



**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.

**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 12, 2012

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, Oklahoma Highway Patrol
Sheriff John Whetsel, Oklahoma County
Chief Byron Cox, Weatherford Police Dept.

STAFF PRESENT:

J. Robert Blakeburn, State Director
Toby Taylor, Administrative Asst.
Shelly Schultz, Ignition Interlock P.A.
Jenifer Martin, Admin. Tech.
Joe Johnson, Senior Instructor

BOARD MEMBERS ABSENT:

None

GUESTS:

John Wickstrom
Tim Levey
Justin McCord
Jeff Skinner
Jeff Sifers
Paul Wallace

ORGANIZATION:

Smart Start
Smart Start
Smart Start
Lifesafar
District Attorneys Council
OSBI

1. Call Meeting to Order

Action Taken: Chairman Blick called the meeting to order at 10:02 a.m. Roll was taken; seven members were present representing a quorum.

2. Approval of Minutes

Action Taken: Sheriff Whetsel made a motion to approve the minutes of the March 9, 2012, Special Meeting as written. 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; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

3. Report from State Director

Director Blakeburn presented the Director's Report dated August 12, 2012. There was no discussion.

Action Taken: Chief Cox made a motion to accept the Directors Report. 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; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

4. Set 2013 Regular Meeting dates

The Board scheduled Regular Meeting dates on February 13, 2013 and August 14, 2013.

Action Taken: No action taken.

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

Director Blakeburn stated that, with the exception of Hominy P.D. who is currently mailing one, the Board has not received any log reports from field instruments. He stated if the agencies are doing maintenance on the remaining instruments, this is not being documented. Director Blakeburn told the Board the agency is no longer training 5000-D Maintenance Supervisors and there is nobody certified in Oklahoma for the repair of the instruments. Chairman Blick asked about instruments currently owned by private individuals. Director Blakeburn affirmed private ownership and indicated these instruments were covered by a separate rule for independent testing. Dr. Dunn asked if there would be any impact on pending cases. Sheriff Whetsel stated this was addressed in the current rules.

Action Taken: A motion was made by Sheriff Whetsel to remove authorization for the 5000-D as an evidentiary device in the state of Oklahoma effective December 31, 2012. The motion was seconded by Major Rhoades. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

6. Discussion of the number of vials of blood to be required in a Board-approved blood kit, as indicated at the Board's last meeting.

Mr. Kramer stated the OSBI has re-evaluated the decision to reduce the number of vials in the blood kits from 4 vials to 3 vials. After evaluating surrounding states, the OSBI decided to continue with the 3 vial kit and the procurement process was ongoing. Dr. Blick confirmed two tubes for blood analysis (inside and outside) leaves only one tube for challenge analysis and there would not be a fourth for the defendant to have tested by an outside laboratory. Mr. Kramer stated it is rare, but not impossible, that the OSBI has to get into a second tube. Dr. Blick stated the defendant could raise the issue that an unsealed tube was used for testing. Director Blakeburn indicated statute requires one vial of blood be drawn for independent testing – subject request required. Mr. Kramer affirmed but stated the statute does not specify an amount. He stated

surrounding states collect one tube and the kit supplier indicated everyone collects one or two vials of blood. The OSBI met in the middle at three vials. He stated the previous supplier had cancelled the four vial kit contract.

Action Taken: A motion was made by Sheriff Whetsel to retain the three vial kit. The motion was seconded by Chief Cox. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

7. Request to the Board for the Director to attend the CLEET Law Enforcement Terrorism Certification Program.

Director Blakeburn asked Mr. Emmons if it would be appropriate for him to attend the course and stated he felt he needed specific permission from the Board because his attendance in CLEET certified law enforcement training class would be out of the ordinary. Mr. Emmons felt it would be beneficial for Director Blakeburn to attend.

Action Taken: A motion was made by Chief Cox to allow Director Blakeburn to attend the training conference. 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; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

8. Presentation to the Board on Actions clarifying ignition interlock device calibration procedures (See attached).

Members reviewed proposed Action No. 12-01. Mrs. Schultz explained the current set points and penalty fail points to the Board. Sheriff Whetsel questioned why the values indicated were above the legal limits. Mrs. Schultz stated this was due to uncertainty in calibration. Dr. Blick felt these values were too generous. Director Blakeburn stated the 0.02 g/210L was established by Dr. Dubowski as the lowest measurable amount. Mr. Taylor clarified the difference between the set point and penalty fail values and affirmed the current set point is in accordance with the 1992 NHTSA Model Specifications for Breath Alcohol Ignition Interlock Devices. Mrs. Schultz explained the process utilized by manufacturers to notify the Board of their intent to modify a currently approved device as it related to device certification, the current violation scheme, issues related to the instrument's capability to detect when a vehicle is running, and gave an update to the Board regarding the progress of the BOT website ignition interlock module. Dr. Blick asked Mrs. Schultz how many interlocks were in use in Oklahoma and Mrs. Schultz indicated 2000 – 3000. Mrs. Schultz explained the functionality of the BOT website rotating vendor list and described recent problems with the automatic rotation of the list. Mrs. Schultz explained the software program is maintained by ok.gov and they are aware of the recent problems and are working to resolve. Mrs. Schultz described the service center inspection process and the calibration issues identified through this process.

Members reviewed proposed Action No. 12-02. Mrs. Schultz noted a substitution of the proposed procedural language based on a submission of clarifying language from a manufacturer with experience in this field. Dr. Blick confirmed the need for this citing Wells Law. Dr. Blick stated he felt everything related to the calibration (temperature, technician, etc.) should be recorded and stated the device is no better than the calibration. Dr. Dunn stated he believed a calibration log should be required and only NIST certified thermometers should be utilized.

Action Taken: A motion was made by Sheriff Whetsel to approve the Actions as amended. The motion was seconded by Chief Cox. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

9. **Consideration as to whether Action 01-01 (Persons Authorized to Withdraw Blood pursuant to 47 O.S. § 752(a)) may need to be amended or created as an administrative code rule.**

Director Blakeburn stated the Board made the determination that no action was necessary at the last Board meeting. Mr. Sifers indicated this is presently an issue in several pending cases. Director Blakeburn expressed his concern regarding the long term effects of Actions issued by the Board and felt this should be a judicial determination that could be worked through the Department of Public Safety. Dr. Blick asked if Director Blakeburn has talked to the DPS about this issue Director Blakeburn indicated they were non-responsive. Chairman Blick stated the Board has spoken on this issue, having recently approved two Actions, and we don't want judges challenging Actions. Mr. Sifers explained he approached the Board with this issue because we are seeing court confusion related to blood draws involving serious injury and fatality traffic collisions. He expressed his concern about a "significant challenge" from the defense bar because the action taken by the Board in 2001 is insufficient. He states an Action not promulgated does not have the full force and effect of law. No issue about the EMS qualifications, but the Action itself. He stated 47 O.S. § 759 looks at rules of the Board or an ASCLAD certified lab as related to an "approved medical facility" not "approved individual". He stated the District Attorneys Council requests amending "EMT" as an approved individual. He felt this would remove any and all confusion. He stated he understands the Board's concerns about existing Actions constructive effort legally to make the argument. Dr. Blick asked if this "would open the flood gates" and Chief Cox asked if the proposed language would be in addition to the existing language or replacing the existing language. Sheriff Whetsel noted the presence of an Action but no rule. He stated state law refers rules and we don't have a reference in the rules. Director Blakeburn stated the statute says "qualified persons approved by the Board" and the Boards enabling legislation says "The Board may take such reasonable actions... as the Board shall determine proper. Director Blakeburn reiterated his belief that the issue should be taken up on appeal. Dr. Blick asked Director Blakeburn if he felt that would happen and Director Blakeburn stated he didn't know. Dr. Blick asked Mr. Sifers how many cases were involved and Mr. Sifers cited two cases in which this is an issue.

Action Taken: Sheriff Whetsel made a motion for the Director to write a proposed modification to the rule to better comply with those enumerated in statute with respect to persons authorized in statute and adding EMT's. The motion was seconded by Chief Cox. A roll call vote was taken with the following results: Mr. Kramer voted yes; Dr. Dunn voted yes; Mr. Emmons voted yes; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

10. **Personnel: Executive session, The Board may convene an executive session pursuant to 25 O.S. § 307 (B) (1).**

Action Taken: Chief Cox made a motion to convene an executive session. 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; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes.

The motion carried unanimously 7-0. The Board went into executive session at 11:45 a.m.

Chairman Blick announced the return to open session at 12:37 a.m.

Action Taken: Mr. Emmons made a motion to reconvene the Regular Meeting. 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; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

11. **Chairman Report.**

No report given.

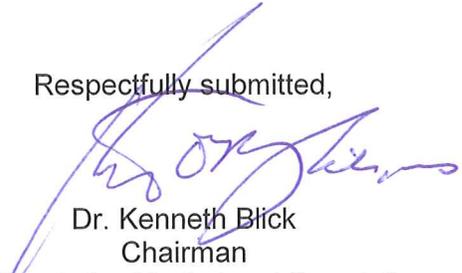
Action Taken: No action taken.

9. **Adjournment.**

Action Taken: Chief Cox 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; Chief Cox voted yes, Major Rhoades voted yes; Sheriff Whetsel voted yes and Chairman Blick voted yes. The motion carried unanimously 7-0.

Chairman Blick adjourned the meeting at 12:39 p.m.

Respectfully submitted,



Dr. Kenneth Blick
Chairman

Board of Tests for Alcohol and Drug Influence