



**STATE OF OKLAHOMA
BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE**

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Dr. Kenneth E. Blick, Ph.D.
Chairman

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.

**Special Meeting AT OKLAHOMA CITY, OKLAHOMA
Of the Board of Tests for Alcohol and Drug Influence
Oklahoma Department of Public Safety Complex,
Building No. 9, W.C. (Sarg) Smith Classroom
3600 North Martin Luther King Avenue, Oklahoma City, OK, 73111
February 22, 2013
MINUTES**

BOARD MEMBERS PRESENT:

Dr. Kenneth Blick, O.U. Health Sciences Center
Mr. Kevin Kramer, OSBI
Dr. Terence Dunn, OK Dept. of Health
Mr. Steve Emmons, CLEET
Major Rusty Rhoades, OHP
Sheriff John Whetsel, Oklahoma County

STAFF PRESENT:

Kevin Behrens, Interim Director
Shelly Schultz, Ignition Interlock P.A.
Jenifer Martin, Admin. Asst.

BOARD MEMBERS ABSENT:

Chief Byron G. Cox, Weatherford Police Dept.

GUESTS:

Joshua Smith
Thomas W. Hosty
Mary Wickstrom
Timothy Levey
Stephen Fabian
Sandra Balzer
Doug Young
John Lindsey
Joanne Horn
Brian Morton
Charles Sifers
Jeff Sifers

ORGANIZATION:

N/A
HLO
Smart Start
Smart Start
N/A
OAG
DPS
DPS
DPS
DPS
TSRP-attended special meeting but did not sign in

1. Call to Order and Roll Call

Action Taken: Chairman Blick called the meeting to order at 1:32 p.m. Roll was taken; six members were present representing a quorum.

2. Approval of Minutes of February 13, 2013 Regular Meeting

Action Taken: Sheriff Whetsel made a motion to approve the minutes from the February 13, 2013 regular meeting. The motion was seconded by Dr. Dunn. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0.

3. Proposed executive session pursuant to 25 O.S. § 307(B)(1) for second interviews, discussion, and possible action to employ an Administrative Assistant to the Board.

- a. Vote to enter executive session.

Action Taken: Sheriff Whetsel made a motion to enter executive session for agenda items 3, 4, and 5. The motion was seconded by Mr. Emmons. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. Executive Session was entered at 1:33 p.m.

- b. Vote to exit executive session.

Action Taken: Mr. Emmons made a motion to exit the executive session. The motion was seconded by Mr. Kramer. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. Executive Session was exited at 3:30 p.m.

Possible action taken as a result of Executive Session.

Action Taken: Sheriff Whetsel made a motion for the Board to meet on March 1, 2013 at 1:30 p.m. to enter executive session for the purposes of interviewing candidates for Administrative Assistant to the Board, Training Specialist II and the Maintenance Technician vacancies. The motion was seconded by Mr. Kramer. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0.

4. Proposed executive session pursuant to 25 O.S. § 307(B)(1) for second interviews, discussion, and possible action to employ a Training Specialist II.

- a. Vote to enter executive session.

Action Taken: Sheriff Whetsel made a motion to enter executive session for agenda items 3, 4, and 5. The motion was seconded by Mr. Emmons. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. Executive Session was entered at 1:33 p.m.

- b. Vote to exit executive session.

Action Taken: Mr. Emmons made a motion to exit the executive session. The motion was seconded by Mr. Kramer. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. Executive Session was exited at 3:30 p.m.

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5. Proposed executive session pursuant to 25 O.S. § 307(B)(1) for second interviews, discussion, and possible action to employ a Breath Alcohol Maintenance Technician.

- a. Vote to enter executive session.

Action Taken: Sheriff Whetsel made a motion to enter executive session for agenda items 3, 4, and 5. The motion was seconded by Mr. Emmons. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. Executive Session was entered at 1:33 p.m.

- b. Vote to exit executive session.

Action Taken: Mr. Emmons made a motion to exit the executive session. The motion was seconded by Mr. Kramer. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. Executive Session was exited at 3:30 p.m.

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Action Taken: Sheriff Whetsel made a motion for the Board to meet on March 1, 2013 at 1:30 p.m. to enter executive session for the purposes of interviewing candidates for Administrative Assistant to the Board, Training Specialist II and the Maintenance Technician vacancies. The motion was seconded by Mr. Kramer. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0.

6. **Discussion and possible action on request to reconsider expungement of the Intoxilyzer 5000-D as an approved breath testing instrument.**

Chairman Blick gave a synopsis of Mr. Fabian's request to reconsider the expungement of the 5000-D as an approved breath testing instrument. Chairman Blick gave the floor to Mr. Fabian to further elaborate on this request. Mr. Fabian stated that he purchased a 5000 and has used it ever since. He stated it was not obsolete, that he used it as an independent test, and that out of State breath tests were performed on it. He also stated there is money wrapped up in the device. He requested help in purchasing an Intoxilyzer 8000. Mr. Fabian stated there was no reason to disapprove this device. He stated it was expunged because he and Director Blakeburn were at odds. Mr. Kramer asked that Mr. Fabian further elaborate on what he used the instrument for. Mr. Fabian explained he gave breath tests to out of state people (Mr. Fabian mentioned people from Colorado) who were required to take a breath test. Blick made a comment that obsolete was inappropriate. Interim Director Behrens stated that board members had discussed this at the previous regular meeting. He reviewed the minutes from that regular meeting and stated there were two rules, one for evidential device for the State's test and a rule

for private owners and operators. Interim Director Behrens said it was stated in the meeting minutes that the expungement of the 5000-D was only for the State's test and would not have any bearing on the independent owners and operators. Mr. Hosty stated he is not allowed to buy an 8000 and would like the Board to give him permission to purchase one. Mr. Fabian said Detox has one right? Chairman Blick said yes they did at one time. Sheriff Whetsel stated it appears by the record the exception is made. Mr. Fabian said it raises a potential about the tests being done by independent operators. Interim Director Behrens said it is appropriate to clarify the ruling applying to 30-1-3 and not applying to 30-1-3.1. Mr. Fabian said how can you use this if it's not an approved device? Chairman Blick asked if there is a motion.

Action Taken: Sheriff Whetsel made a motion to put the 5000-D as an approved device on the list. The motion was seconded by Mr. Emmons. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0.

7. Discussion and possible action on recommendations from CMI for resolving issues with the external battery on the Intoxilyzer 8000.

Interim Director Behrens directed the board to a letter with recommendations from CMI for resolving the System Error 18 issue. Dr. Dunn wanted to know if the instrument would need to be re-calibrated after pulling the battery. Interim Director Behrens said it requires nothing because it is an external component. Chairman Blick stated a check of the linearity, accuracy, and precision would be done as the device is used in the field.

Action Taken: Sheriff Whetsel made a motion to accept Option 1 from CMI.

Option 1 The easiest and most cost effective solution is to remove the external battery from the I-8000. Once the battery is removed, the "Auto-On" function will no longer be an issue. If the main power is lost, the instrument will shut off and remain off until power is restored. This option does not require the instruments to be opened or reprogrammed. Further, the testing protocols will remain the same.

The motion was seconded by Mr. Kramer. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0.

8. Discussion and possible action on clarifying the June 12, 2008, resolution of the Board approving pressurized gas cylinders containing a known breath-alcohol equivalent ratio of nitrogen and ethanol gas.

Chairman Blick states the issue. The 8000 does not use a Guth 2100 simulator in the field. A surrogate is used the gas canister. Its NIST certified. The simulators and gas canister is listed as an approved device to simulate breath in the field. Interim Director Behrens stated there is confusion about when the Board adopted the 6/12/08 resolution. Was that good enough approval for vendors and specs on the tank. This has become a legal issue. Chairman Blick to Dr. Dunn this is a quality control step in the field. The stated value is 0.08 +/- .002. It simulates breath. The 2100 is not used in the field. 8000 is equipped with a gas canister. The intent is to clarify the approval of the gas cylinder. Interim Director Behrens state the legal issue is that the ruling has been it is not legally approved for specs and vendors. Chairman Blick states the approval is way too general. It does not specify vendors, NIST approval, etc... Sheriff Whetsel asked Interim Director Behrens to draft a resolution with the correct wording. Chairman Blick asked if there was a motion. Mr. Kramer said I don't see .08 on the 6/12/08 resolution.

Jeff Sifers commented about a rule approved by the board and the Governor signed off on CMI and Scott Gases and they are still approved by rule and there has not been a motion to change that. Chairman Blick asked where the tanks come from? Interim Director Behrens said CMI. The Board then read the draft. The Board then discussed the draft Interim Director Behrens wrote. Chairman Blick suggested the addition "whichever is greater" after BAC. Mr. Fabian said I wouldn't do this because it violates APA. Fix something that was screwed up to begin with. Say we meant something else. This is trying to fix something retrospective. John Lindsey took issue with Mr. Fabian's statement about the APA and strongly urged the Board to incorporate the draft. Ms. Balzer added the board is approved to approve a change to the resolution. Chairman Blick stated we need to add all the details. Mr. Kramer asked why this just became an issue? Chairman Blick said Judge Croy said this was not detailed enough, lack of documentation. Mr. Fabian said DPS tried to introduce evidence of the Certificate of Analysis from ILMO. Croy says we need more evidence on the .08 in the tank. Interim Director Behrens said this would clarify the 2008 resolution. He is not going to say the court should rule one way or another. Chairman Blick said let's see what the court thinks.

Action Taken: Dr. Dunn made a motion to approve resolution with adding whichever is greater after the BAC. The motion was seconded by Sheriff Whetsel. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0.

9. New Business

New business is not allowed at a special meeting per Ms. Balzer.

10. Adjournment.

Action Taken: Sheriff Whetsel made a motion to adjourn. The motion was seconded by Mr. Emmons. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 6-0. The Special Meeting was adjourned at 4:16 p.m.

Respectfully submitted,



Dr. Kenneth Blick
Chairman

Board of Tests for Alcohol and Drug Influence