

**KENTUCKY BOARD OF RESPIRATORY CARE**

**MINUTES**

August 13, 2009

A meeting of the Kentucky Board of Respiratory Care was held at 5:30 p.m., on Thursday, August 13, 2009 at the KBRC, 2624 Research Park Drive, Suite 304, Lexington, KY.

MEMBERS PRESENT

Dr. Byron T. Westerfield, Chair  
Tami McDaniel, Vice-Chair  
Klaus Becker  
Janet R. Vogt  
James P. Bronson, Jr.  
Jeff W. Knight  
Dr. David Hasselbacher

KBRC STAFF

Peggy Lacy Moore, Executive Director  
Rick L. Rose, Administrative Assistant

OTHER

Cheryl Lalonde, AAG  
Wade Root, KSRC Member  
Anna Jones, Southern KY AHEC/KSRC  
James L. Jones, Baptist Regional/KSRC  
Pat Fisher, Norton Healthcare/KSRC

Dr. Westerfield, Chair, called the meeting to order at 5:40 p.m., at 2624 Research Park Drive, Suite 304, Lexington, KY.

Minutes

Tami McDaniel moved to approve the June 11, 2009 Education Committee meeting Minutes; seconded by Jim Bronson. Motion carried unanimously.

Jim Bronson moved to approve the June 11, 2009 Minutes with amendment; seconded by Jeff Knight. Motion carried unanimously.

Mrs. Moore presented letters to the Board that she mailed to Rep. Rick Rand, Chair of the KY House of Representatives Appropriations and Revenue Committee and its membership. The letter was also circulated to Sen. Charlie Borders, Chair of the Senate Appropriations and Revenue Committee and its membership. The Board requested letters regarding the continual practice of sweep of funds from the Board's restricted fund account. Mrs. Moore told the Board she and seven other Directors would be meeting with Rep. Rand on August 27, 2009. Mrs. Moore told the Board the "Directors group" did not feel it would be advantageous to contact the Atty. General Jack Conway at this time for a ruling since two lawsuits are pending in the courts on the sweep of funds.

Mrs. Moore presented a copy of the space application form she was ordered to submit to the Finance Department's Real Properties office. The tenants in the Spindletop Administration building were told on June 1, 2009 that we may be forced to move in the next nine (9) months to accommodate a new battery research lab that wants to do business in our building. We were told we would have to endure the cost of the move without offset by the state. Mrs. Moore did not

have any updates on the possible move. Mrs. Moore also presented a copy of the renewal insurance policy coverage for our office contents.

### **Report from CEU Committee - Continuing Education**

Mrs. Vogt updated the Board that she had been approving CEU's. Mrs. Vogt mentioned she was standing by the standards previously set by the Committee that disallows project based CEU's.

### **Old Business**

#### **Wade Root address KBRC about Draft Legislation**

Dr. Byron T. Westerfield and Dr. David Winslow met with the KY Board of Medical Licensure ("KBML") and presented a draft Polysomnography Act on behalf of the KY Sleep Society at the June 18, 2009 KBML meeting. The doctors requested the KBML to accept responsibility for Polysomnography (sleep techs) licensure in KY. It was the consensus of the KBML to endorse the efforts of the KY Sleep Society in having legislation passed by the 2010 General Assembly.

The KSRC requested to speak regarding the draft Polysomnography Act presented to the KBML. Wade Root, former KSRC President, requested to speak to the KBRC Board and introduced Pat Fisher, Anna Jones and James L. Jones, all former members of the KBRC and active members with the state's professional organization, KY Society of Respiratory Care ("KSRC"). Mr. Root addressed the Board on the draft Polysomnography draft legislation. Mr. Root told the Board the KSRC **cannot** support and strongly opposes the draft Polysomnography Act as currently written.

Mr. Knight asked Mr. Root whether the draft legislation would limit sleep therapy throughout the state as written and potentially endanger the public. Mr. Root stated the following concerns:

- 1. The draft limits the current practice of respiratory care.***
- 2. The draft reorganizes and eliminates the KBRC.***
- 3. All claims of care related questions or malpractice would be presented to the KBML and not the KBRC. The people making decisions on CEU's or disciplinary actions would be physicians and not respiratory therapists; respiratory regulates these issues currently.***
- 4. The public may suffer harm because the decisions will be made by those that may not understand the day to day activities of the respiratory therapist or their profession or how they actually provide care. It would limit the scope of practice of the respiratory therapist.***

Ms. Lalonde stated she had two drafts; one draft is dated 4/14/2009 and the other is dated 7/30/2009. Mr. Root stated the KSRC had looked at three different drafts and he is under the impression that the April 14 draft was the draft prepared and approved by the KY Sleep Society; however, the draft actually presented to the KBML had changes the KY Sleep Society did not

approve. The KBRC needs to determine which draft was presented to the KBML before it can articulate a response.

Dr. Charlotte Beason, Executive Director and Nathan Goldman, Legal Counsel for the KY Nursing Board sent a written statement in regard to the Polysomnography Draft Act as follows:

- (1) It would need language to the effect that it does not preclude any other licensed professional from doing what their license permits; otherwise, it could potentially impact nursing; and***
- (2) Advanced Registered Nurse Practitioners (“ARNPs”) should be added as a polysom’s supervisor and one who has the ability to order a test; currently the draft is restricted to MD’s.***

The Board requested Dr. Westerfield and Dr. Hasselbacher to recuse themselves from the discussion of the matter since Dr. Westerfield and Dr. Hasselbacher’s partner made the presentation to the KBML on June 18, 2009. Both Dr. Westerfield and Dr. Hasselbacher left the meeting during discussion and neither voted on the matter. Mrs. McDaniel, Vice Chair, presided over the meeting in the Chair’s absence.

After discussion Mr. Knight made a motion, seconded by Mrs. Vogt which passed unanimously, to send a letter to the KBML requesting the following items:

- How was the KBRC’s participation represented to the KBML at the June 18, 2009 meeting? In what capacity did Dr. Westerfield represent himself at the meeting (e.g., member of the KY Sleep Society, Chair of the KBRC, etc.)?
- A statement that the KBRC has not addressed any draft legislation on Polysomnography and this Board has not been formally presented with any draft legislation.
- A copy of the minutes of the KBML’s meeting of June 18, 2009 and or any video, tape, or transcript that documented the presentation made by Dr. Westerfield and Dr. Winslow.

The KBRC agreed they should involve the KY Nursing Board since the Nursing Board opposed the draft as written and its legal counsel opined that the draft was poorly written. The KBRC also felt it would be advisable to have a member attend the September 17, 2009 meeting of the KBML to see who is going to sponsor the draft legislation.

Dr. Westerfield and Dr. Hasselbacher rejoined the meeting and Dr. Westerfield continued to Chair the meeting and requested to know the action taken while he and Dr. Hasselbacher were out of the room. Dr. Westerfield stated the legislative proposals are drafts and that this Board represents the public in the Commonwealth of KY and not the respiratory care society or respiratory care practitioners. Mrs. McDaniel added this board did not discuss individual respiratory practitioners but the legislation as it concerned impact to this Board and the safety of the public.

Dr. Westerfield presented a service award for Pat Fisher and Dr. Abdi Vaezy for their past service to the Board.

### **Complaints**

Pursuant to KRS 61.810 (1) (c) and (j), Tami McDaniel made a motion for the Board to go into closed session to discuss proposed or pending litigation and deliberate regarding individual adjudications. The motion was seconded by Jim Bronson, and carried unanimously.

Tami McDaniel moved to come out of closed session; seconded by Janet Vogt. Motion carried unanimously.

### **Agreed Orders:**

#### **Shirley Henderson KY # 0086 Agreed Order 5/20/05 & Amendment 10/16/06**

Mr. Fingerson provided documentation that Shirley Henderson has **not** been adhering to her KYPRN Agreement and KBRC Agreed Order. The Board noted that Ms. Henderson's Agreed Order requires her to document one (1) year of continued sobriety before she may be considered for reinstatement. No action required on the case.

#### **Tami D. Balser KY # 2181 – KYPRN Agreement & AO 8/13/2008**

Ms. Lalonde reported Tami Balser is compliant. No action on the case.

#### **Kim Deaton KY # 3627 – AO 11/19/2008**

Ms. Lalonde reported Kim Deaton is compliant. No action on the case.

#### **Delrena G. Lucas KY # 5603 – AO 12/02/2008**

Ms. Lalonde stated Delrena G. Lucas is on suspension until June 2009. No action on the case.

#### **Scotty D. Halsey KY # 2138 – AO 12/02/2008**

Ms. Lalonde reported Scotty Halsey is compliant. No action on the case.

#### **John “Jack” Harrison KY # 0285 – AO 12/02/2008**

Ms. Lalonde reported John “Jack” Harrison is compliant. No action on the case.

#### **Charlotte Dreux KY # 0773 – AO 12/02/2008; Amended AO 2/19/2009**

Ms. Lalonde reported Charlotte Dreux is compliant. No action on the case.

#### **Terry Clark KY # 0742 – AO 12/02/2008**

Ms. Lalonde reported Terry Clark is compliant. No action on the case.

**Thomas W. Grant KY # 0527 – AO**

Ms. Lalonde reported Thomas Grant is compliant. No action on the case.

**Eric Harmon KY # 5433 – AO 2/19/2009**

Ms. Lalonde reported Eric Harmon is compliant. No action on the case.

**Complaint Cases:**

**A. Richard T. Dials – KY # 3996**

Tami McDaniel made a motion to continue the case pending an assessment by Dr. Patton; motion was seconded by Klaus Becker and carried unanimously.

**B. Kim Y. Murphy KY # 5038**

No action was required on the Kim Murphy case.

**C. Allen Firquin Complaint Re: DME Companies**

Mr. Bronson made a motion to request that complaint letters be sent to all the KY Companies Mr. Firquin named in his complaint, excluding the Florida company with twenty (20) days to respond; motion was seconded by Mrs. McDaniel and carried unanimously.

**Correspondence**

Mr. Knight added he had several folks he assisted with inquiries on scope of practice issues. He spoke to A & D Medical about licensure in KY. He informed A & D Medical that in KY you don't have to have a license as a DME company. However, he advised they needed a resale permit. Mr. Knight also informed A & D Medical about our rules and regulations and who can set-up sleep therapy and different respiratory services in the Commonwealth of KY.

Mr. Knight also talked to Pikeville Medical about whether nurses can set-up CPAP/BIPAP units? Mr. Knight informed them it was within the nursing scope of practice if they have received proper training.

**New Business**

**Review of Annette Corio's 2009 Renewal**

Mrs. McDaniel received information that Ms. Corio may not have divulged information about a recent conviction on her renewal application. The Board requested legal counsel to send a letter to Ms. Corio inquiring about a possible violation that should have been reported during Ms. Corio's renewal.

### **Jim Maynard Poses Question Re: Flu Shots**

Mrs. Moore presented an email from Jim Maynard, from Whitesburg ARH, Whitesburg, KY. Mr. Maynard stated he had several inquiries concerning respiratory therapists administering flu vaccinations to the community. The Board agreed it was not within our scope of practice to administer flu shots. Mrs. Moore emailed Mr. Maynard the Board's response.

### **KBRC 2009 Summer Newsletter**

Mr. Rose presented a copy of the KBRC 2009 Summer Newsletter which is posted on the KBRC website and emailed to as many hospitals and DME companies as he can find email addresses for. The Board would like to thank Anna Jones for processing the newsletter in color for us to distribute copies at the KSRC's state convention on Sept. 9-11, 2009. Mr. Knight brought to our attention an error on the newsletter. Staff will notify Ms. Jones and get another printing before they are distributed at the State convention and to other folks. The Board thanked Mr. Rose for an outstanding job producing the newsletter with the help of Mrs. Moore and Mr. Becker.

Mr. Knight informed the Board that KMESA (KY Medical Equipment Suppliers Association) will be hosting a fall meeting and it would be good for a few of our members to attend and educate these folks on the Board's requirements. Mr. Knight also mentioned it would be good to get rid of complaints through education by us and the Pharmacy Board.

### **Carrie Ray Email Inquiry – Can you Sell Pulse Oximeters**

Mrs. Moore presented an email inquiry from Carrie Ray, with Deom Health Enterprises of Radcliff, KY. Ms. Ray stated she had home health agencies wanting to purchase pulse oximeters for use in their work and wanted to know if they could sell to licensed individuals. The Board agreed this question does not fall within the KBRC laws and regulations. The Board will advise Ms. Ray to direct this inquiry to her agency's legal department or legal counsel.

### **Announcements**

#### **Election of KBRC Chairman and Vice-Chairman for 2009-2010 Terms**

Dr. Westerfield stated he had enjoyed serving the Board and called for election of officers. Jim Bronson made a motion nominating Tamara G. McDaniel to serve as Chair of the Board for 2009-2010; there being no other nominations, Mrs. McDaniel was elected Chair; the motion was seconded by Janet Vogt and carried unanimously.

Mrs. McDaniel thanked the Board for electing her Chair and stated she hoped she could serve the Board as well as Dr. Westerfield has these past years.

Dr. Westerfield opened the floor for nominations for Vice-Chair. Jim Bronson made a motion nominating Jeff W. Knight to serve as Vice-Chair. Klaus Becker made a motion nominating Janet R. Vogt to serve as Vice-Chair. Since there were two nominations the Board voted by ballot and the vote was three (3) votes for Jeff W. Knight and three (3) votes for Janet R. Vogt. Dr. Westerfield had to cast his vote to break the tie. He stated Mrs. Vogt had served

previously in a leadership role so he would cast his vote for Jeff W. Knight to serve as Vice-Chair. The motion was seconded by Dr. Hasselbacher and carried unanimously.

Dr. Westerfield turned the Chair over to Mrs. McDaniel. Mrs. McDaniel stated the next meeting of the Board will be a regular meeting held on Thursday, October 8, 2009 at 5:30 p.m., at the KBRC offices.

### **Application Review**

A motion was made by Klaus Becker to accept all **42** applications since the last meeting; seconded by Jeff Knight. Motion carried unanimously.

The following **Student applications (7)** were approved:

Ashley L. Chaney, Kayla X. Dang, Jeanette M. Gardiner, Lindsay R. Houchens, Shauna L. Jones, Eric J. Kilburn, Christina F. Murphy.

No **Temporary applications** were approved

The following **NBRC applications (22)** were approved:

Kimberly L. Allen, Johnny K. Anku, Shelly L. Blair, Natasha D. Caudill, Melanie R. Cornett, Jason E. Higdon, Christian J. Humphrey, Jon C. Isaacs, Rebecca J. Isom, Ashley M. Johnson, Joseph T. Johnson, Felicia D. Knowles, Jennifer J. Neaveill, Jarred S. Perdue, Aaron M. Pyke, Mark J. Sketch, Amanda M. Smith, Sarah B. Smith, Michael K. Sundaresan, Wenter D. Stewart, Christie M. Turley, Crystal D. Walker.

The following **Reciprocity applications (13) were** approved:

Cauleen R. Denman, Tony A. Chisholm, Ronald L. Warmoth, Carolyn J. Kirkpatrick, Cheryl A. Meadows, Carol L. Hickok, Margaret J. Royce, Thomas J. Schilling, Charlotte L. Squibb, Susan M. Smallwood, Angela N. Smith, Timothy J. Smith, and Tuchy W. Villegas.

Janet Vogt made a motion to adjourn the meeting at 8:45 p.m.; seconded by Dr. Hasselbacher. Motion carried unanimously.

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Dr. Byron T. Westerfield, Chair  
KY Board of Respiratory Care