

GUIDEWIRE

NEWS OF THE HEALING ARTS



Volume 2 / Issue 1

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UPCOMING PUBLIC MEETINGS

- May 5
Prehearing Conference
William O Reed Jr., MD
- May 10
Prehearing Conference
Thomas Plumeri, DO
- May 10
Status Conference
Carol Ann Ryser, MD
- May 27
Prehearing Conference
A. Sponaugle, OTA
- June 1 - June 4
Formal Hearing
Wasse Zafer, DC
- June 15
Formal Hearing
A. Sponaugle, OTA
- June 18
Board Meeting

A Glimpse at the Board of Healing Arts' Activities

by Kathleen Selzler Lippert, Acting Executive Director

My first few months as the Interim/Acting Executive Director have been filled with a whirlwind of activities from the winter holidays to the legislative session. I readily admit that this time has not been without its' challenges. Although I am not new to KSBHA, I am continually impressed by the quality and dedication of staff. Without each finely honed cog of the KSBHA wheel, we would fall flat and fail our licensees and the public. Happily, I can state that we are fully turning and would like to share some facts:



- **On average, a license is issued within a week after the application information is received.**
- **Closed investigations increased by 54% from FY 2008 to FY 2009.**
- **Closed litigation cases increased significantly. In FY 2008, approximately 20 cases were closed compared to FY 2009 when approximately 100 cases were closed. Thus far in FY 2010, 138 cases have been closed.**

In view of these accomplishments, I believe it is the right time to turn a proactive eye to education. With the Board's support, we are looking for ways to enhance the public's understanding of our mission and the health care providers' knowledge of the Board's expectations. One example of this is Kelli Stevens' article about the "Anatomy and Physiology of a KSBHA Disciplinary Action" in this newsletter. This article explains the general process KSBHA follows for disciplinary cases. Under this auspice, I would like to propose that in the future perhaps Board staff could meet with licensees, hospitals, and clinics to discuss common causes of Board actions, ways to assist in the prevention of those issues, and the ramifications of subsequent discipline. This is just one of the many ways we are looking to develop our role to educate licensees, improve public protection, and strengthen the healing arts professions. Your thoughts, ideas, and suggestions are always welcome and I encourage you to share them with us.

Anatomy and Physiology of a KSBHA Disciplinary Action: Part 2

by Kelli Stevens, Chief Litigation Counsel

Between statutory practice acts and the Kansas Administrative Procedure Act, the process for a disciplinary action can be quite complex. The first part of this series of articles discussed the Board's internal system of reviewing investigations and determining which ones warrant seeking discipline. This article focuses on the basic routes a case can take once disciplinary proceedings are initiated.



The Board is charged with protecting the public. While this can often be accomplished through informal means, a small percentage of cases result in public disciplinary

actions. The Board's litigation attorneys start the process by filing a petition against an individual healthcare provider (provider) who is regulated by the Board. The petition is filed with the Executive Director at the Board. The Executive Director's staff functions much like the clerk of the court in civil proceedings. They receive, file-stamp, and maintain the agency record of pleadings. Cont. page 2.....

It is acceptable to hand-deliver, mail, or fax pleadings to be filed with the Executive Director for the Board. A copy should always be served separately on the Board's litigation attorney of record in the case. The case is given an internal docket number which will be used to reference the action.

Once a petition has been filed against a provider, the provisions of the Kansas Administrative Procedure Act govern the proceedings that follow. There is no requirement that the provider file an "answer" to the petition, but some providers choose to. Either way, the provider is afforded a hearing. Sometimes the allegations do not involve any dispute of material facts. An example would be a situation where a provider has been disciplined by another state's licensing agency. Under most of the professions' practice acts, this is grounds for discipline against the provider's Kansas license too. When there is no dispute of the facts, the matter usually results in a "conference hearing." In a conference hearing, only the parties can testify. Typically, a conference hearing involves oral argument by the parties and the admission of exhibits into evidence.

If a case is more complex, a trial-type "formal hearing" is held. A formal hearing may involve testimony from multiple witnesses and the admission of large volumes of exhibits. Formal hearings can take anywhere from a few hours to a few weeks, depending on the type of allegations and evidence involved. Prior to the actual formal hearing, the parties may engage in an abbreviated form of "discovery" that is somewhat similar to civil litigation. During

the discovery phase of formal hearing proceedings, the parties can request documents and other evidence from each other and third parties. In more complex cases, the parties may take depositions of key witnesses and expert witnesses, if applicable. Because of the underlying need to ensure public safety, the Board's discovery timeframe is usually shorter than in civil cases.

"A formal hearing may involve testimony from multiple witnesses and the admission of large volumes of exhibits."

Both conference hearings and formal hearings may be heard in front of the Board or be referred to the State Office of Administrative Hearings ("OAH"). Typically, conference hearings are heard by the full Board during their regularly scheduled Board meetings which occur on a Friday every other month. These conference hearings are brief and the parties may submit proposed exhibits in advance for the Board to consider. At the conclusion of the conference hearing, the Board may go into a private "executive session" to deliberate their decision and receive legal advice from the Board's General Counsel. Afterwards, a public decision is made verbally. A formal, written decision called a "Final Order" is issued several days after the hearing.

If a formal hearing is held at the Board, one Board member is usually appointed to serve as a "presiding officer" to oversee the discovery phase, conduct the hearing, and issue an order. The presiding officer does this with the legal advice and assistance of the Board's General Counsel. The order issued by a presiding officer is called an "Initial Order." It contains findings of fact, conclusions of law, and proposed disciplinary measures to be taken against the provider, if any are found to be warranted. Once issued, the full Board then reviews the Initial Order at their next Board meeting and the parties usually have the opportunity to provide written and oral arguments in support of, or against, the Initial Order. The full Board can adopt, reject or modify an Initial Order. In doing so, the Board gives due regard to the observations of the presiding officer who had the opportunity to directly evaluate witness credibility.

Disciplinary cases can also be conducted by the OAH, which employs hearing officers who are attorneys and handle hearing proceedings for many state agencies. When a case is referred to the OAH, the Board sends out a notice to the parties. Often, these are cases that are anticipated to involve extensive discovery and require a formal hearing lasting several days. If a case has been assigned to a hearing officer at the Office of Administrative Hearings, a courtesy copy of all pleadings should be sent to the hearing officer as well as a copy to the Board's litigation attorney, and the original needs to be filed with the Executive Director. Just as in formal hearing proceedings conducted at the Board, the hearing officer at the OAH will oversee the discovery

process, hold the formal hearing and issue an Initial Order which is subject to review by the full Board. Again, the full Board has the ultimate decision-making authority and renders a Final Order in each case.

If a case results in findings indicating that discipline should be imposed, the Board must use the statutorily-available forms of discipline available pursuant to each professions' practice act. These can range from a fine to revocation of licensure. For the Healing Arts Act professions (MDs, DOs, and DCs), the Board may utilize the *Guidelines for the Imposition of Disciplinary Sanctions* as a guide in determining sanctions. These Guidelines can be found on the agency's website. The Guidelines seek to provide uniformity to the decisions the Board makes in imposing discipline for the various violations of the Healing Arts Act. Additionally, it has a non-exclusive list of aggravating and mitigating circumstances which the Board may consider in evaluating the appropriate discipline in a particular case.

The hearing proceedings for a disciplinary action are often intricate and involve many factors to determine what route the case will take and what the outcome will be. There are also different settlement options which may be available both before and after a petition is filed.

Part 3 of this series of articles will further explore licensure application cases, the Board's summary order procedure, and both informal and formal types of settlement.

LEGISLATIVE UPDATES

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The Board of Healing Arts follows legislation that may have direct bearing on licensees. Following is a list of the bills we introduced, watched, or actively worked on:

HB 2575 originally expanded the scope of practice and changed several other portions of the practice act for naturopathic doctors (NDs). However, after committee review, it was significantly amended. The bill, as passed, changes NDs from registrants to licensees, authorizes NDs to form professional corporations, and provides clarifying language that licensure does not require health insurance to provide covered services. The Senate amended another bill, **SB 501** relating to the creation of licensure of perfusionists, to include the language of **HB 2575**. Subsequently, the House amended and substituted **SB 83** to include the language from **HB 2575**. In conference committee, the original autism language (SB 83), as well as the perfusionist verbiage (SB 501), was removed and **SB 490** was added. Therefore, **SB 83** now contains naturopath language from **HB 2575**, as well as the PT license language from **SB 490**. **This bill was signed into law by the Governor.**

SB 489 was introduced to amend the current law concerning the dispensing of contact lenses to Kansas residents by a person or entity not licensed to practice optometry, medicine, or surgery in the state. The bill would broaden the specific reference to dispensing contact lenses through the mail to include commercial couriers, overnight carriers, or other delivery services. **This bill was signed into law by the Governor.**

SB 490 was introduced to create two new license statuses, federally active and exempt, for physical therapists. A federally active license would allow a licensee to work in a federal institution without maintaining individual malpractice coverage because they are already covered for malpractice under the Federal Tort Claims Act. An exempt license would allow a licensee to work for a charitable entity without maintaining individual malpractice coverage because they are covered for malpractice under the State Tort Claims Act. The language from this bill was added to **SB 83** in conference committee (see HB 2575).



SB 491 was introduced to extend student respiratory therapy permits to be valid for 30 days past graduation. This bill was amended by the Health and Human Services Committee to reduce the term of a temporary permit from one year to six months. **This bill was signed into law by the Governor.**

SB 500 was introduced to allow unlicensed persons the use of the word “doctor”, or the letters “MD”, “DO”, or “DC” if such person has (1) earned a professional degree from an accredited healing arts school or college and (2) if the use of such word or initials is not misleading to the public, patients or other healthcare providers that such person is (a) engaged in the practice of the healing arts or (b) licensed to practice healing arts in this state. Essentially, this bill would codify the language used by the Appellate Court in the case of *State v. Thomas*. **This bill was signed into law by the Governor.**

2010-2011 Board of Healing Arts' Legislative Subcommittee

Dr. Templeton
Dr. Minns
Dr. Counselman
Brenda Sharpe



Key Legislators for Healthcare

Public Health and Welfare Committee

Senator Barnett
Chair

Senator Schmidt
Vice Chair

Health & Human Services Committee

Representative
Landwehr, Chair

Representative
Crum, Vice Chair

Questions, comments, or to submit suggestions for future newsletters, please contact the editor, Lisa Corwin, PIO at: lcorwin@ksbha.ks.gov

BOARD HAPPENINGS

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Lenexa

Vice-President

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Gary L. Counselman, DC
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Sue Ice, Public Member
Newton

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Garold O. Minns, MD
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Leawood

Terry L. Webb, DC
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Brenda R Sharpe-New Public Board Member

Excerpt from Governor Mark Parkinson's Press Release of February 4, 2010

To ensure the health and safety of all Kansans, Governor Parkinson has appointed Brenda Sharpe to the State Board of Healing Arts.

Sharpe, Overland Park, is currently the president and chief executive officer of **REACH Healthcare Foundation**, a nonprofit healthcare conversion foundation that aims to create access to quality healthcare for the poor and underserved.

"Brenda has been relentlessly protecting Kansans' right to quality healthcare at REACH and in the community for many years," said Parkinson. "Her leadership and experience in the medical industry will make her a great addition to the Board of Healing Arts."



As the first CEO of the **REACH Healthcare Foundation**, Sharpe built the public charity into a fully operational and accountable foundation. She was recognized for her charitable efforts in 2007 when she was named the Nonprofit Professional of the Year by the Council on Philanthropy, and she currently serves on numerous boards and committees for multiple philanthropic organizations in the Kansas City area. Sharpe received her bachelor's degree in human development and family studies as well as her master's degree in student counseling and personnel services from Kansas State University.

"Safeguarding the Public ~ Strengthening the Healing Arts"

KSBHA 2009 Statistics from FSMB

The Federation of State Medical Boards released the following statistics regarding the Board's actions from 2009:

There was a total of 64 actions taken against licensees

12 Actions resulted in loss of license

14 Actions resulted in license restriction

17 Were other prejudicial actions

21 Were other non-prejudicial actions

LifeHouse Child Advocacy Center is the Agency's chosen charity for March & April. For more information, go to:

<http://www.lifehousechildadvocacycenter.com>



PROVIDER GUIDELINE

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License Renewal Deadlines for 2010

Doctors of Medicine and Surgery	May 15 - June 30
Doctors of Osteopathy	Aug. 15 - Sept. 30
Doctors of Podiatry	Aug. 15 - Sept. 30
Radiologic Technologists	Aug. 15 - Sept. 30
Athletic Trainers	Oct. 15 - Nov. 30
Doctors of Chiropractic	Nov. 15 - Dec. 31
Physician Assistants	Nov. 15 - Dec. 31
Physical Therapists	Nov. 15 - Dec. 31
Physical Therapist Assistants	Nov. 15 - Dec. 31



Don't Forget!

If you fail to renew your license within your allotted renewal period, you have the month directly following your renewal period to renew your license without having to formally reinstate your license. However, a late fee will apply.

Statutes, Rules & Regulations Review

Healing Arts Act K.S.A. 65-2837(b)(29)

Referring a patient to a health care entity for services if the licensee has a significant investment interest in the **health care entity**, unless the licensee informs the patient in writing of such **significant investment interest** and that the patient may obtain such services elsewhere.

"Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principal practice.

"Significant investment interest" means ownership of at least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of a least 10% of the shares of stock of the corporation which owns or leases the health care entity.

Other Professions with Similar Language

Podiatry ~ K.S.A. 65-2006(a)(14)(C)

Physical Therapy ~ K.S.A. 65-2912(b)

Respiratory Therapy ~ K.A.R. 100-55-5 (k)

UPCOMING COUNCIL MEETINGS at KSBHA

- May 5
PA Council
Meeting 1:00 pm
- May 5
PT Council
Meeting 2:00 pm
- May 12
RT Council
Meeting 12:00 pm
- May 18
AT Council
Meeting 10:00 am
- July 20
AT Council
Meeting 10:00 am