

NEBRASKA BOARD OF MEDICINE AND SURGERY

MEETING MINUTES

August 04, 2023

ROLL CALL

The meeting of the Board of Medicine and Surgery was called to order by Chairperson, Brian Keegan, MD, at 9:00 a.m. on August 04, 2023, 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:

Brian Keegan, MD, Chairperson
Rachel Blake, MD, Vice-Chairperson
Adam Kuenning, JD, LLM, Secretary
Jodanne Hedrick, DO
Jeffrey Howorth
John Massey, MD

Absent: Mark Goodman, MD
Maria Michaelis, MD

A quorum was present, and the meeting convened.

Also present to participate in the meeting: Jesse Cushman, Program Manager, Vonda Apking, Health Licensing Coordinator and Jan Gadeken-Harris, Health Licensing Coordinator, with the Licensure Unit; Dina Mekic, Program Manager, Behavior Health; Mindy Lester, Assistant Attorney General; Abigail Nissen, Sr. Law Clerk with the Attorney General Office; Jeff Newman, Kathleen Krueger, Carla Cue, Trevor Klaassen and Mark Meyerson, Investigators with the Investigation Unit; Suzanna Glover-Ettrich, Department Attorney via WebEx and Anna Harrison, DHHS Compliance Monitor for Licensing and Investigations via WebEx.

Dr. Keegan 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 July 21, 2023.

REVIEW OF AGENDA

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

Additions, Modification, Reordering

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

Hetzler, Norman, MD – Initial Application
Sobrin, Marco, MD – Initial Application
Vander Wal, Hannah, PA – Initial Application

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

2023 LEGISLATION UPDATES

Amy Reynoldson, Executive Vice President and Paul Henderson, Vice President, Advocacy & Regulation; In-house Counsel with the NMA (Nebraska Medical Association) were present to discuss and provide updates to the Board.

- LB16 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 examinations and appeals from denial of a license, and change requirements for membership of the State Electrical Board
Referred to Government, Military and Veterans Affairs Committee
The NMA opposes this bill as written
Hearing held February 9, 2023
Placed on General File with AM748
To learn more about LB16 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB16.pdf>
- LB68 Increase limits on medical malpractice liability and change provisions of the Nebraska Hospital-Medical Liability Act
Referred to Banking, Commerce and Insurance Committee
The NMA supports this bill
Hearing held January 30, 2023
Amendments adopted February 16, 2023
Provisions/portions of [LB68](#) amended into [LB92](#) by [AM1364](#)
LB92 Approved by the Governor June 6, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB92.pdf>
To learn more about LB68 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB68.pdf>
- LB92 Provide, change, and eliminate law relating to banking, commerce, insurance, housing, and taxation
Approved by the Governor June 6, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB92.pdf>
To learn more about LB92 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB92.pdf>
- LB138 Adopt updates to federal law relating to motor vehicles and motor carriers and change provisions relating to transportation
Approved by the Governor June 1, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB138.pdf>
To learn more about LB138 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB138.pdf>
- LB181 Provide for filling and refilling prescriptions in certain circumstances
Referred to Health and Human Services Committee
The NMA opposes this bill as written
The Board of Medicine and Surgery submitted a letter in opposition to LB181 to the Legislature
Hearing held February 1, 2023
Amendment filed March 23, 2023
Provisions/portions of [LB181](#) amended into [LB227](#) by [AM1332](#)
LB227 Approved by the Governor June 6, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB227.pdf>
To learn more about LB181 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB181.pdf>
- LB227 Change provisions relating to public health and welfare
Approved by Governor on June 6, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB227.pdf>
To learn more about LB227 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB227.pdf>

- LB286 Provide for confidentiality of a physician wellness program under the Uniform Credentialing Act
Referred to Health and Human Services Committee
The NMA supports this bill as written
Hearing held February 9, 2023
Provisions/portions of [LB286](#) amended into [LB227](#) by [AM1477](#)
LB227 Approved by the Governor June 6, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB227.pdf>
To learn more about LB286 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB286.pdf>
- LB351 Increase and eliminate limits on medical malpractice liability and change provisions relating to proof of financial responsibility and the Excess Liability Fund
Referred to Judiciary Committee
The NMA opposes this bill as written
Hearing Scheduled for February 24, 2023
To learn more about LB351 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB351.pdf>
- LB419 Require submission of a Medicaid state plan amendment to extend postpartum coverage
Provisions/portions of [LB419](#) amended into [LB227](#) by [AM1989](#)
LB227 Approved by the Governor June 6, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB227.pdf>
To learn more about LB419 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB419.pdf>
- LB422 Exempt certain activities from disciplinary action under the Uniform Credentialing Act
Referred to Health and Human Services Committee
The NMA opposes this bill as written
Hearing Held February 16, 2023
Amendment filed February 23, 2023
To learn more about LB422 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB422.pdf>
- LB574 Adopt the Let Them Grow Act
Referred to Health and Human Services Committee
The NMA opposes this bill as written
There has been a lot of activity and amendments with this bill
Provisions/portions of [LB626](#) amended into [LB574](#) by [AM1658](#)
Passed on final reading and presented to the Governor May 19, 2023
Approved by the Governor on May 22, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB574.pdf>
To learn more about LB574 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB574.pdf>
- LB626 Adopt the Nebraska Heartbeat Act
Referred to Health and Human Services Committee
The NMA opposes this bill as written
Multiple Amendments filed
Provisions/portions of [LB626](#) amended into [LB574](#) by [AM1658](#)
LB 574 Approved by the Governor May 22, 2023
Slip Law: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB574.pdf>
To learn more about LB626 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB626.pdf>
- LB810 Adopt the Medical Ethics and Diversity Act
Referred to Health and Human Services Committee
Hearing February 10, 2023
Multiple Amendments filed
To learn more about LB810 go to: <https://nebraskalegislature.gov/FloorDocs/108/PDF/Intro/LB810.pdf>

Regarding LB574 the abortion and gender affirming care bill, the NMA spoke with Dr. Tesmer, Chief Medical Officer, DHHS and he indicated that he is hopeful to issue emergency rules and regulations when this act becomes operative on October 1, 2023, and looking to have the traditional rules and regulations issued in early December. Also, Dr. Tesmer's office is looking to have a FAQ page on the DHHS website regarding LB574.

The credentialing review (407) application filed for Hearing Care Professionals will have the public hearing on September 5, 2023, at 9:00 a.m. To learn more about the application and the agenda go to: [https://dhhs.ne.gov/licensure/Pages/Credentialing-Review-\(407\)-Hearing-Care-Professionals.aspx](https://dhhs.ne.gov/licensure/Pages/Credentialing-Review-(407)-Hearing-Care-Professionals.aspx)

REGULATIONS UPDATE

Jesse Cushman informed the Board that Title 172, Professional and Occupational Licensure, Chapter 87 Licensure of Surgical First Assistant, Chapter 88, Licensure of Medicine and Surgery and Osteopathic Medicine and Surgery and Chapter 92, Licensure of Genetic Counselors revisions are complete.

Chapter 89, Practice of Acupuncture, Chapter 90, Licensure and Supervision of Physician Assistants and Chapter 91, Licensure of Perfusionists are open for drafting and approval of the revisions to include LB390, the Reciprocity Bill that was approved April 21, 2021, Nebraska Revised Statute 38-129.02. <https://nebraskalegislature.gov/laws/statutes.php?statute=38-129.02>

APPROVAL OF MINUTES OF THE MEETING

Howorth moved, seconded by Hedrick to approve the minutes for June 30, 2023, as presented. Voting aye: Blake, Hedrick, Howorth, Keegan, Kuenning and Massey. Voting nay: None. Absent: Goodman and Michaelis. Abstain: None. Motion carried.

INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS, APPLICATION REVIEW – CLOSED SESSION

Howorth moved, seconded by Hedrick, to go into closed session at 9:15 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, Hedrick, Howorth, Keegan, Kuenning and Massey. Voting nay: None. Absent: Goodman and Michaelis. Abstain: None. Motion carried.

Dr. Hedrick Recused herself at 9:38 a.m.
Dr. Hedrick Returned at 9:50 a.m.

The Board members returned to Open Session at 11:25 a.m.

APPLICATION REVIEW – OPEN SESSION

BOARD RECOMMENDATIONS ON APPLICATIONS FOR LICENSURE AND REGISTRATION

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

HETZLER, NORMAN, MD - application for Initial license to practice medicine and surgery. Hedrick moved, seconded by Kuenning, to recommend approval of the application to practice medicine and surgery. Voting aye: Blake, Hedrick, Howorth, Keegan, Kuenning and Massey. Voting nay: None. Absent: Goodman and Michaelis. Abstain: None. Motion carried.

SOBRINO, MARCO, MD - application for Initial license to practice medicine and surgery. Hedrick moved, seconded by Howorth, to recommend approval of the application to practice medicine and surgery. Voting aye: Blake, Hedrick, Howorth, Keegan, Kuenning and Massey. Voting nay: None. Absent: Goodman and Michaelis. Abstain: None. Motion carried.

Physician Assistant Initial Application(s) (1)

VANDER WAL, HANNAH, PA – application for Initial license to practice medicine and surgery as a physician assistant. Hedrick moved, seconded by Massey, to recommend approval of the application to practice medicine and surgery as a physician assistant. Voting aye: Blake, Hedrick, Howorth, Keegan, Kuenning and Massey. Voting nay: None. Absent: Goodman and Michaelis. Abstain: None. Motion carried.

BOARD DISCUSSION(S)

A. Concerns regarding safety of the public for procedures provided by Unlicensed providers.

The DHHS office gets questions regarding who and what procedures can be provided if an individual is not required to have a license under Statutes. The basic rule is to look at the below Statute and if you are still unclear consult your legal teams for clarification.

38-2025. Medicine and surgery; practice; persons excepted. The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine: (21) Persons who are not licensed, certified, or registered under the Uniform Credentialing Act, to whom are assigned tasks by a physician or osteopathic physician licensed under the Medicine and Surgery Practice Act, if such assignment of tasks is in a manner consistent with accepted medical standards and appropriate to the skill and training, on the job or otherwise, of the persons to whom the tasks are assigned. For purposes of this subdivision, assignment of tasks means the routine care, activities, and procedures that (a) are part of the routine functions of such persons who are not so licensed, certified, or registered, (b) reoccur frequently in the care of a patient or group of patients, (c) do not require such persons who are not so licensed, certified, or registered to exercise independent clinical judgment, (d) do not require the performance of any complex task, (e) have results which are predictable and have minimal potential risk, and (f) utilize a standard and unchanging procedure;

B. Composition of a Board of Medicine and Surgery Newsletter.

Dr. Hedrick has volunteered to act as the editor for the newsletter. It has been discussed that it would be issued quarterly. Content of the newsletter would need to be reviewed and approved by both the Board of Medicine and Surgery and the DHHS Legal Department prior to publishing. Dr. Hedrick and Vonda Apking will collaborate on a draft newsletter to present to the Board at the next meeting in September.

C. DEA Prescribing Guidelines and Pain Management Guidance Review

The Drug Enforcement Administration (DEA) has published the Revised 2023 Practitioner's Manual, An Informational Outline of the Controlled Substances Act.
[https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-071\)\(EO-DEA226\)_Practitioner's_Manual_\(final\).pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-071)(EO-DEA226)_Practitioner's_Manual_(final).pdf)

Dr. Massey noted a few 2023 updates that are of particular importance:

- Partial Dispensing – see page 25
- Partial Filling of Schedule II Prescriptions for Terminally Ill or LTCF Patients – see page 26
- Schedule III-IV Controlled Substances – see page 27

REMINDER: The DEA requires healthcare providers holding a federal DEA license to complete eight (8) hours of education on opioid treatment.

Anyone other than a veterinarian who holds a DEA license, including physicians, dentists, chiropractors, podiatrists, nurse practitioners, and physician assistants, will be required to complete a one-time eight-hour course on the treatment and management of patients with opioid or other substance use disorders and the safe pharmacological management of pain.

Please Note: The NMA is offering all members FREE training that meets the new DEA eight-hour training requirement.

<https://www.nebmed.org/>
<https://www.nebmed.org/resources/education-cme/project-echo>

With the changing of the Federal guidelines the NE Pain Management Guidance Document needs to be updated. This was previously discussed at the May Board meeting. Kuenning moved, seconded by Howorth to name Dr. Massey as the Chair of the sub-committee that will be formed to direct the updates to the Guidance Document. Voting aye: Blake, Hedrick, Howorth, Keegan, Kuenning and Massey. Voting nay: None. Absent: Goodman and Michaelis. Abstain: None. Motion carried.

The sub-committee will be coordinated by Davidson Wissing, Drug Overdose Prevention Coordinator for NE DHHS.

BOARD MEETING SCHEDULE

The next meeting is scheduled for September 15, 2023, in the Husker Conference Room at the Hampton Inn & Suites. To see a complete list of the projected schedule, visit the DHHS website:

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

ADJOURNMENT

There being no further business, Keegan, Chairperson adjourned the meeting at 12:00 p.m.

Respectfully submitted,

signature available upon request

Adam Kuenning, JD, LLM, Secretary
Board of Medicine and Surgery