



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

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Chairman

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Kevin Behrens
Director

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.

**Regular Meeting AT OKLAHOMA CITY, OKLAHOMA
Of the Board of Tests for Alcohol and Drug Influence
Oklahoma Department of Public Safety Complex,
W.C. Sarg Smith Classroom
3600 North Martin Luther King Avenue, Oklahoma City, OK, 73111**

**Tuesday November 18, 2014
10:00 A.M. CST**

MINUTES

BOARD MEMBERS PRESENT:

Dr. Kenneth Blick, O.U. Health Sciences Center
Sheriff John Whetsel, Oklahoma County
Chief Vernon Griffin, Comanche Nation
Steve Emmons, CLEET
Kevin Kramer, OSBI

STAFF PRESENT:

Kevin Behrens, Director
Jenifer Martin, Admin to the Board
Joshua Smith, Technician
Vince Barnard, Senior Training Officer
Shelly Schultz, Interlock Program Admin

BOARD MEMBERS ABSENT:

Dr. S. Terence Dunn, Oklahoma State Health Dept.
Major Rusty Rhoades, Oklahoma Highway Patrol

1. Call Meeting to Order

Action Taken: Chairman Blick called the meeting to order at 10:00 a.m. Roll was taken; five members were present representing a quorum.

2. Approval of Minutes of July 15, 2014 Regular Meeting

Action Taken: Steve Emmons made a motion to approve minutes. The motion was seconded by Kevin Kramer. A roll call vote was taken with the following results Chairman Blick voted yes; Sheriff Whetsel voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0.

3. Director's Report

Director Behrens spoke about the ENDUI campaign kickoff at the capital on November 13, 2014 and that one of the ENDUI vans would be present for viewing after the board meeting today. He also gave an update on the WASP asset management system being deployed. Also included in his report was BOT website improvements; such as the Interlock installation verification electronic forms are going well and has been a great update to our system. The new Intoxilyzer operator course scheduling module is being pushed to production. The changes to this module will accommodate our mobile training platform. The new policies and procedures for BOT are posted on the website and more will be added as they are written. There will be some publications posted to the website sometime in January 2015. Those publications will include the Annual Report and Annual Plan. DUI references will be posted sometime in spring of 2015.

Director Behrens also addressed two points that were made in public comments at the July Board meeting. The first point being the Board has not approved the software being used on the Intoxilyzer 8000. Director Behrens stated "The Board did approve this in 2007 when it approved the use of the Intoxilyzer 8000 with the Oklahoma package. The second point being breath test records being stored electronically cannot and would not be expunged. Director Behrens believes that to be accurate, but he believes with the way things are progressing to everything being stored electronically it's only a matter of time before that's not our choice. He does believe this will happen in the distant future. BOT is still committed to storing all Intoxilyzer maintenance files electronically.

2015 is a Sunset Review year for BOT. We are still waiting to receive the survey for this. Director Behrens feels we have a strong body of work to provide and is confident with taking it the Sunset Review Board.

Finally, the next board meeting will focus on upcoming rule changes. The bulk of the rule changes will be for the Ignition Interlock Program. They have been place for several years without any updates or changes.

Action Taken: Sheriff Whetsel made a motion to accept Director's report. The motion was seconded by Steve Emmons. A roll call vote was taken with the following results Chairman Blick voted yes; Sheriff Whetsel voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0.

4. Discussion and possible action on proposed Study of the Effects of Vapes/E-Cigarettes on the Operation of the Intoxilyzer 8000

Chairman Blick stated there was a summary of what the study will include emailed to all the board members prior to the board meeting for review. He asked for any comments or concerns about the study.

Sheriff Whetsel asked if the study would be done in house. Director Behrens answered with yes it will and there are a lot of logistics to be worked through and the summary is basically a thirty thousand foot view of it. This is just to find out if this is something the board is interested in letting us do. Whetsel and Kramer both feel this is something that needs to be looked at. Chairman Blick does not feel this study would merit the approval of the Institutional Review Board at OU because of this being a low risk project due to officers being tested. The officers being tested would come from a pool of volunteers for this study. Director Behrens pointed out the vote just needs to be for moving forward with the study and we will handle all the details.

Action Taken: Sheriff Whetsel made a motion to proceed with the study. The motion was seconded by Steve Emmons. A roll call vote was taken with the following results Chairman Blick voted yes; Sheriff Whetsel voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0.

5. Discussion and possible action on proposed 2015 Regular Meeting Schedule

The dates proposed are as follows:

Monday February 23, 2015 at 10:00am

Monday July 6, 2015 at 10:00am

Monday November 9, 2015 at 10:00am

Action Taken: Steve Emmons made a motion to accept Monday February 23, 2015 at 10:00am as the first scheduled Regular Board Meeting. The motion was seconded by Chief Griffin. A roll call vote was taken with the following results Chairman Blick voted yes; Sheriff Whetsel voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0.

Action Taken: Steve Emmons made a motion to accept Monday July 6, 2015 at 10:00am as the second scheduled Regular Board Meeting. The motion was seconded by Chief Griffin. A roll call vote was taken with the following results Chairman Blick voted yes; Sheriff Whetsel voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0.

Action Taken: Steve Emmons made a motion to accept Monday November 9, 2015 at 10:00am as the third scheduled Regular Board Meeting. The motion was seconded by Chief Griffin. A roll call vote was taken with the following results Chairman Blick voted yes; Sheriff Whetsel voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0.

6. Presentation by Dr. Jarrad Wagner and Ms. Tara Valouch regarding developments in oral fluid drug testing

Dr. Wagner and Ms. Valouch presented on the technology and developments in oral fluid drug testing and they have discovered through a pilot project study they have done on this matter. After the presentation Dr. Wagner and Ms. Valouch fielded questions and comments from the audience and the Board.

7. Public Comments

Thomas Hosty, DUI defense attorney stated statute does not require quantification. Therefore, he is concerned that if this method is approved it goes from probable cause, to we did the stick test, it showed positive, under statute we don't have to quantitate so that's good enough for guilt to the prosecutors and the officers. Also, just like with blood testing there is no additional sample for independent testing. He also ask if the Board of Tests is to ever approve this method of testing they also consider approving independent testers much like with the Intoxilyzer 8000.

Mr. Hosty would also like for there to be some amendments to the implied consent. He would like that after asking the person to take the states test, if they refuse, there be an additional item added asking if the person is sure they want to refuse and the officer be required to inform the person they have the right to change their mind because the

conditions exist to let them take the test. He would also like that after they have taken the states test they be asked if they would like an independent test. He feels these amendments would make for a fair implied consent.

Mr. Hosty addressed the Board approving the software used on the Intoxilyzer 8000 in 2007. He stated the Board did not approve specific software, it just approved generic software. He believes that is vague and not sufficient. Does it comport with DOT on file approved software, we don't know in Oklahoma.

Mr. Hosty addressed the expungement issues, stating the Board on its own has the authority to grant relief to those people seeking expungements. By administrative rule saying if you submit to us an approved court order of expungement in conformity with the law and intent of the expungement we will seal those records. He is not saying the Board should destroy records of an expunged person, but should give the option to having them sealed.

Steve Fabian, DUI Defense Attorney addressed his concerns with oral fluid testing. He stated that unless there is a quantitative blood test stating the amount of drugs in the sample there is no way to say presence of a drug impairs a person's ability to drive. He believes the police mentality will be the machine showed there was a drug present therefore you are impaired and going to jail. He advised that the Board take great care and consideration with the possible approval of oral fluid testing.

Sonja Porter, DUI Defense Attorney addressed that Kevin and his team came out for a DUI wet lab for lawyers and judges. They put an hour and fifteen minute wet lab in crash course fashion. She wanted the Board to know she received nothing but compliments on Kevin and his team's performance. As a matter of fact the Bar Association has asked Sonja to put on a full day course with the assistance of Kevin and his team.

Sonja also added that the oral fluid testing does not seem to be cost effective. She feels that the oral fluid screening device is a glorified PBT, if all it can do is test positive for a parent drug. She is also concerned about independent testing on oral fluids.

Sonja also mentions that the implied consent needs to clearly distinguish between the PBT screening and the states test.

Mr. Hosty also asked what the concern was with the Vapes/E-Cigarettes and the operation of the Intoxilyzer 8000. He has not seen any studies or literature showing they change the results.

Dr. Blick answered stating there aren't any studies or literature that we know of on this subject and it's the Boards suspicions they will not have an effect on the Intoxilyzer.

Dr. Blick on behalf of the Board thanked everyone for their comments and concerns. The Board appreciates and learns from the public comments.

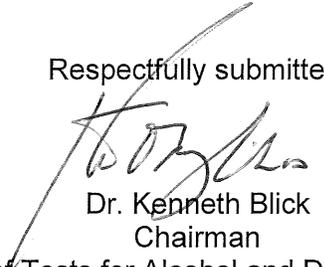
8. New Business

No new business

9. Adjournment

Action Taken: Sheriff Whetsel made a motion to adjourn meeting. The motion was seconded by Steve Emmons. A roll call vote was taken with the following results Chairman Blick voted yes, Steve Emmons voted yes, Kevin Kramer voted yes, Sheriff Whetsel voted yes, and Chief Griffin voted yes. The motion carried unanimously 5-0

Respectfully submitted,



3/11/15

Dr. Kenneth Blick
Chairman

Board of Tests for Alcohol and Drug Influence

A digital copy of these minutes is kept on record at the Board of Tests