

GUIDEWIRE

NEWS OF THE HEALING ARTS



Volume 2 / Issue 3

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PUBLIC MEETINGS

• December

- 1 Formal Conference
Paul Schonbrun, DO
at KSBHA @ 9
- 3 KSBHA Board
Meeting @ 8:30
- 4 Special Meeting
Board Learning
Summit
at KSBHA @ 8:30
- 7 Prehearing
Conference
Greg Epperson, MD
at OAH @ 1:15
via teleconference
- 20 Prehearing
Conference
Ann Neuhaus, MD
at OAH @ 11:00

OAH is located at:
1020 S. Kansas Ave
Topeka, KS 66612

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BOARDS

www.fsmb.org

We Are Moving!

by Kathleen Selzler Lippert, Executive Director

The Kansas State Board of Healing Arts has been located at 235 SW Topeka Blvd., Topeka Kansas for close to 20 years. The Board leased its current facility which has about 9,900 sq. ft. in 1990 when the agency employed less than 20 employees. Since 1990, to fulfill our mission of public protection, our agency has grown to almost 50 employees.



In January 2011, we will move to the lower level of 800 SW Jackson, Topeka, Kansas. The lower level (basement) of 800 SW Jackson was previously the home of the Workers Compensation office for the State of Kansas. Our new location will provide us with over 13,000 sq. ft. In our current space, the board meeting room barely accommodates public who wish to observe meetings or licensees that are required to attend. The new board meeting room is significantly larger and will allow all members of the public and licensees to have a chair. Our new location will also allow us to keep our licensing applications and investigation files under the same roof as staff; rather than in a separate building across the street.

Change, in general, and moving-specifically does not come without problems or anxiety. This move will place extra burdens on our already busy staff. In addition to their usual applications or case load, staff will be organizing, sorting, and packing 20 years worth of information and equipment. The physical move will take multiple days. There will be days that computers and/or files are in transit. During this time, our ability to respond to public or licensee requests will be impacted. A seamless move scheduled for a Kansas January for an agency rooted 20 years in one location is, in my opinion, an oxymoron. However, we have a dedicated staff that is committed to making this move as transparent as possible. The patience and understanding of all is coveted.

Anatomy and Physiology of a KSBHA Disciplinary

Action: Part 3

by Kelli Stevens, Chief Litigation Counsel

Disciplinary actions at the Board of Healing Arts may be initiated after a thorough investigation and legal review. Some cases require argument-only hearings before disposition. Some require evidentiary, trial-type hearings. These aspects of the Board's disciplinary process were discussed in Parts 1 and 2 of this series of articles. This 3rd segment will explain how application cases with disciplinary issues are handled at the Board. Additionally, it will provide an overview of the Board's summary order process and also discuss the Board's use of both formal and informal types of settlements. (cont. pg. 2)



"Safeguarding the Public ~ Strengthening the Healing Arts"

Applications

Once the Board's Licensing Department has determined that all technical requirements for licensure have been met, an application may be referred to the Litigation Department if there appear to be any disciplinary issues which could be grounds for denial of licensure under the practice acts for each profession. An example would be an applicant's disclosure of disciplinary action by another state's licensing agency. Disciplinary issues may be present based on information that is self-reported by applicants in response to mandatory disciplinary questions in the application form; from outside information received as part of the application background check; or from other sources.

First, the Litigation staff obtains any necessary additional information about the particular disciplinary issues. In some cases, this may take a significant amount of time depending on the scope of the issues and information needed. Then staff performs an analysis of the facts involved and applicable laws to determine if there are grounds for denial or if other disciplinary or remedial measures should be put in place if the application is granted. Lastly, the application, all additional information and the analysis are presented to the Board's Disciplinary Panel. After careful consideration, the Panel may authorize opposing the application, allowing the license to be granted without further action, or they may request that the license only be granted with certain conditions or safeguards. One

common safeguard is to require an applicant enter into a formal monitoring program with respect to their recovery from substance or alcohol dependence.

If a settlement is reached on the conditions for granting licensure, the full Board must approve the agreement. If an application is opposed, the applicant is entitled to a hearing. In appropriate cases where a settlement has been reached but the Board has not yet had the opportunity to review and approve it, the applicant may receive a temporary license to allow them to begin practicing. However, if the full Board does not approve the settlement, the temporary license will be cancelled.

Litigation staff endeavors to quickly process applications with disciplinary issues. The Disciplinary Panel meets once every month to review application cases so that applicants do not have to wait excessive amounts of time to either receive their license or be afforded a hearing.

Summary Orders

The Board has authority to issue summary orders in disciplinary matters in accordance with K.S.A. 77-537 of the Kansas Administrative Procedure Act. There is no opportunity for a hearing before a summary order is issued. A summary order simply sets forth the Board's action taken against a licensee's license and provides a brief statement of the reason. The Board typically issues summary orders only in cases with simple allegations and for low level action. An example would be a fine that is issued because a licensee failed

a Board audit of his or her continuing education hours. The summary order also gives the licensee notice that they can request a hearing within a specified amount of time. If a hearing is not requested in time, the summary order will become final. If a hearing is requested in a timely manner, the licensee is provided a full opportunity to contest the action and the reason for it at a hearing.

Formal and Informal Settlements

In many cases, the Board and an applicant or licensee reach a settlement to resolve allegations of unprofessional conduct or competency concerns. In deciding to enter into a settlement, the Board carefully considers whether the agreed terms adequately attend to all the issues and protect the public. Settlement allows the parties to work together to negotiate ways to address or resolve the areas of concern while saving the time and resources which would otherwise be spent in litigation. Formal settlement of a case usually takes place in the form of a Consent Order that is filed with the agency after approval by the full Board. If authorized by the Disciplinary Panel, an offer of settlement in the form of a Consent Order may be sent to a licensee before disciplinary proceedings are ever initiated. If an agreement is reached, the Board litigation attorney and the licensee and his or her attorney appear at a Board meeting to present the Consent Order to the full Board for approval. The provisions of a Consent Order can vary depending on the nature and complexity of the underlying matter. A Consent

Order may have disciplinary terms such as a public censure, a period of license suspension, or a practice limitation. It may also include remedial measures such as additional education or training in specific areas of practice. Often, there is a combination of disciplinary and remedial provisions such as a period of license probation during which the licensee must comply with certain remedial or monitoring terms. Consent Orders are public documents that are disclosed on the Board's website. However, the Consent Order may contain some information and provisions which the Board is required by law to hold confidential. Those items are redacted from the Consent Order document which is visible to the public.

In 2008, changes were made to the Kansas Healing Arts Act which gave the Board authority to take non-disciplinary action with respect to its licensee's licenses. K.S.A. 65-2838a now allows the Board to enter into an agreement with a licensee for a professional development plan under specific circumstances. A professional development plan is an informal way for the Board to settle cases with less serious concerns or address issues which could affect the public's safety if allowed to continue. By statute, the agreement to enter into a professional development plan is confidential.

Upon reviewing an investigation, the Board's Disciplinary Panel frequently authorizes Board litigation attorneys to offer professional development plans to licensees to resolve less significant practice and conduct concerns.
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BOARD HAPPENINGS

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Board Members

President
M. Myron Leinwetter, DO
Rossville

Vice-President
Gary L. Counselman, DC
Topeka

Michael J. Beezley, MD
Lenexa

Randy Brown, Public Member
Wichita

Ray N. Conley, DC
Overland Park

Frank K. Galbraith, DPM
Wichita

Merle J. "Boo" Hodges, MD
Salina

Garold O. Minns, MD
Bel Aire

John Settich, PhD, Public Member
Atchison

Brenda R. Sharpe, Public Member
Overland Park

Carolina M. Soria, DO
Wichita

Kimberly J. Templeton, MD
Leawood

Terry L. Webb, DC
Hutchinson

Nancy J. Welsh, MD
Topeka

Ronald N. Whitmer, DO
Ellsworth

Agency Department Heads

Kathleen Selzler Lippert
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New Board Officers

At the August KSBHA Board meeting, members elected Dr. Myron Leinwetter to serve as President of the Board.



Dr. Leinwetter has been a licensed doctor of osteopathic medicine since 1984 and a member of the Board since 2007.



Members also elected Dr. Gary Counselman to serve as Vice-President.

Dr. Counselman has been a licensed doctor of chiropractic since 1972 and a member of the Board since 2003.

The officers will begin their terms in October and serve in their respective capacities for one year. Officer elections are pursuant to K.S.A. 65-2818 and KSBHA Policy #05-06.

New Staff Offices

For almost a year, the mechanizations of searching, planning, and preparations have been under way in partnership with the Kansas State Division of Facilities Management in the hopes of securing meeting and office space for the Board and their staff. We are pleased to announce that as of **January 18, 2011**, the Board of Healing Arts' offices will be relocated to:

**800 SW Jackson
Lower Level, Suite A
Topeka, KS 66612**

The Board's existing phone numbers, e-mail addresses, and fax numbers will NOT change due to the relocation.



2010-2011 Kansas State Board of Healing Arts

Sitting L-R: Brenda Sharpe, Dr. Counselman, Dr. Leinwetter, Dr. Soria, Dr. Welsh
Standing L-R: Dr. Beezley, Dr. Conley, Dr. Whitmer, Dr. Minns, John Settich, PhD.,
Dr. Webb, Dr. Templeton

Not pictured: Randy Brown, Dr. Galbraith, and Dr. Hodges

PROVIDER GUIDELINE

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CME & CEU Review

This information reminds licensees of required amounts of CME & CEU hours.

MD, DO, DC One Year Update: 50 hours with a minimum of 20 hours of Category I and a maximum of 30 hours of Category II. Two Year Update: 100 hours with a minimum of 40 hours Category I and a maximum of 60 hours of Category II. Three Year Update: 150 hours with a minimum of 60 hours Category I and a maximum of 90 hours of Category II. See K.A.R. 100-15-5 for more details.

PA One Year Update: 50 hours with a minimum of 20 hours of Category I and a maximum of 30 hours of Category II. Two Year Update: 100 hours with a minimum of 40 hours Category I and a maximum of 60 hours of Category II. See K.A.R. 100-28a-5 for more details.

DPM Each podiatrist shall complete a minimum of 54 hours of continuing education during the preceding three-year period. See K.A.R. 100-49-8 for further specifics.

ND A minimum of 50 hours with proof of at least 20 of these hours shall be taken in a professionally supervised setting and not more than 30 of these hours may be taken in a non-supervised setting. Due to recent legislation, this requirement is waived for 2010. It will apply to the 2011 renewal cycle. For specifics, see K.A.R. 100-72-7.

OT/OTA/PT Minimum of 40 hours of Continuing Education (CEU) for the preceding two (2) year period. OTs & OTAs can refer to K.A.R. 100-54-7 for specifics. PTs can refer to K.A.R. 100-29-9 for more specifics.

PTA A minimum of 20 hours of Continuing Education (CEU) for the preceding two (2) year period. For specifics, see K.A.R. 100-29-9.

AT A minimum of 20 hours of Continuing Education (CEU) for the preceding one (1) year period is required. See K.A.R. 100-69-10 for more specifics.

RT A minimum of 12 hours of Continuing Education (CEU) for the preceding one (1) year period is required. Please contact Melanie Asmussen 12300 W 34th Ct. So., Wichita, KS 67227, (316) 268-5812 or melarrt@cox.net for preapproval of CEUs. See K.A.R. 100-55-7 for more specifics.

LRT You may provide a notarized certificate of current registration with the American Registry of Radiologic Technologist (AART) or Nuclear Medicine Technology Certification Board (NMTCB), or a minimum of 12 hours of Continuing Education (CEU) for the preceding one (1) year period. See K.A.R. 100-73-7 for further specifics.

**All applicable rules and regulations for each of the professions
can be found on KSBHA's website, www.ksbha.org.**

License Renewal Deadlines for 2010

Athletic Trainers	Oct. 15 - Nov. 30
Doctors of Chiropractic	Nov. 15 - Dec. 31
Naturopathic Doctors	Nov. 15 - Dec. 31
Physician Assistants	Nov. 15 - Dec. 31
Physical Therapists	Nov. 15 - Dec. 31
Physical Therapist Assistants	Nov. 15 - Dec. 31

2010 & 2011 COUNCIL MEETINGS

December 2010

14 AT Council Meeting @ 10 am
Meeting will be held at the KNEA Building
715 SW 10th St Room C, Topeka, KS

January 2011

12 OT Council Meeting @ 12 pm
12 PT Council Meeting @ 2 pm
14 LRT Council Meeting @ 12 pm

The Closure of a Medical Practice or Termination of a Physician-Patient Relationship

At some point during their career, every physician will be faced with the decision to terminate a physician-patient relationship or close a medical practice. Principle VI of the American Medical Association's Principles of Medical Ethics explains that generally, a doctor is "free to choose whom to serve, with whom to associate, and the environment in which to provide medical care." However, once a relationship is established with a patient, the doctor is ethically obligated to regard the welfare of the patient as "paramount." In fact, according to AMA Code of Ethics Opinion 10.015, "[t]he relationship between patient and physician is based on trust and gives rise to physicians' ethical obligations to place patients' welfare above their own self-interest and above obligations to other groups." Thus, while doctors have the right to close a medical practice or discharge a patient from their care, physicians have a legal and ethical obligation to take every action necessary to ensure that patient welfare will not be compromised in the process.

The Kansas State Board of Healing Arts' mission is to "Safeguard the public through licensure, education, and discipline of those who practice the healing arts in Kansas." Thus, this article strives to help medical professionals protect patient welfare by pointing out the most common legal and ethical issues associated with the closure of a medical office or the termination of a physician-patient relationship. While several issues frequently arise, the legal consequences associated with these two decisions are highly dependent upon the doctor's particular situation. Therefore, this article is provided for guidance purposes only, and should not be interpreted as legal advice. It is important for physicians to consult an attorney to ensure that their individual legal rights are protected.

Terminating a Physician-Patient Relationship

Both doctor and patient are free to terminate their relationship at any time. Yet, doctors have an ethical and legal obligation to handle the situation in a professional manner that fully protects the health and welfare of the patient. Physicians must ensure that the termination of the patient relationship does not constitute abandonment. The Kansas Court of Appeals has defined patient abandonment as follows: "[...] true abandonment—a medical practitioner's discontinuance of services before the need for them is at an end and without due notice to the patient to afford him or her ample time to secure other professional attendance of his or her own choice." *Dicke v. Graves*, 9 Kan.App.2d 1, 5, 668 P.2d 189, 193 (1983). To avoid patient abandonment, at a minimum, the American Medical Association recommends that physicians always adhere to two important rules. First, doctors should notify the patient in writing of the decision to discharge. The notice should provide the patient with enough time to make alternative arrangements for treatment, and include a referral to other physicians that can continue the patient's care. Second, physicians should refrain from discharging a patient suffering from an acute illness until treatment is complete and the patient's condition is stable.

In addition, there are several other actions a physician should think about taking prior to dismissing a patient from their practice. Steven M. Harris, has a number of recommendations in his article "Take care when firing a patient" published in the American Medical News vol. 51 no. 5 on February 4, 2008, Copyright © 2008 American

Medical Association. All rights reserved. The article points out several steps doctors should consider:

- "Offer to provide the patient or the patient's new physician with a copy or a summary of the patient's medical record.
- If the patient is in need of medical care during the transition period, it is advisable that you continue to provide that care so the patient is not abandoned while he or she finds a new physician.
- If the patient will require ongoing medical care, make sure that fact is clearly conveyed to the patient.
- If the patient has been habitually noncompliant with the treatment plan, ensure that the patient has an accurate understanding of the possible consequences.
- Inform your office staff about the termination so it may handle any contacts with the patient appropriately.
- Notify the patient's other physicians and health care professionals of the transfer to the new physician.
- Document the termination process and maintain detailed records of discussions with the patient.
- Send the patient a letter drafted by an experienced lawyer confirming the termination and the reasons for this decision. Be sure to send the letter by certified mail with a return receipt requested.
- Put a copy of the letter and the postal receipt in the patient's medical record and write a final record entry."



Closing a Medical Practice

The decision to close or depart from a medical group or practice involves several complex issues such as contractual obligations, the sale of assets, and staff concerns, and a physician must always remember that patient welfare should guide each and every decision and always be placed above the physician's own self-interest. There are three important issues that every doctor must address when undertaking such a task: (1) proper patient notification, (2) storage and transfer of patient records, and (3) providing notification to the Kansas State Board of Healing Arts of changes in the licensee's mailing address.

First, similar to the termination of a physician-patient relationship, the American Medical Association recommends that physicians notify patients in writing of their decision to leave or close a medical practice. The notice should give patients a reasonable amount of time to find another physician and make alternative arrangements for their healthcare. In fact, AMA Opinion 7.04 explains that doctors closing a practice should notify their patients of the closure, and AMA Opinion 7.03 states that whenever a doctor leaves a medical group or practice, "patients should be notified and urged to find a new physician and be informed that upon authorization, records will be sent to the new physician." Furthermore, AMA Opinion 7.03 indicates that doctors moving to another

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PROVIDER GUIDELINE

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Closure of a Medical Practice/Termination of a Physician-Patient Relationship (cont. p.5)

Disciplinary Action:

Part 3 (cont. from pg. 2)

medical office should also ensure that patients are “notified of the physician’s new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice.”

Second, several Kansas statutes and regulations deal with the storage and transfer of patient records:

1. KSA 65-4971(b)

Medical records fees

2. KAR 100-24-2

Patient record storage

3. KAR 100-24-3

Location of records upon termination of active practice

4. KAR 100-22-1

Release of records

5. KSA 65-2836

Grounds for disciplinary action

6. KSA 65-2837

Professional incompetency, unprofessional conduct; definitions

7. KSA 65-4970

Access to health care records

8. KSA 65-4971

Copies of health care records

9. KSA 65-4972

Enforcement

10. KSA 65-28,128

Abandonment of health care records

Licensees are required to maintain adequate and legible patient records. Per **K.A.R. 100-24-2**, records should be stored “for a minimum of 10 years from the date the licensee provided the professional service recorded.” It is not necessary for licensees to personally maintain these records; **K.A.R. 100-24-2** permits licensees to “designate an entity, another licensee, or

health care facility to maintain the record if the licensee requires the designee to store the record in a manner that allows lawful access and that maintains confidentiality.”

In addition to patient record storage, licensees are also responsible for the proper transfer of patient records. Pursuant to **K.S.A. 65-4971 and K.A.R. 100-22-1**, licensees shall transfer records within thirty days of the receipt of a signed release to the patient, another licensee designated by the patient, or the patient’s legally designated representative. If copies of the records are not available, **K.S.A. 65-4971** requires licensees to notify the patient or the patient’s representative of the reasons why the records cannot be provided. Furthermore, records may only be withheld if the licensee reasonably believes that providing the records as requested will result in substantial harm to the patient or another individual. However, per **K.A.R. 100-22-1**, licensees may also refuse to release records to the patient and instead restrict their transfer to another licensee if the licensee reasonably determines that the information contained in the records will be detrimental to the patient’s mental or physical health. Pursuant to **K.A.R. 100-22-1**, the failure to properly release patient records “shall constitute prima facie evidence of dishonorable conduct pursuant to **K.S.A. 65-2836(b)**, and any amendments thereto.”

K.S.A. 65-4971 and K.A.R. 100-22-1 authorize licensees to charge for the reasonable costs associated with retrieval and reproduction of the patient’s records. However, licensees must remember that **K.A.R. 100-22-1** prohibits them from

conditioning the transfer of patient records to another licensee upon prepayment of the reproduction costs. **K.S.A. 65-4971** outlines the maximum fees licensees can charge, and on January 1 of each year, the Kansas Department of Labor adjusts these fees in accordance with the Consumer Price Index released by the United States Department of Labor.

The physician’s legal responsibility to store and transfer patient records does not end simply because the doctor is leaving or closing a practice. Upon the termination of an active medical practice, **K.A.R. 100-24-3** requires licensees to provide, within 30 days of the practice’s closure, the following information to the Kansas State Board of Healing Arts: (1) the location where patient records will be stored; (2) the name, address, and telephone number of the individual or entity designated to maintain the records; and (3) the date the records are scheduled to be destroyed.

Finally, per **K.S.A. 65-28,126**, licensees must notify the Kansas State Board of Healing Arts within 30 days of any changes in their mailing address. Thus, if the practice being left or closed was a designated mailing address, physicians must forward their new mailing address to the Board. Failure to do so could result in the assessment of a penalty in an amount not to exceed \$100 for the first violation and \$150 for each subsequent violation.

The plans can include terms for additional education, training, the implementation of practice modifications and other remedial measures. If a licensee agrees to the professional development plan, the investigation is closed. The licensee’s compliance with the professional development plan is monitored by Board staff. If the licensee fails to satisfactorily meet the professional development plan’s terms, there is always the potential that a disciplinary action could be initiated based on the facts and circumstances in the underlying investigation.

Conclusion

No matter how a case is resolved, the Board’s aim is always to protect the public. Depending on the particular situation, this goal may be achieved in the form of disciplinary sanctions which are ordered following a contested trial type hearing. Conversely, a relatively minor infraction may be handled with an informal, non-disciplinary professional development plan. Of utmost importance in any Board proceeding is the assurance that all the relevant facts in a case are considered and that due process is afforded to the parties. The Board of Healing Arts’ processes may be complex, but they exist to support the critical function the Board plays in regulating health care in Kansas.

To offer questions, comments, or suggestions, contact Lisa K. Corwin Public Information Officer
lcorwin@ksbha.ks.gov

KSBA STATISTICS

22,135 licensees
1,278 registrants

(as of 9/10)