

The agenda for this meeting was posted in accordance with Title 25 Section 311.A.9, at the Administrative Offices of the Board of Tests for Alcohol and Drug Influence, 3600 North Martin Luther King Avenue, Building 9, Oklahoma City, OK, 73111 and on the Board of Tests for Alcohol and Drug Influence website: [http://www.ok.gov/bot/About\\_Us/Open\\_Meetings/index.html](http://www.ok.gov/bot/About_Us/Open_Meetings/index.html).

**BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE  
REGULAR MEETING**

**Oklahoma Department of Public Safety Complex,  
W.C. (Sarge) Smith Training Room  
3600 North Martin Luther King Avenue, Building 9,  
Oklahoma City, OK, 73111.**

**August 31, 2011**

**MINUTES**

**BOARD MEMBERS PRESENT:**

Dr. Kenneth Blick, O.U. Health Sciences Center  
Mr. Steve Emmons, CLEET  
Mr. Steve Brookman, OSBI  
Chief Byron Cox, Weatherford Police Dept.  
Dr. Terence Dunn, OK Dept. of Health  
Major Rusty Rhoades, Oklahoma Highway Patrol  
Sheriff John Whetsel, Oklahoma County

**STAFF PRESENT:**

J. Robert Blakeburn, State Director  
Toby Taylor, Administrative Asst.  
Joe Johnson, Senior Instructor

**BOARD MEMBERS ABSENT:**

None

**GUESTS:**

DeAnn Taylor  
Thomas Hosty  
Stephen G. Fabian  
Sandra Balzer

**ORGANIZATION:**

DPS - Legal  
Attorney  
Enemy  
OAG

**1. Call Meeting to Order**

**Action Taken:** Chairman Dr. Kenneth Blick called the meeting to order at 10:00 a.m. Roll was taken; six members were present representing a quorum. Sheriff Whetsel arrived at 10:25 a.m.

**2. Approval of Minutes**

**Action Taken:** Chief Byron Cox made a motion to approve the minutes of the February 28, 2011 Regular Meeting as written. The motion was seconded by Mr. Steve Brookman. A roll call vote was taken with the following results: Mr. Steve Brookman voted yes; Chief Byron Cox voted yes; Dr. Terence Dunn voted yes; Mr. Steve Emmons voted yes; Major Rusty Rhoades voted yes; Sheriff John Whetsel voted yes and Chairman Kenneth Blick voted yes. The motion carried 7-0.

**3. Report from State Director**

Director Blakeburn presented the attached Director's Report dated August 31, 2011.

**Action Taken:** Mr. Steve Emmons made a motion to accept the Directors Report. The motion was seconded by Chief Byron Cox. A roll call vote was taken with the following results: Mr. Steve Brookman voted yes; Chief Byron Cox voted yes; Dr. Terence Dunn voted yes; Mr. Steve Emmons voted yes; Major Rusty Rhoades voted yes; Sheriff John Whetsel voted yes and Chairman Kenneth Blick voted yes. The motion carried 7-0.

#### 4. **Blood kit configuration**

##### **A. Presentation of letter from OSBI re configuration of blood kits to be provided**

Mr. Steve Brookman provided a letter from the OSBI to all Board members advising the blood alcohol kit contract the OSBI had with Tri-Tech of North Carolina has been terminated by Tri-Tech effective June 30, 2011 (OSBI letter attached). Mr. Brookman advised the OSBI plans to re-bid the blood alcohol kit contract for three 8-milliliter collection tubes per kit rather than four 8-milliliter collection tubes per kit. Director Blakeburn stated the kit is approved by manufacturer not specification and provided the Board with a handout (handout attached). Dr. Blick stated anti-coagulant (sodium chloride – 100 mg) is required. Mr. Emmons suggested creating a specification for a 10m tube with the same contents/components in the kit. Dr. Blick asked Mr. Brookman "Steve, on record, you have no Q&S concerns?" Mr. Brookman responded "correct, I think there is plenty of blood." Dr. Blick asked Mr. Brookman if a sealed tube would be available for outside testing. Mr. Brookman said yes, and stated the OSBI only needs one tube. Chief Cox stated the Board "just needs to meet all the standards – if three tubes is adequate then that's fine". Mr. Fabian stated three tubes might be adequate depending on what you get in the tubes. He stated the Board needed to "avoid salting out issues". Mr. Hosty expressed a concern about breakage and spillage stating he felt the ratio of chemicals and stopper need to be the same. Mr. Hosty stated the Board needs to "be sure to get objectively a comparable kit". Dr. Blick asked Mr. Brookman if the OSBI specified glass or plastic tubes. Mr. Brookman responded stating they would specify glass with a gray top. Mr. Fabian stated he felt plastic would not work. Mr. Hosty cautioned the Board not to assume DCS would "get it right" and stated the BOT should authorize a specific request. Director Blakeburn indicated that he did not believe breakage was an issue. Dr. Blick advised to put out a bid for three tubes stating that 3 tubes was more than adequate to meet the Q & S needs.

**Action Taken:** Sheriff John Whetsel made a motion to accept either a three or four tube blood collection kit meeting BOT specifications are acceptable – moving forward this will be the policy. The motion was seconded by Dr. Terence Dunn. A roll call vote was taken with the following results: Mr. Steve Brookman voted yes; Chief Byron Cox voted yes; Dr. Terence Dunn voted yes; Mr. Steve Emmons voted yes; Major Rusty Rhoades voted yes; Sheriff John Whetsel voted yes and Chairman Kenneth Blick voted yes. The motion carried 7-0.

##### **B. Current inventory of blood kits**

Director Blakeburn indicated he needed Board approval to do training with kits that won't match the current kit being used. Dr. Blick asked Mr. Brookman if we had a two year supply and Mr. Brookman indicated the OSBI had over 7,500 kits (4 tube) in stock. Dr. Blick inquired about expiration dates. Mr. Brookman stated he was not sure, but

indicated the kits do expire. Director Blakeburn advised the Board the agency would trade for expired blood kits and referenced the BOT Action regarding the use of expired blood kits.

**Action Taken:** No action taken.

## **5. Expungement of the Intoxilyzer 5000-D for breath testing**

### **A. Discussion of expungement of I-5000D as approved evidentiary device for the state's test.**

Director Blakeburn advised Chief Hitchcock with Langley P.D. had expressed his opposition to the expungement of the I-5000D. Dr. Blick commented the 5000D was a legacy instrument that had been around a while and served the state well. Chief Hitchcock joined the meeting by telephone and indicated his agency is in Mayes County and 10 agencies use the instrument. The nearest I-8000 is 30-40 minutes away and expunging the 5000D would result more time due to longer transport and his agency can't afford an I-8000. Sheriff Whetsel asked how many 5000D were in operation. Mr. Johnson stated fewer than 12. Sheriff Whetsel asked when they were slated for replacement. Mr. Johnson indicated they were all locally owned. Chief Cox stated his agency was not selected to receive a 5000D but did receive an I8000 and they currently use the 5000D as a backup. Chief Cox expressed difficulty with maintaining the 5000D. Director Blakeburn stated the BOT no longer repairs the 5000D. Director Blakeburn added the I8000 uploads to Cobra and the 5000D does not. Director Blakeburn continued that by providing evidentiary backup for the 5000D is a concern indicating the 5000D uses a wet bath simulator while the I8000 uses a dry gas standard. Director Blakeburn stated the independents pay the cost maintaining their own instrument. Sheriff Whetsel asked if the 5000D repairs go to CMI. Director Blakeburn stated yes and the average repair is about \$1,200.00. Dr. Blick asked if CMI would continue to support the 5000D and Director Blakeburn indicated they would. Sheriff Whetsel asked if 10 or 12 5000D are still In use and properly maintained then what's the advantage of eliminating the 5000D? Director Blakeburn expressed concern about evidentiary issues and record keeping. Mr. Hosty stated that legally, this was not as good idea. Cases are pending and independent tests get taken away from the public which could open legal challenges. Mr. Hosty expressed concern regarding training issues and stated if he had a vote he would object. Mr. Fabian said there was no reason to expunge the 5000D as two machines could be approved. Director Blakeburn stated there are no 5000D maintenance supervisors in the field and Mr. Fabian stated he knew of one 5000D that was not law enforcement. Director Blakeburn stated the BOT would have to restart the maintenance supervisor training but independent instruments can be ad hoc. Mr. Fabian suggested there was no need to restart the training because they could just go through the existing process. Mr. Hosty stated there were enough surrounding states to make a rule exception for, CMI documented, for out of state supervisors to maintain. Sheriff Whetsel asked Chief Hitchcock who maintains their current device and the Chief stated they have two maintenance supervisors. Dr. Blick confirmed their maintenance supervisor certificate had been updated and Chief Hitchcock replied they had been updated last year on-line. Sheriff Whetsel asked Chief Hitchcock when they would have funding to replace the 5000D and Chief Hitchcock replied replacement is in their plan but not their budget so replacement might take a couple of years. Sheriff Whetsel asked Chief Hitchcock if he could set a goal of replacing the 5000D in a 24 month period and the Chief indicated they could shoot for that. Dr. Blick asked Chief Hitchcock what he

would use for a backup if he purchased an I8000 and the 5000D were decertified and Chief Hitchcock indicated he would not have a backup and expressed concern about the two hour time limit and long drive to an evidential instrument. Dr. Blick asked Chief Hitchcock if he would need a backup system even if he had an I8000 and Chief Hitchcock indicated yes, that would be convenient. Dr. Blick noted that Chief Cox was using a 5000D as a backup and asked Director Blakeburn how many agencies were doing the same. Mr. Johnson indicated that most were replacing the 5000D with the I8000. Sheriff Whetsel discussed a motion encouraging agencies to replace the 5000D within a twenty four month period. Dr. Dunn inquired as to how the Board encourages with no funding or incentive. Dr. Blick stated that encouragement was enough, the agencies realize they are falling behind and suggested a letter be sent to 5000D owners encouraging them to contact OHSO for I8000 funding. Mr. Johnson noted that Union City received an I8000 through an OHSO grant. Dr. Blick asked Chief Hitchcock if he agreed and Chief Hitchcock agreed.

**Action Taken:** Sheriff John Whetsel made a motion to continue using the 5000D as an evidential instrument with the goal to encourage transition with a twenty four month period of time and to reassess at twelve and twenty four month intervals. The motion was seconded by Mr. Steve Brookman. A roll call vote was taken with the following results: Mr. Steve Brookman voted yes; Chief Byron Cox voted yes; Dr. Terence Dunn voted yes; Mr. Steve Emmons voted yes; Major Rusty Rhoades voted yes; Sheriff John Whetsel voted yes and Chairman Kenneth Blick voted yes. The motion carried 7-0.

#### **6. Recommendations to Sunset Review Board.**

Director Blakeburn proposed removing the Administrative Assistant language from 47 O.S. 759 for this years Sunset Review. The Board had a brief discussion about the process for hiring the position and the duties of the position. The Board felt changes could be accomplished through an administrative rule change and no statutory change was necessary.

**Action Taken:** Chief Byron Cox made a motion to keep things the way they are and, if necessary, make an administrative rule change to reflect more flexibility. The motion was seconded by Major Rhoades. A roll call vote was taken with the following results: A roll call vote was taken with the following results: Mr. Steve Brookman voted yes; Chief Byron Cox voted yes; Dr. Terence Dunn voted yes; Mr. Steve Emmons voted yes; Major Rusty Rhoades voted yes; Sheriff John Whetsel voted yes and Chairman Kenneth Blick voted yes. The motion carried 7-0.

#### **7. Chairman Report.**

Chairman Blick commended the work of the Board and staff.

**Action Taken:** No action taken.

#### **8. Consideration of any statements by the public.**

Mr. Hosty solicited Director Blakeburn to speak at a Municipal Judges Conference.

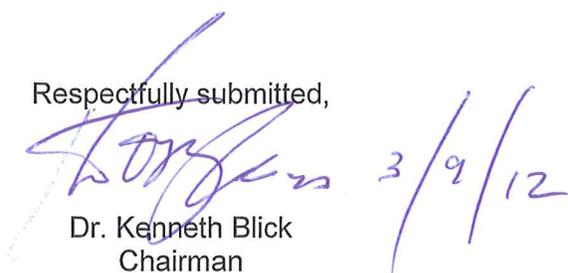
**Action Taken:** No action taken.

8. **Adjournment.**

**Action Taken:** Chief Byron Cox made a motion to adjourn. The motion was seconded by Mr. Emmons. A roll call vote was taken with the following results: Mr. Steve Brookman voted yes; Chief Byron Cox voted yes; Dr. Terence Dunn voted yes; Mr. Steve Emmons voted yes; Major Rusty Rhoades voted yes; Sheriff John Whetsel voted yes and Chairman Kenneth Blick voted yes. The motion carried 7-0.

Dr. Kenneth Blick adjourned the meeting at 11:07 a.m.

Respectfully submitted,

A handwritten signature in blue ink, which appears to be "K. Blick", is written over the typed name. To the right of the signature, the date "3/9/12" is handwritten in blue ink.

Dr. Kenneth Blick  
Chairman

Board of Tests for Alcohol and Drug Influence