

KANSAS STATE BOARD OF HEALING ARTS NEWS

"Your health and safety is our greatest purpose."

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A KSBHA Annual Check-up

During the past 12 months, there have been tremulous, unexpected changes in the world. In July 2008, who could have predicted the collapse of many financial institutions, bankruptcy of General Motors, the budgetary problems of many state governments and the worldwide impact of our economy?

The Kansas Board of Healing Arts has experienced changes as well from different

mandates, adding staff, to a new director which have created a year of transition for this agency.



*Dr. Michael Beezley
Board President*

As president of the Board, I'm very encouraged at the amount of work staff has been able to accomplish thus far. At the

beginning of July 2008, we were looking at a significant backlog of cases. And, while we're still addressing a backlog, it is considerably smaller and

processes are becoming more streamlined thanks to the work of exceptional staff.

We're still evolving but I'm very pleased to see the amount of work our agency has put in to moving forward. This next year we will be launching a new web site and continuing to work to better communicate with our licensees as well as the public.

As always, if anyone has suggestions on what they'd like to see or any feedback, please do not hesitate to contact our agency.

Amendments now in effect for Women's-Right-to-Know Act

Several new amendments to K.S.A. 65-6709, which is the Women's Right-to-Know Act, went into effect July 1.

One of those amendments involves the requirement that a sign must be posted pursuant to K.S.A. 65-6709(k). It stipulates that any private office, freestanding surgical outpatient clinic

or other facility or clinic in which abortions are performed shall conspicuously post a sign in a location so as to be clearly visible to patients. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least three quarters of an inch boldfaced type which reads:

Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to

contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease.

The provisions of this

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Dumpster diving changes state abandoned records law

by **Jack Confer**
Executive Director

A dumpster diver discovering a cache of abandoned medical records and a little boy needing inoculation records to start kindergarten were the precursors for a change in state law regarding abandoned medical records this 2009 Legislative Session.

It all started with two phone calls last summer concerning the patient records of two physicians; one of whom had his license revoked and whose patient files were found in a dumpster and another whose license was suspended and a mother subsequently unable to access her child's inoculation records.

State law requires that doctors who are leaving the practice establish a custodian for their patient records as patient records must be maintained for 10 years. It also requires that the doctors inform the Board who the custodian is and where the records are stored. In these two cases, that did not happen. Subsequently, we filed suits in Shawnee County District Court that

records custodians be appointed in both cases. One was settled with the licensee's attorney in February and we were awarded custody in May on the other one. This is simply way too long for people

that was introduced as House Bill 2010 which applies to the three healing arts professions. It was signed into law by Governor Mark Parkinson on June 4.

This new legislation

believe that this legislation will be helpful to our agency and the healthcare profession and to the public.

If you are retiring or leaving your practice, please remember that



Board members, staff and legislators attended a bill signing of House Bill 2010 on June 4. Left to right: Dr. Kimberly Templeton, Board Member; Senator Jim Barnett; Julia Mowers, Legislative Analyst; Jack Confer, Executive Director; Governor Mark Parkinson; Representative Mike Kiegerl; Dr. Myron Leinwetter, Board Member; and Scott Hesse, General Counsel.

to be without their records. There needed to be a quicker resolution and the other question that surfaced was, who is financially responsible for the maintenance of these patient records when the former licensee's location is unknown?

In January, our agency created legislation with the help of Rep. Mike Kiegerl

includes language that the district court shall expedite an abandoned records action brought forth by the Board. It also created the medical records maintenance trust fund, which can allocate up to \$10 from each license renewal fee and dedicate it to that trust. This trust will be used to maintain abandoned patient records. We

per K.A.R. 100-24-3, our agency is to be notified of who will be maintaining your records and where they will be located. You may contact Sandy at 785-296-2482. And, if you haven't had a chance to think that far ahead yet, now is always a good time to start planning.

BOARD ACTIONS

June and April 2009 Board Meetings

The Kansas State Board of Healing Arts held its bi-monthly meeting on Friday, June 12 and took various actions, including suspension and approval of consent orders.

In administrative matters, the license of Russell Reitz, M.D., Manhattan, was brought before the Board, as he was recently convicted of a felony. Kansas law requires the Board to revoke licenses when the licensee has been convicted of a felony regardless of whether it is related to the healing arts; unless 2/3 of the Board finds that the licensee has been rehabilitated and is not a risk to the public. The Board converted this to an evidentiary hearing which means a presiding officer was appointed and a hearing was held July 10.

The Board voted to deny the request for reconsideration of reinstatement of the license of Steven D. Ringel, M.D., Shawnee Mission. Dr. Ringel was previously licensed in Kansas and had his license revoked in 2004 for prescribing violations. The Board

denied the initial request for reinstatement at its April meeting.

Raymond E. Winger, M.D., Wichita, was granted an unrestricted license. Dr. Winger was first licensed in Kansas in 1978 and continued practicing until he changed his license to exempt status in 1997 and to inactive in 1998. In 2001, he applied for a status change from inactive to active which was denied by the Board. In 2003, he was granted a restricted license which required supervision by another physician and limited his practice to family medicine. A request to modify or terminate the limitations was denied by the Board in 2005 before approval was granted in the June 2009 meeting.

The Board suspended the license of Dana S. Gifford, Physical Therapist Assistant, Topeka, following a failure to abide by the terms of a consent agreement previously entered.

Kurt M. Guindon, M.D., Arkansas, was granted reinstatement of his Kansas medical license with limitations. In February 2009, the

Board found actions that constituted unprofessional and dishonorable conduct. The order imposed a 60-day suspension and practice limitations. The Board voted to assess costs associated with the hearings of \$20,421.93, which was later reduced to \$5,000. Dr. Guindon's license lapsed in August 2008.

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.

Ariana Powell, Occupational Therapist Assistant, Wichita, and Matthew Britton, Licensed Radiologic Technologist, Lawrence, both entered into consent agreements with the Board. Adelbert Reece, M.D., Leawood, entered into a consent agreement following allegations of over prescribing. The terms of the agreement include probation which consists of further education. The Board approved entering into a consent agreement with John T. Schroll, M.D., Overland Park after a motion for

review. The Board previously rejected an offer of a settlement at the February Board meeting. The petition filed alleges boundary issues with four patients, failure to adhere to applicable standard of care and failure to maintain accurate medical records, amongst other violations of Kansas Statutes. The terms of the consent agreement include a chaperone in the room all times the doctor is present with a female patient; the chaperone will maintain daily logs of patients seen and report monthly to the Board; and a fine. After three years and meeting all the terms, the licensee may petition the Board to terminate the consent order.

The Board accepted eight initial orders as final orders which involved fines as a result of failure to provide proof of continuing education and/or insurance. The orders were issued to Jigar S. Patel, M.D., Lenexa; Mervin Hershberger, L.R.T., Kansas City; Andrew McGill Bowen, R.T., Overland Park; Dustin

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BOARD ACTIONS *June and April 2009 Board Meetings*

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Kleekamp, Overland Park; Clifford Towle, L.R.T., Hutchinson; Barbara Scritchfield, L.R.T., Carl Junction, MO; Judy Lemasters, Kansas City, MO; Michael Fish, L.R.T., Texas.

April Board Meeting

At the April 17 meeting the following actions were taken:

The license of Asghar Chaudhary, M.D., Leawood, was suspended pending successful passage of the Federation of State Medical Board's Special Purpose Examination and reinstatement of his license in another state. Chaudhary had his staff appointment and privileges revoked at a Kansas health care facility and had his Missouri license revoked.

The Board voted to deny the reinstatement of the license of Steven D. Ringel, M.D., Shawnee Mission. Dr. Ringel was previously licensed in Kansas and had his license revoked in 2004 for prescribing violations.

Two licensees, James A. Brockenbrough, M.D., Missouri, and Mohammad W. Akram, P.A., Wichita, had

limitations previously placed on their licenses, terminated. Dr. Brockenbrough entered into a consent agreement in February 2007 as a condition of granting licensure in the state. The terminations lifted include monitoring of his professional practice by a Kansas-licensed, Board-approved physician. Akram entered into a consent agreement in February 2008 following allegations of boundary violations. Limitations implemented as part of the agreement included a chaperone present with female patients and documenting a daily log of female patients, certifying the presence of a chaperone. Those limitations have now been lifted.

Kurt M. Guindon, M.D., Arkansas, appealed the Board's assessment of \$20,421.93 at the February board meeting. In February, the Board concluded there were actions that constituted unprofessional and dishonorable conduct. The order issued imposed a 60-day suspension and practice limitations. The Board voted to assess Guindon costs associated with the

hearings. The Board voted in the April meeting to reduce the amount of costs owed by Guindon to \$5,000.

Russell Etzenhouser III, MD, Overland Park, asked the Board to review a consent agreement he entered into with the Board placing limitations on the practices he could perform. The Board tabled any further consideration to the June meeting.

John Schroll, M.D., Overland Park, requested the Board to reconsider its decision from February to reject a settlement agreement. The Board tabled the request to the June 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.

Carmen Steckline, Licensed Radiologic Technologist, Hays, entered into a consent agreement with the Board for reasons which fall under K.S.A. 45-221a(1).

Paul Toma, D.O., Missouri, entered into a consent agreement with

the Board as a stipulation of being granted reinstatement of his Kansas license. His license had previously been cancelled. The consent order includes public censure for misrepresenting on his licensure application that he had not been subject to malpractice actions.

Ronald L. Young, D.C., Salina, entered into a consent agreement with the Board. Audits of the licensee's medical records indicated deficiencies. Terms of the consent order include probation for one year and follow-up education.

James D. Hanna, M.D., Wisconsin, entered into a consent agreement with the Board as a condition for licensure. The terms of the agreement fall under K.S.A. 45-221a(1) and are not permitted for release.

Margaret Eubank, Physician Assistant, Junction City, entered into a consent agreement with the Board following failure to maintain adequate medical records and not adhering to the standard of care. The terms of the agreement include continuing education in medical record keeping.

NATIONAL NEWS *From the Federation of State Medical Boards*

CME-Accredited version of responsible opioid prescribing

A Continuing Medical Education (CME) accredited version of *Responsible Opioid Prescribing: A Physician's Guide* is now available at www.fsmb.org. Written by pain medicine expert Scott Fishman, M.D., this concise, authoritative book offers physicians effective strategies for reducing the risk of addiction, abuse and diversion of opioids

they prescribe for patients in pain. More than 100,000 copies of *Responsible Opioid Prescribing* have been distributed across the United States.

Jointly sponsored by the Federation of State Medical Boards Foundation, the University of Wisconsin School of Medicine and Public Health, and the Alliance of State Pain Initiatives, this 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.

Responsible Opioid Prescribing 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

Responsible Opioid Prescribing: A Physician's Guide is available at www.fsmb.org for \$12.95. Bulk discounts are available.

A Look Back In History

Ever wonder what a doctor's visit or prescription cost back in the day? Here's a look at information reprinted in the May 7, 2009 issue of the Iola Register.

May 1887
The Allen County Medical Society published a fee bill in this issue which listed a range of fees physicians should charge for a long list of medical procedures. Writing an "ordinary" prescription should cost 50 cents, for instance, but writing a prescription for a case of

syphilis might cost as little as \$5 or as much as \$100; chest examination, \$1 to \$5; obstetrics, ordinary case, \$10; visit in the country under one mile, \$1.30; over one mile, \$2; add to charge, 50 cents for every mile over one; amputation of leg, arm, foot or forearm, each, \$50, etc. Fifteen county physicians signed the publication.

Women's Right-to-Know Act

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subsection shall not apply to any private office, freestanding surgical outpatient clinic or other facility or clinic which performs abortions only when necessary to prevent the death of the pregnant woman. A courtesy copy of a sign is available for download on our web site at www.ksbha.org.

The Women's Right-to-Know Act is part of the Public Health Act which is administered by the Kansas Department of Health and Environment. Additional information can be found on their web site, www.womansrighttoknow.org.

Anatomy and Physiology of a KSBHA Disciplinary Action: Part 1

by Kelli J. Stevens, Associate Litigation Counsel

What happens when an investigation at the Board of Healing Arts has been completed?

If a case results in a disciplinary action against a licensee of the Board, what is the process? These are just a few of the questions often asked of Board staff.

The answers are not simple ones. The different routes a case can take may at times resemble the body's arteries branching out in many directions. This three-part series of articles strives to explain basics of the process involved in a disciplinary action against a Healing Arts Act licensee (medical doctor, doctor of osteopathy, or chiropractor). It is not intended to provide the reader with an in-depth analysis of every type of case, but to give a general overview of the path an investigation case takes through the disciplinary system at the Board.

This first part discusses

the preliminary work up of a case after a Board investigator has completed his or her investigation.



The direction an investigation case takes upon completion depends first on what type of case it is. If it involves allegations of practice below

the standard of care, inappropriate prescribing, or other clinical issues, the case will likely be presented to a review committee of outside practitioners of the same profession as the licensee being investigated.

Currently there are three Medical Doctor review committees, one Doctor of Osteopathy review committee, one Chiropractor review committee, one Podiatrist review committee, and the respective councils which perform the case reviews for each of the allied professions regulated by the Board, Physician Assistants, Physical Therapists, and PT Assistants, Occupational Therapists and OT Assistants, Athletic

How the process begins

Complaint

Complaints regarding medical professionals come to the Kansas State Board of Healing Arts from a number of sources including patients, patients' families, medical staff, employers, other health agencies and medical malpractice insurers. There are several types of documents which function as a "complaint," but are not on a typical complaint form. These include, but are not limited to, reports of adverse findings from hospitals, notifications from other state licensing boards of disciplinary action against a Kansas licensee, and malpractice complaints.

Once the initial complaint is received, it is reviewed by the Board's disciplinary counsel to determine whether an investigation needs to be opened or if further information is needed. In order for the agency to open an investigation, the complaint must pertain to the practice of the healing arts and must allege facts, which if accepted at face value, would constitute a violation of the laws enforced by the Board. Occasionally, if the complaint contains insufficient information, more information may be requested of the complainant.

Investigation

Board investigations are time-consuming and may take several months or longer, depending

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Trainers, Naturopathic Doctors and Radiologic Technologists.

They perform a preliminary "peer review" of each case and provide a clinician's set

of eyes to assist Board staff. The review committees meet on a regular schedule and often have a long agenda of several

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Anatomy and Physiology of a KSBHA Disciplinary Action: Part 1

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investigations to consider during a meeting. The members receive the investigative materials in advance, which may include thousands of pages of medical records, investigative reports, and typically, a response from the licensee regarding the allegations. Based on their evaluation of all the information, the review committee makes a recommendation as to whether the licensee's care and treatment was outside the standard of care or otherwise deviated from accepted practices.

The review committee's recommendation triggers the next set of events for the case. If the recommendation is that the standard of care was met, the investigation case will be routed through the Board's processes for closure. If the recommendation is that the standard of care was not met, the case will proceed to the next level of review by the Board's disciplinary panel. On the other hand, investigations that involve "conduct"

allegations, such as impairment, fraud, sexual boundary violations and deceptive advertising go directly to the disciplinary panel once the investigation is complete.

The Board's disciplinary panel is comprised of either four or five Board members who serve for one year on a rotating basis. The panel always has an M.D., D.O., D.C. and public member serving at the same time. The function of the panel is to review the investigations where the review committee has recommended the standard of care was not met, as well as all the investigations alleging "conduct" violations. The purpose of the panel's review is to determine whether or not to authorize Board prosecution counsel to initiate disciplinary proceedings, make a formal offer of settlement in the case, seek an informal remedy or close the case with no action. In

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How the process begins

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on the seriousness and complexity of the alleged complaints and the cooperation of the licensee, health care facilities and witnesses involved. Once it is deemed that an investigation should be opened, an investigation case number and an investigator are assigned. Once assigned, the investigator will typically contact the complainant to advise them of the case's status, where applicable. Many investigations require obtaining medical records from the licensee/registrant and any health care facilities that are involved. It may also include interviewing witnesses, visiting facilities, obtaining drug prescription profiles from pharmacies and requesting information from law enforcement or other regulatory agencies, in this state and elsewhere. During the course of the investigation, the investigator documents their progress and findings in investigative reports.

Review

Upon completion, the investigation case is forwarded to the Board's disciplinary counsel to determine the appropriate next step in the process. If the investigation involves concerns about treatment below the acceptable standard or other clinical issues, the investigative materials are forwarded to a review committee or council comprised of licensed/registered peers who determine if the information as presented indicates a violation of the applicable standards.

If the investigation involves no issues related to treatment or the sufficiency of the care provided and involves only allegations related to the conduct or other "non-treatment" issues of the M.D., D.O., D.C. or D.P.M. licensee, the case goes directly to the Board's disciplinary panel.

Anatomy and Physiology of a KSBHA Disciplinary Action: Part 1

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that way, the disciplinary panel essentially serves as the “client” for Board prosecution counsel. The panel is privy to confidential investigative information and receives a legal analysis of each case from Board attorneys. Because of this, the panel members do not participate in any decision-making for all future disciplinary proceedings or other Board actions which may involve cases they have reviewed. It is of utmost importance that the disciplinary panel avoid the conflict of interest which would exist if they made both prosecution decisions and the final decisions regarding whether discipline is imposed.

The disciplinary panel carefully evaluates the investigative materials and considers the licensee’s response to the investigation, including all supporting documents. Sometimes they request additional investigative information and a case may be

carried over to their next meeting. Only after a thorough review does the Panel determine whether to authorize Board counsel to pursue discipline, seek a professional development plan, settle or recommend closure of a case. Additionally, since the disciplinary panel does not determine any final outcomes for the cases they review, the licensee does not have a right to appear when their investigation is considered by the panel. Both the review committee and disciplinary panel processes take place while the case is still at the “investigative stage” and the information is confidential. Once a disciplinary action is commenced, the licensee is entitled to due process in the proceedings.

If the disciplinary panel authorizes Board counsel to initiate a disciplinary action, the next step is again dependent on multiple

factors. A “conduct” case can often be prepared for a disciplinary hearing much faster, unless there are issues requiring follow up investigation or an expert witness is needed to review aspects of the case that require some sort of technical expertise. For example, billing fraud allegations may necessitate a coding and billing expert’s review of the case. On the other hand, a case containing allegations of practice below the standard of care or inappropriate prescribing will almost always need an independent review by an expert in the particular field of practice. The purpose of an expert’s review is to enable the presentation of opinion testimony on the clinical care issues involved.

Upon completion of the review, if the expert’s opinions support the allegations, the next step is for the prosecuting attorney to prepare a disciplinary petition that will be filed with the Board. Filing the petition

commences the disciplinary proceedings and outlines the facts and allegations supporting a request for discipline against a licensee. The petition is filed with the Board’s Executive Director, much like civil pleadings are filed with a court clerk. At that point, the matter is no longer an investigation. Most pleadings are public records. Occasionally, there may be statutorily protected information in the pleadings that is redacted if the document is provided pursuant to a request from the public. After a proceeding is initiated, the hearing process is governed by the Kansas Administrative Procedures Act, or KAPA.

While there can certainly be variations on the disciplinary function of the Board depending on the subjective facts and circumstances involved in each investigation case, the basis structure and process. The next article in this series will examine the various forms of disciplinary proceedings which take place at the Board.

KANSAS STATE BOARD OF HEALING ARTS

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