the regulatory chapter. The public hearing was held November 2, 2022. There were no oral or written comments, emails, or letters submitted for this hearing. No opposing testimony was presented.

- Title 180 NAC 18 – Fees for Certificates of Registration, Radioactive, Material(s) Licenses, Environmental Surveillance, Emergency Response and Other Regulatory Services – Becki Harisis <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2611.pdf>.  
Title 180 NAC 18 establishes the fees for licensing, registration, environmental surveillance and implementation, emergency planning, emergency response and implementation, and other regulatory services and provide for their payment. The proposed changes update definitions; update fees; modify terminology; remove all duplicate statutory, unnecessary, and inconsistent language from the regulations; update section headings; correct typographical and punctuation errors; and update formatting. The public hearing was held November 2, 2022. There were no oral comments or letters submitted for this hearing. No opposing testimony was presented. Written testimony was received from Kurt Bogner, Nucor Steel, regarding Electron Microscopes.
- Title 180 NAC 19 – Licenses & Radiation Safety Requirements for Irradiators – Becki Harisis <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/proposals/2602.pdf>.  
Title 180 NAC 19 governs the licensing and safety requirements for the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. The proposed changes update definitions; replace names of agencies with abbreviations; remove unnecessary and repetitive language from the regulations; remove the requirement for personnel dosimeters that require processing; correct typographical and punctuation errors; update section headings and formatting; and restructure the regulatory chapter. The public hearing was held November 2, 2022. There were no oral or written comments, emails, or letters submitted for this hearing. No opposing testimony was presented.

Mr. Vehle made a committee motion to approve the proposed rules and regulations. voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.

2. Sue Medinger provided an update on the status of draft regulations. The Uniform Credentialing Act Regulation Status Report is available at: <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/index.cgi>

**Professional Boards Committee.** Dr. Crotty, Committee Vice Chair, reported. They conducted 2 interviews in the morning, and recommend the following appointments:

Board of Advanced Practice Registered Nurses  
Sean Kenney, MD, of Lincoln, appointed as a physician member for the term January 17, 2023-November 30, 2027.

Public Members

Renea Gernant, PhD, of Seward, appointed as public member to the Board of Mental



Health Practice for the term January 17, 2023 through November 30, 2023.

Dr. Crotty made a Committee motion to approve the recommendations. Voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.

There are 29 planned professional board vacancies in 2023. The announcement will post on the website on May 1, 2023.

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

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

Dr. Bauer left the meeting at 2:30 PM.

**Public Health, Education and Legislation Committee:** Dr. Kuehn, Committee Chair, reported. They discussed options for meeting with or briefing the HHS Committee and other newly elected senators in January, 2023. Dr. Kuehn made a committee motion to approve the legislative bills identified by the PHEL Committee. Voting yes: 13 (Bauer, Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest); voting no: 0; not voting: 0. Motion carried.

LB	Sponsor	Committee & Hearing date	BOH Liaison	Content & Amendments
16	Briese	GOV 2/9/23	Kuehn	Require occupational boards to issue certain credentials based on credentials or work experience in another jurisdiction and make a determination regarding an applicant with a criminal conviction, provide for jurisprudential exams and appeals from denial of a license, and change requirements... Electrical Board.
22	Wayne	Judiciary 2/9/23	Kuehn	Decriminalize use and possession of marijuana.
91	B Hansen	Trans& Tel 1/24/23	Tessmer	Change motorcycle, moped, and autocytle helmet and eye protection provisions
123	Fredrickson	HHS 1/26/23	Gissler	Adopt the Behavior Analyst Practice Act.
181	B Hansen Hunt	HHS 2/1/23	Patefield	Provide for filling and refilling prescriptions in certain circumstances
189	Kauth	HHS 2/2/23	Gissler	Change and provide exemptions for natural hair braiding and natural hairstyling
200	Briese	HHS 1/25/23	Patefield	Adopt the Canadian Prescription Drug Importation Act
202	Walz	HHS 1/26/23	Patefield	Provide for vaccine administration by pharmacy technicians
216	Hughes	HHS 1/26/23		Provide certification requirements for optometrists performing certain procedures

261	Riepe	HHS 2/1/23	Kuehn	Change apprenticeship requirements under Funeral Directing and Embalming Practice Act
280	Blood	HHS 2/2/23	Kuehn	Adopt the Interstate Massage Compact
458	Ballard Hardin	HHS 2/9/23	Patefield	Allow certain central fill pharmacies to deliver to a patient under the Prescription Drug Safety Act

- Subgroup Updates
  - The marijuana Op Ed was submitted to the Legislature.
  - There will be continued discussion of the issues regarding complaints against professional boards, and gender neutrality in training materials.
- There was a PHEL Committee conference call on January 13, 2023 to review introduced legislative bills.
- There will be a special meeting of the Board of Health on January 19, 2023 to discuss legislative bills introduced on Days 9-10.

### **PUBLIC COMMENTS.**

- Amy Reynoldson from the Nebraska Medical Association discussed procedural inconsistencies by the Credentialing Review Committee and the Board of Health with following the statutory rules when voting on issues for review. The main issue was the tie votes following the Optometry Review at the September and November, 2022 meetings. DHHS Attorney Teresa Hampton clarified what the statute says about making a recommendation.
- Dr. Gregg Wright, former Department of Health Director, spoke about the history of the 407 Credentialing Review Process, and thanked the Board of Health members.

### **UNFINISHED BUSINESS.**

- The By-Laws Review Committee presented the proposed updates at the November 14, 2022 meeting. Mr. Reese made a motion to approve the revised Board of Health By-Laws, with a second by Dr. Vest. Voting yes: 12 (Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest). voting no: 0; not voting: 0. Motion carried.
- Board of Health Annual Report – Dr. Kuehn made a motion for approval of the Board of Health Fact Sheet for 2022 and the Committee Reports; second by Mr. Reese. Voting yes: 12 (Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Tesmer, Vander Broek, Vehle, Vest). voting no: 0; not voting: 0. Motion carried.

### **NEW BUSINESS.**

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. We will revisit this at the March meeting.



**TOPICS AND PREPARATION FOR NEXT MEETING**. The next regular Board of Health meeting will be Monday, March 20, 2023 in the Nebraska State Office Building in Lincoln. Ms. Gissler will ask a DHHS staff member to review the investigative process.

2023 remaining Board of Health meeting dates:

June 12, 2023

September 18, 2023

November 13, 2023

**ADJOURN**. There being no further business, Mr. Reese made a motion to adjourn, with a second by Dr. Kotopka; all in favor by voice vote. The meeting adjourned at 3:02 PM. Minutes were taken by Monica Gissler and were approved by the State Board of Health on March 20, 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](mailto:monica.gissler@nebraska.gov). Board of Health: <https://dhhs.ne.gov/licensure/Pages/Board-of-Health.aspx>*

3/21/23, mcg

### **The Nebraska State Board of Health Affirms:**

- Cannabis has not been approved by the Food and Drug Administration (FDA) for preventing or treating any disease process.
- The Board does not recommend patient use of non-FDA approved cannabis or cannabis derived products. It further recognizes the FDA has approved synthetic cannabis-derived medications for specific indications (Marinol, Syndros, Cesamet and Epidiolex.)
- Should scientific evidence support the use of cannabis derived substances to prevent or treat specific conditions, the substance should be subject to the approval process of the FDA.
- Policy and medical practice surrounding cannabis and cannabis-derived substances should not be altered until sufficient clinical evidence supports such changes.
- To be considered a medicine, cannabis products should be dispensed in a standardized product subject to the same regulations as a prescription drug product in a manner to ensure patient safety and clinical efficacy through consistent potency and quality.
- The Controlled Substances Act lists cannabis on Schedule I, defined as drugs with no currently accepted medical use and a high potential for abuse. All Nebraska licensed medical professionals holding a DEA registration certificate must honor the tenants of their certification.

***Therefore, the Nebraska State Board of Health finds that cannabis for medicinal use should not be legalized through the state legislative, ballot initiative, or referendum process. Legalization of any medicine for the prevention or treatment of any disease process should occur through the same rigorous, evidence based scientific process standard for all prescription medications.***

Approved on November 14, 2022