

KANSAS STATE BOARD OF HEALING ARTS NEWS

"Your health and safety is our greatest purpose."

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A word from Board President Dr. Beezley

For me, a trip to Denver is usually a city to pass through on the way to Breckenridge for skiing in winter or golf, hiking and bicycle riding (or wrecking) in the summer.



*Dr. Michael Beezley
Board President*

On the 26th and 27th of February, Board Associate Disciplinary Counsel Joshana Offenbach and Board members Sue Ice, Dr.

Myron Leinwetter and myself attended a day-plus meeting with the personnel at CPEP (the Center for Personalized Education for Physicians) in Denver.

The presentation was very informative. We left with the impression that they do an excellent job of evaluating physicians sent to them because of quality

concerns. They also are a great reference for evaluating physicians returning to practice after retirement – of which an ever-increasing number have since the economic crisis has hit.

I anticipate that we, the Kansas State Board of Healing Arts, may utilize their services much more in the future. The possibility of a half-day program presented just to us in Topeka has been raised and will be discussed at the April Board meeting.

FSMB unveils board action report; Kansas numbers up

Dedicated staff and new procedures are the main reasons the Kansas State Board of Healing Arts has doubled actions it took in 2008, according to Jack Confer, KSBHA Executive Director.

On April 16, the Federation of State Medical Boards released the 2008 Summary of Board Actions Report.

The report, available online at www.fsmb.org, includes disciplinary

sanctions involving only physicians and breaks down types of action take amongst 70

medical boards throughout the nation.

The numbers for

license or loss of license privileges while nine involved a restriction of license or license privileges. In 2007, there were 11 losses and four restrictions.

"Our increase is attributable to a couple of factors; additional staff and changing our procedures," Confer said. "Our main

"We have a great team assembled of very talented people who are dedicated to serving the citizens of Kansas."
- Jack Confer

Kansas show a total of 98 actions taken in 2008 compared to 47 in 2007. Of the 98 actions, 20 of those involved loss of

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Legislative Update— Jack Confer, Executive Director

This has been a busy season for the Kansas State Board of Healing Arts. Since the Legislature went into session in January, staff has been busy initiating and tracking legislation.

Some of the key legislation for our agency includes a Medical Records Retention Plan. This is House Bill 2010 and it has been through a conference committee. A signing date has not been established. This bill gives the agency the authority to retain patients' medical records if they have been abandoned after a professional in the healing arts' license has been revoked or the

professional becomes incapacitated. The agency will have authority only if the professional abandons the records or fails to transfer the records to another custodian. There is also an amendment added to the bill referencing registered nurse anesthetists.

Another bill that was introduced is Senate Bill 200, which takes the provisions of 2008's House Bill 2620 and applies those to the allied professions. This bill would give the Kansas State Board of Healing Arts the authority to conduct

background checks on applicants, enter into non-disciplinary resolutions with licensees and registrants, and to post disciplinary information on the agency web site in regards to the 10 allied professions the agency regulates. It is currently in a House sub-committee and it is not anticipated that it will move forward this session.

House Bill 2161 would increase the fee caps currently in place for licensees. This bill does not raise fees; it gives the agency the ability to do so should it need to. The bill failed

to move out of the House. It was reintroduced to a Senate Committee and reassigned to number SB 318. It is not anticipated that the bill will move forward this session. If that is the case, we will move forward next year with similar legislation.

A big thanks to Sen. Vicki Schmidt, Rep. Mike Kiegerl and Rep. Cindy Neighbor for their assistance with introducing legislation into committees on our behalf.

These are just the bills introduced on our behalf. There may be legislation passed that could affect different licensees and we will keep you informed as things progress.



Jack Confer
Executive Director

2009 Medical record fee information released by KDOL

Kansas Statute 65-4971(b) established the maximum fees that medical care providers can charge for reproduction of medical records (non-workers compensation records).

By law, these fees are adjusted on January 1 of each year by the Secretary of Labor, "in accordance with the all-items consumer price index published by the United States department of labor."

The all-items Consumer Price Index (CPI) rose from 207.3 in 2007 to 215.3 in 2008. This represents an increase of 3.9 percent. This change is applied to the medical fee cost schedule below.

The release of the 2009 CPI data is scheduled for January 15, 2010. Please contact the Kansas Department of Labor at 785-296-5000 if there are questions or further assistance is needed.

	<u>January 2008</u>	<u>January 2009</u>
Cost of supplies and labor	\$17.50	\$18.18
First 250 pages	\$ 0.58	\$ 0.60
Additional pages	\$ 0.41	\$ 0.43

BOARD ACTIONS *February 2009 Board Meeting*

The Board entered into several consent agreements. With consent agreements, both the licensee and the Board agree to the conditions and the licensee waives his/her right to a hearing.

Steven K. Madigan, M.D., Leawood, entered into a consent agreement with the Board for reasons which fall under K.S.A. 45-221a(1). Terms of the consent agreement includes probation for five years and other stipulations which are considered confidential by law.

John R. Dickerson, M.D., Wichita, entered into a consent agreement with the Board regarding delinquent medical records. The consent order includes public censure for violation of the Healing Arts Act and licensee must attend a records-keeping course.

Wesley David Swart, R.T., Haysville, entered into a consent agreement with the Board after his temporary license lapsed in December 2008 before being reinstated in January 2009. During the interim, he continued to practice respiratory therapy without a

license. There was a \$150 fine.

Tracy E. Nkana, R.T., Wichita, entered into a consent agreement with the Board after her temporary license lapsed in December 2008 before being reinstated in January 2009. During the interim, she continued to practice respiratory therapy without a license. There was a \$150 fine.

Stewart R. Grote, D.O., Lansing, entered into a consent agreement with the Board regarding inappropriate prescribing of controlled substances outside the accepted standard of care. The terms of the agreement include monitoring and completion of a Board-approved DVD course on prescribing.

Daniel Frye, M.D., Roeland Park, entered into a consent agreement with the Board. The terms of the agreement fall under K.S.A. 45-221a(1) and are not permitted for release.

Jenni A. Denton, O.T.A., Olathe, entered into a consent agreement with the Board following a felony arrest. The terms of the agreement fall under K.S.A. 45-221a(1) and are not permitted for

release.

Brad Eck, D.C., Wichita, entered into a consent agreement regarding excessive fees, fees paid for services not rendered and medical records keeping issues. The terms of the consent agreement include two years probation, to no longer offer credit applications to patients in his office, to provide full refunds to patients listed in the complaint who did not receive all of the treatments contracted for, submit all copies of advertisements used during the term of probation, reimburse the Board for the costs of this matter, pay a fine of \$5,000, complete a medical records keeping course and have all radiographs and reports monitored by another chiropractor for at least one year.

The Board also approved termination of several consent orders, or modifications/terminations of stipulations of consent orders for the following individuals: Henry Borra, M.D., New Mexico; Matthew J. Willis, M.D., Topeka; Daniel R. Baker, M.D., Wichita; Carrie Hagemann, D.O., Osage City; Francis Abraham, D.P.M., Wichita; Trent Timson, D.P.M., McPherson.

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NATIONAL NEWS *From the Federation of State Medical Boards*

Responsible opioid prescribing book helps physicians reduce risk of addiction and diversion

Responsible Opioid Prescribing: A Physician's Guide offers physicians effective strategies for reducing the risk of addiction, abuse and diversion of opioids that they prescribe for their patients in pain. This concise, authoritative book offers pragmatic steps for risk reduction and improved patient care, including:

- Patient evaluation, including risk assessment

- Treatment plans that incorporate functional goals
- Informed consent and prescribing agreements
- Periodic review and monitoring of patients
- Referral and patient management
- Documentation
- Compliance with state and federal law

Written by pain medicine specialist Scott M. Fishman, M.D., chief of the Division of Pain Medicine at the

University of California, Davis, the book translates the Federation of State Medical Boards' (FSMB) consensus *Model Policy for the Use of Controlled Substances for the Treatment of Pain* into practical, office-based pain management guidelines.

Responsible Opioid Prescribing is available with a related Continuing Medical Education (CME) activity. Jointly sponsored by the

University of Wisconsin School of Medicine and Public Health, the Alliance of State Pain Initiatives and the FSMB Research and Education Foundation, the activity offers participants up to 7.25 AMA PRA Category 1 Credits™ for reading the book and successfully completing an online test on the material. There are no prerequisites for participating in this activity. The book is available at www.fsmb.org for \$12.95.

Website provides free, accredited CME on pharmaceutical marketing practices

A Web portal provides health care practitioners with access to free, accredited CME courses about pharmaceutical industry marketing techniques and their effect on prescribing practices. Located at www.fsmb.org, the web site is hosted by the Federation of State Medical Boards' Research and Education Foundation.

Funded by a grant from the Attorney General Consumer and Prescriber Education

Prescriber Education Grant Program, the portal was created as part of a 2004 consumer protection settlement with Warner-Lambert, a division of Pfizer, Inc., resolving allegations of deceptive "off-label" marketing of the drug Neurontin®. The national program is designed to educate health care professionals about pharmaceutical industry marketing practices and provide tools for accessing unbiased sources of information about drugs.

Most courses on the

portal are available free of charge to licensed medical prescribers and many may be taken for continuing medical education credit. More than 30 educational modules are available on the website and more courses are in development.

As a program grantee, the FSMB Foundation developed and implemented the Online Prescriber Education Network (OPEN) portal. The portal provides practitioners access to CME modules developed by other program

grantees, which include the Kaiser Foundation Health Plan of Colorado, Georgetown University Medical Center, the Lovelace Clinic Foundation, Massachusetts General Hospital (MGH) Institute of Health Professions, the Meyers Primary Care Institute, Northeastern Ohio University College of Medicine and Pharmacy, the University of California, San Francisco, the University of North Carolina, Chapel Hill, and Wake Forest University Health Sciences.

EVALUATING CLINICAL COMPETENCY

by Kelli J. Stevens, Associate Litigation Counsel

How does a professional licensing board determine whether a physician who hasn't actively practiced in several years should be granted a license? What does a board do to determine whether a physician who has made multiple medical mistakes is clinically incompetent or safe to practice with some restrictions?

These are among the questions that routinely arise at the Kansas State Board of Healing Arts. With its mission to protect the public, the Kansas Board is often charged with the task of evaluating a physician's clinical competence. A typical case may involve a report regarding a well-established obstetrician-gynecologist in rural practice with a recent record of bad patient outcomes after performing surgery. While the loss of that physician could be detrimental to the community, the risk of harm to future surgery



patients must be thoroughly evaluated and dealt with by the Board. In the current economic downturn, another common situation may involve a long-retired family practitioner seeking re-licensure to do locum tenens work around the state. The physician may have no previous competency issues, but the time away from active practice raises serious concerns about whether his or her knowledge and skills are intact and current.

Over the years, the Kansas State Board of Healing Arts has utilized several nationally-recognized clinical competency evaluation programs to assist in answering the complex question of whether a physician is safe to practice. While the cost of such assessments for the physician is not small, it is usually much less than that of litigating a disciplinary case or a board's opposition to licensure.

CPEP

One of the programs used in Kansas is the **Center for Personalized Education for Physicians**, commonly known as "CPEP." Located relatively nearby in Denver, Colorado, CPEP has been in existence since 1990, and has evaluated hundreds of physicians from most medical and surgical specialties. CPEP prides itself on the highly individualized and comprehensive nature of the assessments they perform. The program assesses both physicians with identified concerns and those seeking to re-enter practice after an extended absence. A typical evaluation takes two days. The crux of the assessment involves two to three structured clinical interviews with board-certified medical consultants practicing in the same field as the participant physician. The consultants each conduct 90-minute interviews of the participant based on submitted patient charts, hypothetical cases, and the consultant's own cases. Additionally, a cognitive function screening test, simulated patient encounters, and a thorough chart documentation review are part of the process.

Each assessment is overseen by an Associate Medical Director on CPEP's staff.

The Associate Medical Director also prepares an extensive written report summarizing the assessment data and interpreting the results. The participant physician's demonstrated areas of strength and need are identified and recommendations are clearly outlined. The findings are particularly helpful to licensing boards seeking to differentiate whether a physician has a knowledge gap or judgment and reasoning problems. Following the assessment, CPEP can also tailor a remedial education program to specifically address a participant's areas of concern. The educational program is practice-based and designed to use resources in the physician's own community so as to allow for uninterrupted practice if possible. A participant's progress is monitored by CPEP with ongoing reporting to the licensing agency.

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Is the sign in your office?

by Sue Ice

In November 2007, K.A.R. 100-22-6 took effect requiring each person licensed to practice a branch of the healing arts in Kansas to prominently post a sign in his or her office which states that he or she is currently licensed by the Kansas State Board of Healing Arts. The address, phone number and website of the Board is given on the sign, noting that

questions and concerns regarding the practice may be directed to the Board.



Sue Ice is a Board member from Newton. She has served since 1999 and is one of three public members.

The sign is available to download on our web site at www.kshba.org by clicking on "Official Notice to Patients." It is also available in Spanish. K.A.R. 100-22-6 can be found on our web site at www.ksbha.org/regulations/article22a.html.

Under the heading "Notice to Patients," the sign states simply, "It is unlawful for any person who is not licensed under the

Kansas healing arts act to open or maintain an office for the practice of the healing arts in this state. This office is maintained under the authority of a person who is licensed to practice the healing arts in Kansas. Questions and concerns regarding this professional practice may be directed to: Kansas State Board of Healing Arts."

These signs are a service to the public and are appreciated by your patients. Please remember to make sure the sign is posted!

Kansas numbers increase (continued)

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procedural change is the implementation of summary orders."

Summary orders are an administrative order of disciplinary action such as a fine or censure that the Board's Disciplinary Panel authorizes when a violation is believed to

have occurred. There is no hearing, but the licensee may request one. This is a way to expedite cases and turn out a quicker resolution.

KSBHA was authorized funding in July 2008 for an additional six positions which have assisted in addressing a backlog of

cases, which in turn has affected the number of actions the Board has taken.

"We have a great team assembled of very talented people who are dedicated to serving the citizens of Kansas," Confer said. "We are pleased that our efforts are paying off."

UPCOMING EVENTS

April 17

Board Meeting. Begins at 8:30 a.m. at the Board Office.

April 29

PT Council Meeting. Begins at 2 p.m. at the Board Office.

May 4

PA Council Meeting. Begins at 1 p.m. at the Board Office.

May 6

RT Council Meeting. Begins at 1:30 p.m. at the Board Office.

May 18

AT Council Meeting. Begins at 10 a.m. at the Board Office.

May 26

Public Hearing on K.A.R. 100-29-16. Begins at 10 a.m. at the Board Office.

May 27

Public Hearing on K.A.R. 100-55-7. Begins at 10 a.m. at the Board Office.

LICENSING INFORMATION

License renewals for Medical Doctors will begin May 15. MD licenses expire June 30. MDs can renew online at www.ksbha.org. Licensing will also begin audits of CEUs in May for Occupational Therapists, Occupational Therapist Assistants and Respiratory Therapists.

Hearings and meetings are subject to change. Please visit www.ksbha.org/public.html for updated scheduling.

Do you have what it takes? Become an expert consultant!

Are you interested in serving the citizens of Kansas? Join your colleagues in gaining valuable insight and experience by serving as a professional consultant to the Kansas State Board of Healing Arts!

The Board routinely retains physicians, chiropractors and podiatrists as consultants to provide independent opinions regarding the care rendered by licensed healing arts professionals. This is a very important part of the Board's process. In order to be able to review cases without delay, the Board would like to build a large network of professionals who have expressed interest in working as a consultant.

Consultants will review patient records and other records obtained during

the investigation conducted by the Board. The Board asks that the consultants prepare a written report of the review, which generally includes a summary of the care provided, an opinion as to whether the care provided met the applicable standard of care, and a statement regarding the applicable standard. The Board compensates for these services and most individuals who assist us find it to be a worthwhile experience.

The number of hours required to review cases varies widely. Sometimes the care at issue relates to one patient. Sometimes a consultant will be asked to review the care given to ten patients. If you submit your name, there are no immediate responsibilities. You will only be contacted as a

prospective consultant if there is a case to be reviewed that relates to your specialty and practice. Prospective consultants are contacted for a specific case and may certainly decline review of any case due to conflicts or time constraints.

Consultants may be deposed and need to testify in a hearing before the Board. Many cases settle before the hearing process, but consultants should know that if the matter proceeds to a hearing, the consultant's testimony is necessary. Again, the Board pays for these services and reimburses expenses such as mileage and lodging.

Consultants are needed from all specialties. Board-certification and a clean disciplinary record are essential. The Board

has a specific need for consultants in the following specialties: Surgery, Emergency Medicine, Psychiatry, Cardiology, Obstetrics and Gynecology, Pain Management, Family Medicine and Internal Medicine.

In addition, the Board has a particular need for physicians who practice in a rural setting. If you are interested in serving as a consultant for the Board, please send your curriculum vitae with a cover letter which includes your name, address and area(s) of practice to: Kansas Board of Healing Arts; Attention: Kathleen Selzler-Lippert, Litigation Counsel; 235 S. Topeka Blvd. Topeka, KS 66603-3068.

Evaluating clinical competency (continued)

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The Kansas Board has referred many physicians over the years to CPEP, with good results. Many Kansas physicians assessed by CPEP have been able to remain in practice while simultaneously

engaging in remedial education to address identified areas of need. Re-testing at the conclusion of the educational program provides an extra measure of assurance to the Board. In rare cases, CPEP has identified serious practice deficiencies rising to the

level where a physician was required to limit their practice or cease practicing all together. On the other hand, physicians evaluated for re-entry into practice after an extended absence typically have few problem areas if any. Often they only need a brief period of

re-entry education and/or monitored practice to assist in their transition. More information about CPEP can be obtained from the non-profit organization's website at www.cpepdoc.org.

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EVALUATING CLINICAL COMPETENCY (CONTINUED)

(Continued from page 7)

PACE

Another organization that has been used on occasion by the Kansas Board is the **Physician Assessment and Clinical Education Program** affiliated with the University of California San Diego School of Medicine. Called "PACE" for short, this program offers a slightly different, two-phase approach to evaluate a physician's clinical knowledge and judgment.

In Phase I, a two-day process, an initial practice profile of the participating physician is obtained and a review of a random sample of the physician's charts is also performed. The physician may be required to participate in a 360-degree evaluation of his or her practice. This assessment tool obtains information from individuals practicing with the participant. The core of the evaluation involves a "mock" oral exam conducted by a faculty member in the same specialty and written examination questions specific to the participant's field of practice or areas of

concern. At the conclusion of Phase I, a multi-disciplinary staff meeting is held to discuss the participant's results and formulate any necessary recommendations for further evaluation, education and remediation. Such recommendations may include the participant's return to PACE for Phase II of the program.

Phase II of PACE is a unique, minimum one-week clinical experience at UCSD Medical Center or a satellite clinic. During this time, the participant is actually engaged in clinically-based education activities in an inpatient, clinic and/or operative setting. Even though participating physicians are not practicing "hands-on," they are part of the daily clinical educational activities of a specialty residency program and must keep notes about patients seen and their activities. Case discussions about patients seen and even standardized patient encounters are utilized for further evaluation of how the participant functions in a clinical setting. Another multi-disciplinary meeting is held at the end of Phase

II to determine if the participant has satisfactorily completed the program or if further recommendations are needed. More information about PACE can be obtained at www.paceprogram.ucsd.edu.

PLAS

Also available as a competency assessment tool is the **Post-Licensure Assessment Service**, abbreviated as "PLAS," which is a joint program of the Federation of State Medical Boards and the National Board of Medical Examiners. PLAS offers the highly standardized Special Purpose Examination (SPEX) and also has collaborative arrangements with a variety of assessment centers, including CPEP and PACE, in order to provide multi-modal clinical competence assessment resources. The SPEX is a written examination tool often utilized by licensing boards, including Kansas, to re-examine a current or previously licensed physician's ongoing level of basic medical knowledge. While not a substitute for a comprehensive

evaluation, it serves as a valuable screening mechanism to determine if a physician has the minimally acceptable level of general medical knowledge necessary for continued, unsupervised practice. The format is a one-day, computerized examination consisting of eight blocks of 50 questions. The contents of the exam are intended to encompass the general medical knowledge and ability of a physician who is at least five years past graduation from medical school. More information about PLAS, including the SPEX, can be found at www.fsmb.org/m_plas.html.

Ensuring the clinical competency of the physicians licensed in Kansas is a large responsibility for the Kansas State Board of Healing Arts, and is taken very seriously by its staff and members. The use of proven and fair evaluation programs, such as those described above, greatly assist the Kansas Board in carrying out its duties.

KANSAS STATE BOARD OF HEALING ARTS

*The Kansas State Board of Healing Arts is located at 235 S. Topeka Blvd, Topeka, KS 66603. Please visit us on the web at www.ksbha.org.
Jack Conjer, Executive Director, jeonjer@ksbha.ks.gov; Editor: Kristi Pankratz, kpankratz@ksbha.ks.gov; Layout: Patty Kostreles, pkostreles@ksbha.ks.gov.*