KSBHA: 2022 YEAR IN REVIEW

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General Counsel
DISCLAIMER

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AGENDA

Timeline
2022 Year in Review
  ➢ KSBHA
  ➢ Legislation
  ➢ Agency updates
What’s next in 2023?
Resources
WHO WE LICENSE

AT  DC  MD/DO  DPM  LRT
ND  OT/OTA  PA  PT/PTA  RT
LAc  CNMI  CLD  CPM
MEET OUR TEAM

SUSAN GILE  
Acting Executive Director

COURTNEY CYZMAN  
General Counsel

RON VARNER, DO  
President

JERRY DEGRADO, DC  
Vice President
MEET OUR TEAM

REBEKAH MOON
Licensing Administrator

TODD HIATT
Litigation Counsel

NANCY DODIK
Disciplinary Counsel

LARRY BOWLES
IT Director
TIMELINE - 2022

JANUARY

• 1/1 – 2021 SB 71 – Liability Limits
• 1/3 – AAP active for PT/PTA
• 1/10 – Session begins
• 1/20 – Susan Gile appointed Acting Executive Director
• 1/21 – 2022 HB 2477

FEBRUARY

• 2/10 – KSBHA v. Parcells – Oral arguments at the Kansas Court of Appeals
• 2/15 – KOTA Legislative Day on the Hill

MARCH

• 3/7 – Estivo v. KSBHA – Oral arguments at the Kansas Court of Appeals
• 3/24 – AG Opinion 2022-4 issued on off-label prescribing for the prevention or treatment of COVID-19
**TIMELINE - 2022**

**APRIL**
- 4/28-4/30 – FSMB Annual Meeting
- 4/28 – SB 200 and HB 2087 become effective

**MAY**
- 5/4-5/7 – FCLB Annual Conference
- 5/23 – Sine die

**JUNE**
- 6/10 – KSBHA’s Position on S Sub for HB 2279
- 6/10 – KSBHA Board Policy #21-05, Telemedicine Waiver, revised
- 6/17 – Estivo v. KSBHA, Case No. 123,436 (unpublished opinion), affirming Board Final Order
TIMELINE - 2022

JULY
• 7/1 – SB 440 and S Sub for HB 2279 become effective

AUGUST
• 8/11 – Resident Active license live
• 8/31 – AT: Amended K.A.R. 100-69-10 (temp) effective
• 8/31 – LRT: Amended K.A.R. 100-73-7 (temp) effective

SEPTEMBER
• Early September - PT JAM
• 9/16 – PT: Amended K.A.R. 100-29-7, K.A.R. 100-29-9, and K.A.R. 100-29-15, effective
• 9/17 – 5th National Physician Suicide Awareness Day
TIMELINE - 2022

**OCTOBER**
- 10/14 - KSBHA Board Policy #23-02, Successful Completion of USMLE and COMLEX-USA
- 10/26 - 10/29 – FSBPT Annual Meeting

**NOVEMBER**
- 11/11 – K.A.R. 100-6-6. Reentry active license; medicine and surgery and osteopathic medicine, effective

**DECEMBER**
- 12/9 – KSBHA Board Policy #23-01: Social Media Use for Healthcare Professionals
- 12/30 – CNMI: K.A.R. 100-28b-2, 4, 7, 11, 12, 19 (perm); AT: K.A.R. 100-69-10 (perm); LRT: K.A.R. 100-73-7 (perm), effective
2022
PROFESSIONAL LIABILITY INSURANCE; 2021 SB 78; K.S.A. 40-3402

• For all new policies and policies that renew on and after Jan. 1, 2022 – policy of not less than $500k per claim/$1,500,000 annual aggregate (unless self-insurer) K.S.A. 40-3402(a).

• Aim to take a cooperative approach with licensees in the first year under the new requirements, focusing on encouraging compliance rather than on initiating disciplinary action for noncompliance in the first year under the new requirements.

• MD/DO/DC/DPM/PA
**ALTERNATE APPROVAL PATHWAY (AAP) - PT/PTA**

- AAP – Federation of State Boards of Physical Therapy (FSBPT)

- Allows NPTE exam candidates who are graduates of a CAPTE-accredited programs to be approved to sit for the NPTE by the FSBPT.

- Streamlines Board’s processes and benefits candidates by allowing them to schedule with Prometric more quickly, typically 1-2 business days.
TEMPORARY EMERGENCY LICENSE; HB 2477; K.S.A. 48-965; KEMA

Eligibility

• Must hold a full, active, and unencumbered license in another state to engage in the same profession, and are not subject to investigation in another state
• Have held an active or exempt license in KS within past 2 years
• Currently hold valid federal active license
• Meet all requirements for licensure in KS but are unable to pay fee due to effects of pandemic.

Logistics

• Free
• Available for all professions we regulate
• COVID-19 preparation, response, or mitigation efforts
• Physically practice in KS or telemedicine
• Set to expire Jan. 20, 2023
• 420 have been issued as of 11/2/22
• COVID-19_Emergency_Temp_License_Application.pdf (ksbha.org)
2022 SB 200

• Collaborative Drug Therapy Management Advisory Committee (“CDTMAC”) adopts a statewide protocol for pharmacists to initiate therapy for influenza, streptococcal pharyngitis, and urinary tract infections.

• The Collaborative Drug Therapy Management Advisory Committee is made up of seven members that include the following:
  • 1 member of the Board of pharmacy appointed by the Board of pharmacy, who serves as the non-voting chairperson;
  • Three licensed pharmacists appointed by the Board of pharmacy; and
  • Three licensed physicians appointed by the KSBHA.

• August 12, 2022, KSBHA appointed Dr. Aaron Fast, Dr. Michael Machen, and Dr. Lynn Fischer to the CDTMAC.

• CDTMAC meetings to develop protocols began in October.
• Amends the regulation process.

• Review of regulations adopted by state agencies every five years.
  • KSBHA first report to the Joint Committee on Rules and Regulations is due on or before July 15, 2026.
  • Report must contain a summary of the agency’s review and evaluation of its rules and regulations, including a statement for each rule and regulation as to whether such rule and regulation is necessary for the implementation and administration of state law.

• Articulates a standard agency regulations must meet.
  • Each rule and regulation adopted by a state agency must serve “an identifiable public purpose to support state law and may not be broader than is necessary to meet such public purpose.”
Here, it is clear from the plain language of the bill that the previous APRN requirement to enter into a “written protocol as authorized by a responsible physician detailing the medical plan of care for each classification of disease and injury for which the APRN is authorized to prescribe” is removed and an APRN may now prescribe durable medical equipment and prescribe, procure and administer any drug consistent with such licensee’s specific role and population focus, excluding abortions. Any additional practice of the healing arts is not included in S Sub for HB 2279. It is solely limited to the context of prescribing.

(d)(l) An advanced practice registered nurse may prescribe drugs pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced practice registered nurse is authorized to prescribe and shall specify all drugs which may be prescribed by the advanced practice registered nurse. Any written durable medical equipment and prescribe, procure and administer any drug consistent with such licensee’s specific role and population focus, except an advanced practice registered nurse shall not prescribe any drug that is intended to cause an abortion. Any drug that is a controlled substance shall be prescribed, procured or administered in accordance with the uniform controlled substances act.
THE PRACTICE OF THE HEALING ARTS & MEDICINE AND SURGERY

• The practice of the healing arts:

“[A]ny system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury, alteration or enhancement of a condition or appearance and includes specifically, but not by way of limitation, the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic.” (emphasis added). K.S.A. 65-2802(a).

• The practice of medicine and surgery:

“Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease or mental illness or psychological disorder, of human beings.” K.S.A. 65-2869(b).
WHAT DOES THIS MEAN?

• An APRN who is performing an act that constitutes the practice of the healing arts or the practice of medicine and surgery, excluding prescribing within their specific role and population focus, must have a written agreement/practice protocol with a physician who has delegated such practice in accordance with K.S.A. 65-28,127.
Update articulated a physician holding a telemedicine waiver in Kansas is considered a “licensee” and one who may render professional services in Kansas and is therefore a “healthcare provider” under K.S.A. 40-3401. See K.S.A. 65-28,135, K.S.A. 40-3401(f). Accordingly, the physician must maintain minimum levels of professional liability coverage and maintain compliance with the Kansas Healthcare Stabilization Fund annual premium. See K.S.A. 40-3402, K.S.A. 40-3404.
SB 440
OT LIMITED DIRECT ACCESS

• New definition of “practice of occupational therapy.”
• Authorized OT limited direct access.
• Requires OTs have professional liability insurance.
• OTs can perform wound care management only after approval by a person licensed to practice medicine and surgery
• A hospital or ambulatory surgical center can still require a physician order or make a referral for occupational therapy services for a patient being treated in their facility.
OT LIMITED DIRECT ACCESS

NO REFERRAL IF SERVICES TO:

Employees solely for the purpose of education and instruction related to workplace injury prevention;

The public for the purpose of health promotion, education, and functional independence in activities of daily living; or

Special education students who need occupational therapy services to fulfill the provisions of their individualized education plan or individualized family service plan.

MUST OBTAIN REFERRAL IF:

Does not meet one of the three categories —

Patient is not progressing toward documented treatment goals after 10 patient visits or in a period of 30 calendar days from initial treatment.

Patient returns to the OT seeking treatment from the same condition or injury within one year from the initial treatment visit.
The following permanent regulations became effective July 8, 2022:

K.A.R. 100-6-2A.
RESIDENT ACTIVE LICENSE
QUALIFICATIONS

• Graduate of an accredited school of medicine
• Completed at least 12 months postgraduate training
• Presently engaged in and in good standing in the postgraduate training program
• Passed step 3 of USMLE/COMLEX or equivalent
• Written statement of medical services to be provided beyond parameters of postgraduate training or residency program
• Written approval of the director of the postgraduate training or residency program
• Professional liability insurance; KHCSF compliance
• Implementing K.S.A. 65-2873b.
• Licensure Forms (ksbha.org)
AMENDED K.A.R. 100-69-10 AND K.A.R. 100-73-7 (TEMP) EFFECTIVE

• **AT – Amended K.A.R. 100-69-10. License renewal; continuing education.**
  - The purpose of the amendment is to eliminate the requirement that AT licensees annually complete courses in at least two of the four categories of CE (1. Lecture; 2. Scholarly/Publication; 3. Post-Graduate; and 4. Evidence-Based Practice (“EBP”)).

• **LRT – Amended K.A.R. 100-73-7. License renewal; continuing education.**
  - The amendment provides Kansas licensed LRTs that also hold a national ARRT certificate two options to count continuing education credits to renew a Kansas LRT license: (1) the current 12 hours in the 12 months Kansas standard; or (2) the national 24 hours in 24 months standard.

• Permanent versions will become effective Dec. 30, 2022.
• Each licensed PT must successfully complete the physical therapy jurisprudence assessment module during each continuing education cycle.

• 40 questions. Must answer 80% of the questions correctly within 90 minutes. Unlimited number of attempts.

• Scores automatically reports to the Board.
AMENDED K.A.R. 100-29-7, 9, 15
EFFECTIVE

• Amended regulations implementing PT compact:
  • K.A.R. 100-29-7. Fees.
  • K.A.R. 100-29-9. License and certificate renewal; continuing education.
    • Removed limitation on number of contact hours for self instruction for completion of a correspondence, audio, video, or internet course for which a printed verification of successful completion is provided by the person or organization offering the course.
  • K.A.R. 100-29-15. Professional liability insurance.
Dear Kansas Physician:

Today is the 5th National Physician Suicide Awareness Day. Discussion of physician suicide is never easy, but it is crucial. Almost 400 physicians across the United States die by suicide each year, including physicians at all levels of training and in all specialties, and the stressors of the pandemic have led to even higher rates of burnout, depression, and anxiety than we experienced before.

Physicians are less likely than others to have sought help before deciding to end their lives. We often do not seek care or want to discuss mental health issues because of the fear, shame, and stigma attached to them. We entered medicine to become physicians and help others, not to become patients ourselves. We are the ones that are supposed to have the answers, but stress and anxiety, especially during the pandemic, frequently leave us feeling lost. In addition, we may practice in an environment in which we frequently have little control and have little interactions with our colleagues. Our careers can have negative impacts on our personal lives, and successful work-life integrations remain elusive.

Part of the fear and stigma surrounding seeking care for mental health issues is related to concern of the impact that it could have on our licensure status and hospital privileges. In 2018, the Federation of State Medical Boards (FSMB) recommended state medical boards review their impairment application questions to determine whether the information the questions were designed to seek in the interest of patient safety could be better obtained through a means that was less likely to discourage professionals from seeking treatment. Recognizing the important link between patient safety and healthcare professional wellbeing, the Kansas State Board of Healing Arts underwent a review of initial, renewal, and reinstatement impairment application questions, and in October 2019, removed several questions related to mental health and impairment treatment history. This was done because the Board realized that these questions were unnecessarily broad in some respects and might contribute to the phenomena of physicians avoiding treatment and continuing to suffer due to fears of licensing consequences down the road. These questions were replaced with a narrower and more focused universal question that asks about current impairment and your ability to practice safely and ethically on initial and renewal licensing applications. The universal question was again updated in April 2021. The Board is continuing to refine the application process to further promote the mental and physical health of physicians. The hope is that hospitals will address similar language on their credentialing forms, such as was done at The University of Kansas Health System, to continue to encourage physicians to seek the help they need.

The mission of the Kansas State Board of Healing Arts is to protect the public. A significant component of that is doing as much as we can to promote the health and wellbeing of physicians. The KSBHA wants to work with you to address the issues leading to physician mental health issues and suicide. The National Physician Suicide Awareness Day was initiated by emergency medicine residency program directors in 2018, and since then many other organizations have signed on to the effort to help shine a light on this issue, including but not limited to, the American Medical Women’s Association, Heroes Before Heroes campaign, co-chaired by past KSBHA member Kim Templeton, MD. As part of this campaign, the Kansas State Board of Healing Arts provided a guidance document as part of an advocacy toolkit to help encourage hospitals and other state medical boards to review their impairment questions.

Remember, it’s OK to not be OK - but if you or a colleague are suffering from depression or anxiety or other mental health issues, please seek help. Or if you just need to talk, there are those who want to listen. Please reach out by contacting the Kansas Medical Society Professionals’ Health Program or the Kansas Association of Osteopathic Medicine at the numbers listed below. If you would like additional information, there are resources listed at the bottom of this letter.

Resources

- Kansas Medical Society – Professional Health Program: Mary Jo Fleming, Ph.D., Acting Program Director of the Professionals’ Health Program - (785) 231-1308
- Kansas Association of Osteopathic Medicine: (785) 234-5563
- AMA Steps Forward
- AOA Physician Wellness
- National Suicide Prevention Lifeline: Dial 988; or 1-800-273-8255 or text “HELLO” to 741741 (both are available 24/7)

Sincerely,

[Signature]

Kimberly Templeton, M.D.
Special Advisor, Past Member and President, Kansas State Board of Healing Arts

[Signature]

Kemper Tell
Executive Director, Kansas Association of Osteopathic Medicine
• Purpose is to define “successful completion” of the USMLE and COMLEX-USA as it pertains to K.A.R. 100-7-1.

• Successful completion of the USMLE is defined as passing Step 1, Step 2 CK, and Step 3.
  • Step 2 CS attempts will not be counted towards the seven total attempts in K.A.R. 100-7-1.

• Successful completion of the COMLEX-USA is defined as passing Level 1, Level 2-CE, and Level 3.
  • Level 2-PE attempts will not be counted towards the seven total attempts in K.A.R. 100-7-1.
KSBHA V. PARCELLS, CASE NO. 123,490

• Kansas Court of Appeals issued an unpublished decision affirming the District Court’s decision granting the Board’s Motion for Summary Judgment against Mr. Parcells and granting injunctive relief.

• He did not Petition for Review to the Kansas Supreme Court – this matter has concluded in the Board’s favor.

• He is also in federal prison.
K.A.R. 100-6-6. REENTRY ACTIVE LICENSE; MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE.

- Regulation provides requirements for issuance, maintenance, and scope of practice for a reentry active license for those practicing medicine and surgery and osteopathic medicine.
- Status for physicians who have not been engaged in the practice of the healing arts for two or more years.
- Present reentry plan for review; upon approval reentry agreement implemented through professional development plan or incorporated by reference into a non-disciplinary approved reentry plan.
- Upon successful completion of the approved reentry plan, the physician shall be granted an active license.
- Implementing K.S.A. 65-2809(i).
KSBHA BOARD POLICY #23-01: SOCIAL MEDIA FOR HEALTHCARE PROFESSIONALS

• Guidance statement discussing responsible and ethical social media use by healthcare professionals.

• 12 recommendations.
CONTINUING EDUCATION IN-PERSON REQUIREMENT WAIVER

• The Board is waiving enforcement of any regulations requiring in-person continuing education for all healthcare professions its licenses. For any professions licensed by the Board, all in-person continuing education requirements can be satisfied by live, online continuing education until December 31, 2023. The Board will reassess this waiver at the December 8, 2023, Board Meeting.
• The following permanent regulations become effective December 30, 2022:

• K.A.R. 100-28b-11. Licensees who direct, supervise, or delegate acts that constitute the independent practice of midwifery; requirements and limitations.
ADDITIONAL AGENCY UPDATES 2022

LICENSING

• Expedited electronic licensure verification through Veridoc for DC, PT/PTA, OT/OTA, RT
• Revised attestation questions
• Updated outgoing correspondence to licensee regarding renewal, insurance requirements, and online portal features.

DISCIPLINARY

• Investigator training from the National Health Care Anti-Fraud Association
• Additional MD Review Committee (Hospitalist/General Surgery/Oncology)

LITIGATION

• Modified procedures from PHPs to best facilitate referrals and support recovery efforts.
• Developing network of nationwide resources for applicants/licensees to use for evaluation and remediation.
LOOKING FORWARD TO 2023

CE BROKER
Implementation of CE Broker

REGULATION REVIEW
HB 2087

2023 SESSION
Begins Jan. 9, 2023

IMPROVED LICENSING
Online applications, streamline processes, improved process times, etc.

DEVELOPING EXPERT POOL
If interested in serving as an expert for KSBHA case, contact Todd.Hiatt@ks.gov
RESOURCES
PROTECTING THE PUBLIC

FSMB supports America’s state medical boards in licensing, disciplining and regulating physicians and other healthcare professionals. Our end goal: keep patients safe.

Learn More

Register Today

Join us November 3-4 in San Diego, CA for this two-day event that highlights the current legal issues and trends facing state medical boards.

New: U.S. Licensing and Disciplinary Data

COVID-19 Resources

Change and Continuity in Medicine: Histori...
KSBHA RESOURCES

- Practice Handbooks
- Policies
- KSBHA_Licensing@ks.gov
- KSBHA_Complaints@ks.gov
- KSBHA_LegalQuestions@ks.gov
- Education and Outreach website page
PROFESSIONALS HEALTH PROGRAMS

MD/DO/DC/PA

- Kansas Medical Society – PHP
  - Mary Jo Fleming, Ph.D.
  - 785-231-1308
  - [About the KMS-PHP - Kansas Medical Society](kmsonline.org)
- Kansas Association of Osteopathic Medicine
  - Kemper Tell, Executive Director
  - 785-234-5563
- Kansas Chiropractic Association
  - Travis Oller, DC
  - 785-233-0697

RT/PT/PTA/OT/OTA/AT

- Heart of America Professional Network
  - Leslie Sewester
  - 913-236-7575
  - leslie@hapn.com
  - [Home - Heart of America Professional Network, Inc.](hapn.org)
Physician Support Line
1 (888) 409-0141

Psychiatrists helping our US physician colleagues and medical students navigate the many intersections of our personal and professional lives

Free & Confidential | No appointment necessary
Open 7 days a week | 8:00AM - 1:00AM ET
Welcome.
The Emotional PPE Project connects healthcare workers in need with licensed mental health professionals who can help.

No cost. No insurance. Just a trained professional to talk to.

Healthcare Workers Affected By The COVID-19 Crisis
Mental Health Practitioners Looking To Help

All Services Provided Through The Emotional PPE Project Are Free Of Charge.

The Emotional PPE Project is a directory that provides contact information of volunteer mental health practitioners to healthcare workers whose mental health has been impacted by the COVID-19 crisis.

The Emotional PPE Project is an independent tax-exempt nonprofit (501(c)(3)) organization fully staffed by volunteers.

You may contact us at: contact@emotionalppe.org // Click here to review our Terms of Use // Click here to read our FAQs

Follow Us On Social Media!
We can all help prevent suicide. The Lifeline provides 24/7, free and confidential support for people in distress, prevention and crisis resources for you or your loved ones, and best practices for professionals in the United States.

The 988 Lifeline
988 is now active across the United States. This new, shorter phone number will make it easier for people to remember and access mental health crisis services. (Please note, the previous 1-800-273-TALK (8255) number will continue to function indefinitely.) Click below to learn more about 988.

LEARN MORE
THANK YOU

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