



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

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

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**

**Monday, November 9, 2015
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
Dr. S. Terence Dunn, Oklahoma State Health Dept.
Major Rusty Rhoades, Oklahoma Highway Patrol
Dr. Jarrad Wagner, OSU Center for Health Sciences

STAFF PRESENT:

Kevin Behrens, Director
Jenifer Martin, Office Manager
Vince Barnard, Senior Instructor
Joshua Smith, Maintenance Tech
Shelly Schultz, Ignition Interlock

1. Call Meeting to Order

Action Taken: Chairman Blick called the meeting to order at 10:00 a.m. Roll was taken; seven members were present representing a quorum. Sheriff Whetsel and Dr. Wagner entered the meeting after roll call was taken.

2. Approval of Minutes of July 6, 2015 Regular Meeting

Action Taken: Major Rhoades moved to approve minutes; the motion was seconded by Steve Emmons. A roll call vote was taken with the following results Chairman Blick voted yes, Sheriff Whetsel was not present at the time, Steve Emmons voted yes, Kevin Kramer voted yes, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Wagner was not present at the time, and Chief Griffin voted yes. The motion carried 7 - 0.

3. Director's Report

Director Behrens updated the Board on a few key points:

COOP PLAN – The agency needs to update its COOP Plan. The Board of Tests COOP Plan relies heavily on DPS resources and since DPS is now over hauling their COOP Plan, ours will be updated according to DPS' time frame.

OASIS Pilot – BOT's role in the pilot has been to assist the District Attorney's office with monitoring DUI offender's ignition interlock installations and violation reports. The pilot study is an integral part of GIDPAC's recommendations to integrate DUI prosecutions and administrative license revocations. If implemented this would result in significant changes in how interlock information is processed with a corresponding change in BOT's role in that process.

GIDPAC Training Working Group – BOT is participating in the GIDPAC Training Working Group to make improvements in the delivery of impaired driving training to law enforcement officers.

Oklahoma Bar Association Training – BOT trained attorneys in instrument operation and theory, and a number of fallacies regarding breath testing and the I8000 were addressed.

DAC Training - BOT trained new assistant district attorneys in instrument operation and theory. They were introduced to PBT's and the Ignition Interlock Device, and were provided information related to countering defense arguments.

Statewide Judicial Training – BOT trained sitting judges in instrument operation and theory, and a number of testing fallacies were addressed. In another event Director Behrens, defense attorney Charles Sifers, and DPS General Counsel Stephen Krise addressed questions from sitting judges. The panel was moderated by District Judge James Croy.

Expanded DAC Training – As a result of the previous activities, an expanded multi-day training for assistant district attorneys is being formulated to provide detailed information regarding alcohol distribution in the body and its effects, instrument operation and theory, along with more detailed information regarding instrument maintenance, defense tactics, and instruments safeguards. The Board requested to review the course information once it's developed.

Instrument Distribution – Based upon a recent visit to the Colorado EBAT program, BOT has changed the way instruments are distributed. The purpose of the change is to prolong instrument life, reduce cost, and create efficiencies in the way instruments are assigned and delivered.

Curriculum Updates – BOT is in the process of updating the breath test operator curriculum which will be approved for use in the calendar year 2016.

Maintenance Policy Updates – BOT is in the process of updating the maintenance policy to include pre-maintenance checks. There is also a need to convert the maintenance policy to the format of the other Policy and Procedure Statements posted on the agency's website.

Multi-State Ignition Interlock Forum – BOT attended the Multi-State Ignition Interlock Forum in Richmond, VA to discuss issues related to reciprocity of ignition interlock requirements across state lines. Additionally, Director Behrens traveled out in advance of the meeting to observe and discuss the VASAP (Virginia Alcohol Safety Action Program) program in order to identify potential best practices to adopt in the State of Oklahoma for the purposes of offender monitoring, treatment, and evaluation. This is support of the GIDPAC – Administrative License Revocation Working Groups, of which Director Behrens is the chair.

Recognition Policy - Director Behrens is in the process of drafting a Recognition Policy that will encompass inducting individuals into the BOT Hall of Fame, Interlock Service Center of the Year, Interlock Technician of the Year, and recognizing excellence in DUI prosecution and enforcement efforts.

Instrument Evaluation – E-Cigarettes – BOT has been trying to determine the for IRB approval, and if required how to go about receiving that approval as BOT has no relationship with an institutional review board. The permissions to purchase supplies have been obtained from OMES-Central Purchasing. The OHP EMS team has obtained approval from the medical director to participate for the purpose of conducting blood draws. The program has been outlined with regards to dosing and testing. Upon resolution of the IRB issue, BOT will be able to begin scheduling.

Instrument Evaluation – Purel - Bot has recently conducted an evaluation of the potential effects of the use/overuse of alcohol based hand sanitizer at or near the site of breath testing. The data has been collected, but no draft of the results has been prepared.

Instrument Evaluation – Carbon Monoxide – BOT has designed an evaluation of instrument performance in areas with higher than normal concentrations of carbon monoxide. No date has been scheduled for this evaluation. Other agencies will need to be involved and those agencies have been identified, but not contacted to determine if they are willing and able to assist. Specifically, we will need a fire department to measure the CO levels during the testing and ensure employee safety.

Instrument Evaluation – Mobile Testing – BOT has designed an evaluation to correlate breath test readings between instruments operating in a fixed location and results in a mobile setting. The reason for this evaluation is the high level of interest related to this subject expressed by the defense bar, and anecdotal reports from the Oklahoma County Sheriff's Office that they are being cross examined extensively in relation to tests run in the breath alcohol testing (BAT) mobile. The theory posited is that somehow the results of mobile testing are flawed in some way. In this study, volunteers would be dosed, as in the Vape study, and alternatively tested on an instrument in the BOT classroom and the BAT mobile and the results compared.

GIDPAC Oral Fluid Pilot Study – This is a continuation of Dr. Wagner's pilot study commissioned by the GIDPAC- Chemical Testing Work Group, of which Director Behrens is the chair. It is a cooperative effort between OHP and OSU Forensic Science Center. BOT is no longer involved in its original supporting role.

Sample v. DPS – This case has been assigned to the Court of Civil Appeals by the Supreme Court. The Court of Civil Appeals ruled against DPS as of this morning. It is our understanding that DPS plans to appeal this judgement.

FY16 and FY17 Budget – The Governor has directed all agencies to submit a budget reflecting a 10% cut in non-mission critical expenditures by December 1, 2015 to the Cabinet Secretary. Director Behrens is in the process of developing this now.

Mouthpieces – Director Behrens is in the process of drafting training or technical bulletin for distribution related to that charge that two mouthpieces are required for each breath test sequence.

Blood Kit Approvals – Director Behrens is currently in the process of drafting an update and comprehensive document approving disposable materials for use in blood draws. There have been a number of attempted challenges to blood tests cases based on a theory that the “blood kits” have not been approved. Director Behrens has testified a number of times in regards to this issue.

Rule Reviews - Director Behrens is currently reviewing the rules for needed amendments, including evaluating requested rules. Proposed rules should be submitted sometime in December.

Dr. Blick stated all studies or evaluations with BOT involvement need to be reviewed by Board and have Board approval.

Action Taken: Steve Emmons moved to accept the director’s report with the voting record corrected, Dr. Wagner seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Jarrad Wagner voted yes, and Chief Griffin voted yes. The motion carried 8-0.

4. Discussion and possible action on scheduling 2016 Regular Meetings

It was suggested the Board needs to meet more often throughout the year and decided the Board would meet quarterly. The dates discussed for Regular Meetings in 2016 were February 2, 2016, May 3, 2016, August 2, 2016, and November 1, 2016; all meetings starting at 10 am.

Action Taken: Dr. Wagner moved to accept the dates and time for 2016 Regular Board Meetings, Chief Griffin seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Jarrad Wagner voted yes and Chief Griffin voted yes. The motion carried 8-0.

5. Proposed executive session pursuant to 25 O.S. §307(B)(1) to discuss the “employment, hiring, appointment, promotion, demotion, disciplining, or resignation”, of the State Director, Kevin Behrens, to include performance review

Action Taken: Dr. Dunn moved to enter executive session, Kevin Kramer seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted no, Dr. Jarrad Wagner voted no and Chief Griffin voted yes. The motion carried 6-2.

Action Taken: Steve Emmons moved to exit executive session, Kevin Kramer seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades yes, Dr. Jarrad Wagner voted yes and Chief Griffin voted yes. The motion carried 8-0.

6. Discussion and possible action on defining the roles and responsibilities of the Board, Chair, Vice-Chair, and Director

Action Taken: Sheriff Whetsel moved the Board in conjunction with the Director will define the roles and responsibilities of the Director to be used as the basis for the Director's annual review, Steve Emmons seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Jarrad Wagner voted yes and Chief Griffin voted yes. The motion carried 8-0.

Action Taken: Sheriff Whetsel moved to create a subcommittee of Major Rhoades, Dr. Dunn, and Kevin Kramer in conjunction with the Director to create the rules to define the roles and responsibilities of the Board, Chair and Vice-Chair, Steve Emmons seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Jarrad Wagner voted yes and Chief Griffin voted yes. The motion carried 8-0.

7. Discussion and possible action, pursuant to 40 O.A.C. 25-1-3, to approve alcohol breath simulators or reference methods by resolution

No action taken

8. New Business

In light of the Sample v. DPS ruling the director has drafted proposed emergency rules for all the approvals of instruments, reference methods, and disposable materials. He is asking the Board to decide whether to change the rules now or wait until we know if there will be an appeal to the court's decision.

Action Taken: Sheriff Whetsel moved to defer agenda item 8 to special meeting to be scheduled at a later date, Major Rhoades seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Jarrad Wagner voted yes and Chief Griffin voted yes. The motion carried 8-0.

9. Chairman's Report

No report given

10. Public Comment

Attorney Thomas Hosty stated the Board recognizing an industry or person in an industry whose purpose is for profit and not for public safety will create additional litigation and problems for the Board, to the same degree he cautions the Board on approving certain devices and methods retroactively. He also stated that any study the Board of Tests participates in, even in an administrative capacity, needs to have certain protections in place to avoid future problems.

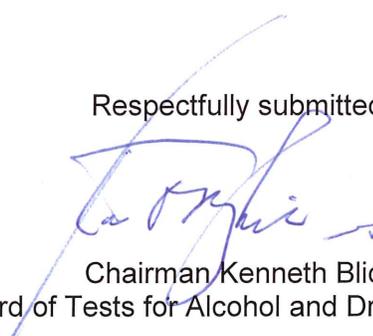
Mr. Blakeburn asked for the Garriott's Medicolegal Aspects of Alcohol book that he received when attending the Borkestein Alcohol Course be returned to him as a keepsake.

Attorney Steve Fabian stated he believes the biggest problem of the Board is they have moved too far away from the science aspect and more towards making it easier for DUI enforcement.

11. Adjournment

Action Taken: Sheriff Whetsel moved adjourn the meeting, Steve Emmons seconded the motion. 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, Dr. Terence Dunn voted yes, Major Rusty Rhoades voted yes, Dr. Jarrad Wagner voted yes and Chief Griffin voted yes. The motion carried 8-0.

Respectfully submitted,



Chairman Kenneth Blick
Board of Tests for Alcohol and Drug Influence

A digital copy of these minutes is kept on record at the Board of Tests
Available upon request.