

GUIDEWIRE

NEWS OF THE HEALING ARTS



Volume 3 / Issue 1

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Moving—More Than Just a Location

by Kathleen Selzler Lippert, Executive Director

Moving – more than just a location.

This past January the KSBHA physically moved locations and now calls 800 SW Jackson, Lower Level–Suite A, Topeka, Kansas home. Although the move to a new physical location is complete, the Board continues its move forward to fulfill its mission to safeguard the public and strengthen the healing arts professions.

Forward movement also encompasses forward thinking and the advancement of proactive activities that produce positive outcomes for both the Public and Licensees. To that end, Board staff proactive education efforts are also on the move. Katy Lenahan, the Licensing Administrator, and her staff present application and licensure training to Kansas health care students at many schools across the state. Katy and her staff have established close working relationships with post graduate programs and developed training to ensure medical students embarking on their residencies have the necessary licenses as quickly as possible. Dan Riley, the Disciplinary Counsel, presented to several groups including the Kansas Risk Quality Management Association at their annual conference in Wichita, Wesley Medical Center Executive Leadership Training, and the KCA new doctor seminar. In all, board staff has presented education to licensees, medical communities, and the public on more than 20 occasions in the last year.



The Medical Society of Johnson and Wyandotte Counties extended their proactive education opportunities to board staff for a second year in a row. In 2010, three board staff attorneys participated in the Physician Preceptor Program. This year, Arthur Snow, Jr., MD, Chairman of the Preceptor Program again reached out to board staff. Cliff Hacker, a 10-year veteran board investigator and I were privileged to see the practice of medicine from the inside. Safeguarding the public and strengthening the healing arts professions requires an understanding of the issues and challenges of those we license. Thanks to the Johnson and Wyandotte Counties Physician Preceptor Program, our investigators are better informed and trained.

Carrying out their task to protect the public, Litigation staff moved many cases through the disciplinary process in the last year. The litigation department sought emergency suspension on four cases involving prescribing or impairment that created an immediate danger to the public health, safety or welfare requiring immediate agency action. Additionally, they issued over 100 letters of concern or professional development plans to encourage licensees to maintain clinical competency and further public protection. The litigation department moved over 200 cases for Disciplinary Panel review and received direction to close or obtain corrective measures.

CURRENTLY SCHEDULED PUBLIC MEETINGS THROUGH SEPTEMBER 2011

can be found on page 7 of this publication.

Please refer to our website at:

<http://www.ksbha.org/public.html>

For a complete and up to date listing.

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www.fsmb.org

Board Investigators: The Fact Finders

It is not the intent of this article to explain the process or specific mechanics of investigating allegations of misconduct to the Board, but rather to inform the reader of who a Board investigator is and what he or she does. In this regard, all regulatory agencies have investigators of some type but it would be hard to find any that have such a varied and intricate mission as those employed by medical boards, especially those in the Disciplinary Division of the Kansas State Board of Healing Arts (Board).

The varied nature of complaints received by the Board, are reflected in the numbers of complaints received. As an example, for the current fiscal year between July 1, 2010 and March 11, 2011 there have been 1143 complaints received, of which 451 cases were opened for investigation. Complaints received that are not opened into investigations either did not meet the criteria based on merit, or they were handled sufficiently without the need for a full investigation. The complaints that are opened for full investigation are then distributed among the seven full time investigators and two part-time investigators who add those cases to their existing inventory. Once a complaint has been assigned to an investigator, he or she is tasked with the responsibility of conducting an impartial investigation. The investigation must be conducted in a confidential manner within the scope of Kansas statutes and regulations and within the framework of other rules and regulations imposed by the Federal government.

The investigations involve a myriad of allegations such as: poor record keeping, practicing without a license, corporate practice issues, failure to maintain professional liability insurance, inappropriate advertising, sexual misconduct, patient abuse, drug/alcohol abuse and diversion, billing fraud, and standard of care issues. Board investigators also routinely conduct thorough inspections of office-based surgical practice locations. While not all-inclusive, the list above represents the variety of cases the Board's investigators handle on a daily basis.

The degree of skill and expertise required of Board investigators is directly related to the diversity of the fourteen professions licensed or registered by the Board, or who may be certified by the Board, such as dentists who

provide anesthetics to facilitate dental procedures. Consequently, the investigators have educational and employment backgrounds in diverse fields such as law enforcement, allied medical professions and medical coding and analysis. This diversity provides a well-rounded staff to handle the wide range of complaints to be investigated.

Board investigators strive to maintain continuing education and skill enhancement to better serve the public. This is accomplished by attending professional seminars and training courses, while maintaining knowledge through reading news of current events occurring in or associated with medical regulation. Medical board investigative functions are continually evolving due to changes in health care delivery and regulatory processes.

Thus, it is incumbent upon Board investigators to identify and collect proper evidence; work amicably with other private and government agencies; interview witnesses; and work closely with staff in the Litigation Division responsible for prosecuting those cases deemed actionable. Obviously, a Board investigator must be able to provide reports made in a legally sufficient manner which are clear and concise so that the Board's peer review committees and legal staff have sufficient evidence to make appropriate decisions regarding whether a violation has occurred and that can be relied upon in any legal forum.

Board investigators are at the very core of the Board's functions in fulfilling its mission of protecting the public and to ensure those licensed by the Board that they will be treated in a professional and impartial manner.

This article was written by Special Investigator, Peter R. Massey who has been with the Board for the last seventeen years and retired on July 1 of this year. Mr. Massey's work background includes nearly eighteen years in law enforcement ranging from patrol officer to criminal investigator and lastly chief administrator. With a desire to know more about the world we live in and possibly teach, Mr. Massey returned to school and graduated cum laude from Emporia State University with a Bachelor degree in World History - but while pursuing his Masters, Mr. Massey's long standing desire to help his neighbor coupled with his intrinsic desire to examine the human condition compelled him to return to the public service arena for four years as a special investigator with the Kansas Civil Rights Commission and finally to the Board.

BOARD MEETING INFORMATION

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Kansas State Board of Healing Arts Information about Board Meeting Hearings

Conference Hearings on applications and disciplinary cases are often scheduled to be heard at the bi-monthly meetings of the Kansas Board of Healing Arts. The schedule of meetings is posted on the agency website. A Notice of Hearing is sent to the parties in advance of the meeting date to notify them of the date and time for the hearing. The following is important information about these hearings:

Filing Pleadings:

Responsive or additional pleadings should be filed with the Office of the Executive Director in person, by mail or fax at (785) 368-7102. A separate copy must also be sent to the attorney for the Board who is identified in the Notice of Hearing. Documents should not be sent directly to any Board member.

Exhibits:

If you have documents which you intend to offer as exhibits at the hearing, please send a copy to the attorney for the Board as early as possible. The agency's administrative staff electronically provides hearing documents to the Board members approximately 2 weeks in advance of the Board meeting date. If you cannot send your exhibits in advance, you will need to bring 18 copies with you to the Board meeting so there are enough for distribution to the Board members, General Counsel and to retain 1 copy for the agency record. Documents should not be sent directly to any Board member.

Conference Hearing Procedure:

Conference hearings are held by the Board during their regularly scheduled board meetings. Each case scheduled for a conference hearing is presented to the full Board.

The hearings are held pursuant to the Kansas Administrative Procedure Act. The Board usually votes on a decision at the conclusion of the hearing. Typically, conference hearings last less than a half hour and do not involve complex factual issues. At a conference hearing, only the parties may testify. There may be portions of a hearing which are closed to the public to consider information or evidence which is held confidential by statute. These may include discussion of settlement offers in matters still under investigation, impairment issues, patient-identifying information and peer review. During a "closed" portion of the hearing, only the parties and agency staff are present in the hearing. Additionally, the Board may go into an "executive session" to receive advice from the agency's General Counsel staff before they make their decision in a case. However, the Board's vote on a decision in a case is always held in public.

Board Decisions

Following Conference Hearings:

The Board will usually vote on their decision at the Board meeting. However, the decision is not effective until a written order is issued. By statute, the agency has 30 days following the hearing to issue the written order. The written order will include the Board's decision and any specific provisions required for implementation.

Agency Location and Parking:

We are located on the southeast corner of the intersection of 8th and Jackson (in the former US Bank building). Our offices are on the Lower Level (basement). The building entrance from the street is on Jackson. There is an attached parking garage on 8th Street. The agency does not validate parking tickets. Additionally, there are metered parking spaces on both 8th and Jackson Streets.

Disclaimer:

This document is intended to provide only general information and does not constitute legal advice. Additionally, it does not create legal rights or obligations for any party.

PROFESSIONAL CORPORATIONS

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Board Members

President

M. Myron Leinwetter, DO
Rossville

Vice-President

Gary L. Counselman, DC
Topeka

Michael J. Beezley, MD
Lenexa

Ray N. Conley, DC
Overland Park

Frank K. Galbraith, DPM
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Merle J. "Boo" Hodges, MD
Salina

Richard A. Macias, JD
Public Member
Wichita

Garold O. Minns, MD
Bel Aire

John Settich, PhD
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Atchison

Brenda R. Sharpe
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Carolina M. Soria, DO
Wichita

Kimberly J. Templeton, MD
Leawood

Terry L. Webb, DC
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Nancy J. Welsh, MD
Topeka

Ronald N. Whitmer, DO
Ellsworth

Agency Department Heads

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If you are setting up a new professional corporation, changing the name of your existing corporation, or adding / deleting shareholders, you must contact the Board of Healing Arts to obtain approval and a certificate noting the changes. Below is the information we require (from our website):

PROFESSIONAL CORPORATION CERTIFICATE REQUEST

Please anticipate 7-10 business days for processing your request. Requests which do not include the items listed below may be delayed to obtain further information.

Please send an e-mail to pkostreles@ksbha.ks.gov and include the following:

1. Proposed name of the corporation;
2. Complete names of all shareholder(s)/proposed shareholder(s);
3. A statement verifying that the corporation is/will be organized under the Kansas Professional Corporation Law, or as a professional limited liability company, or as a professional limited liability partnership;
4. The type of profession which the professional corporation practices/will practice;
5. If the corporation is new, please include an electronic copy of the proposed articles of incorporation; and
6. To whom and where to send the certification documents.

Please refer to K.S.A. 17-2706 *et seq.* for professional corporation legal requirements. Please contact Patty at (785) 296-3146 with additional questions.

2011 Renewals by Date & Profession

Occupational Therapists	2/15 ~ 3/31
Occupational Therapy Assistants	2/15 ~ 3/31
Respiratory Therapists	2/15 ~ 3/31
Doctors of Medicine & Surgery	5/15 ~ 6/30
Doctors of Osteopathy	8/15 ~ 9/30
Doctors of Podiatry	8/15 ~ 9/30
Radiologic Technologists	8/15 ~ 9/30
Athletic Trainers	10/15 ~ 11/30
Doctors of Chiropractic	11/15 ~ 12/31
Doctors of Naturopathy	11/15 ~ 12/31
Physician Assistants	11/15 ~ 12/31
Physical Therapists	11/15 ~ 12/31
Physical Therapy Assistants	11/15 ~ 12/31

EXECUTIVE ORDER 11-10

Executive Order 11-10

Governor Brownback has signed Executive Order 11-10 recognizing the devastating impact that the May 22, 2011 tornado had on those directly affected in Jasper County, Missouri; Reading, Kansas; and the many surrounding communities and Kansas citizens. The tornado destroyed many critical health care facilities which served both Missouri and Kansas communities. The Kansas Board of Healing Arts wants to protect the public and strengthen the healing arts professions by implementing this Executive Order.

Kansas Executive Order 11-10 can be found on our web site home page: <http://www.ksbha.org>. This Executive Order has five (5) elements. It provides for expedited Kansas licensure for practitioners of the healing arts who:

- 1) Maintain a current, valid license in good standing to practice medicine in the State of Missouri,
- 2) That at the time of the May 22, 2011 disaster practiced in Jasper County Missouri,
- 3) Desire to practice in a local Kansas community,
- 4) Have appropriate professional liability insurance that will cover any practice in Kansas, and

5) Limited duration for temporary permit.

The Kansas Board of Healing Arts has developed an application for the emergency disaster temporary permit. This information is necessary. We recognize that medical professionals recovering from a tornado stricken area may not have all information readily available to them. We are committed to working with any applicant who experiences a difficulty.

The temporary permit is only valid for one month, and we anticipate it will be further extended for those who have application for full license pending. We understand that this is an extremely short period. We are committed to reviewing and finding workable solutions as the needs are defined and assessed.

The disaster struck the Joplin and Reading communities, but disasters do not have borders. In addition, many other rural Kansas areas were impacted by the shocking destruction experienced in Jasper County, Missouri and Reading, Kansas. The Kansas Board of Healing Arts is grateful to the Governor, his staff and the many others who saw the need and worked to create a solution.

Questions about the implementation of this Executive Order can be directed to any of the following:

Katy Lenahan, Licensing Administrator,
785-296-8563 or
klenahan@ksbha.ks.gov

Randy Stookey, Assistant General Counsel,
785-296-2007 or
rstooney@ksbha.ks.gov

Kathleen Selzler Lippert, Executive Director,
785-296-8561 or
klippert@ksbha.ks.gov

Upcoming COUNCIL MEETINGS @ KSBHA
July
8 LRT Council Meeting @ 12 pm
13 OT Council Meeting @ 12 pm
20 PT Council Meeting @ 2 pm
August
3 PA Council Meeting @ 1 pm
9 AT Council Meeting @ 10:00 am
10 RT Council Meeting @ 1:30 pm

To offer questions, comments, or suggestions, contact the editor, Patty Kostreles, Administrative Officer at: pkostreles@ksbha.ks.gov
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Board Policy on Delinquent Fines

Purpose:

The purpose of this policy is to establish guidelines and procedures for the Kansas State Board of Healing Arts. This policy is intended to assist the Board in considering appropriate disciplinary action against licensees who are delinquent in excess of ninety (90) days or are in arrears for \$2,000.00 or greater in their Board ordered payment of fines and/or costs. The Board desires, in most cases, to follow a predictable and consistent pattern of imposing fines and penalties. The Board adopts this policy in an effort to treat all licensees fairly.

Authority:

K.S.A. 65-2836(k) K.S.A. 65-2006(a)(12), K.S.A. 65-28a05(f), K.S.A. 65-2912(a)(5), K.S.A. 65-5410(a)(4), K.S.A. 65-5510(a)(4), K.S.A. 65-6911(a)(10), K.S.A. 65-7208(a)(4), K.S.A. 65-7313(a)(8)

Definitions:

Licensee, as used in this policy, shall include a licensee, permit holder, registrant, or certificate holder.

Policy:

This policy does not have the force and effect of law, and does not suggest any intent to create binding precedent in any case. By adopting this policy statement, the Board does not limit itself to any form of disciplinary order, and may depart from this policy without providing notice as the Board deems necessary. The discipline suggested in this policy statement is in addition to, and not in lieu of, any other disciplinary order that the Board may impose in its discretion.

In instances where a licensee is delinquent in excess of ninety (90) days or where the licensee is in arrears for \$2,000.00 or greater in their Board ordered payment of fines and/or costs, the Executive Director is hereby authorized to issue a Summary Order imposing a suspension of licensure whereby the licensee's license is suspended after fifteen (15) days unless the licensee requests a hearing.

The suspension shall continue in effect until such time as the licensee remits sufficient payment to become current on all fines and/or costs due and owing to the Board. The suspension may be lifted upon satisfactory payment of all delinquent amounts.

Procedure:

When a licensee becomes delinquent in excess of ninety (90) days or in arrears for \$2,000.00 or greater in their Board ordered payment of fines and/or costs, a Summary Order will be issued imposing a licensure suspension. The licensee's license will be suspended after fifteen (15) days unless the licensee requests a hearing. The suspension shall continue in effect until such time as the licensee remits sufficient payment to become current on all fines and/or costs due and owing to the Board. The suspension may be lifted upon satisfactory payment of all delinquent amounts.

If the licensee remits sufficient payment within the 15 days after the Summary Order is issued, a Journal Entry shall be entered stating the findings of facts and conclusions regarding licensee's compliance with the original order imposing the fine and/or costs.

If the licensee fails to remit sufficient payment within the 15 days after the Summary Order is issued and they request a hearing, the matter will be set for a hearing.

If the licensee fails to remit sufficient payment within the 15 days after the Summary Order is issued and no hearing is requested, a Journal Entry imposing suspension will be issued.

Approved by the Kansas State Board of Healing Arts this 15th day of April, 2011.

Kathleen Selzler Lippert, Executive Director

Kansas Board of Pharmacy's Prescription Drug Monitoring Program Database Access Now Available

Access to query the Kansas Board of Pharmacy's prescription monitoring database, K-TRACS, is now available to all licensed prescribers and dispensers for the purpose of treating patients. The database provides prescribers and dispensers with information on all Schedule II through IV drugs and drugs of concern that are dispensed to Kansas patients. Once registered to query, a doctor may log into the system and view a patient's complete controlled substance and drug of concern dispensing history from July 1, 2010 forward. Dispensing pharmacies and physicians are required by KSA 65-1683 to report patients' dispensing information to the system. The Board of Pharmacy requires dispensing information to be submitted weekly.

Access request forms to gain access to query the system were e-mailed to every Kansas licensed dispenser and prescriber in late March 2011. A mass mailing was also done in early April and included access forms and a tutorial on how to query. The forms are also available on the Board's website at <http://www.hidinc.com/kansasmpmp/> under RxSentry Data Requester Forms. All prescribers and dispensers can register to be a data requester. Each data requester can have up to 2 sub-account users but are responsible for the sub-account holders' use of the system. Sub-account users must be licensed professionals, i.e. nurses, pharmacy techs, etc.

Another service the K-TRACS program is providing are threshold letters to prescribers and dispensers who have a patient that meets a specific threshold of visiting a number of doctors and pharmacies in a given time period and acquiring the same or similar drug. If you have a patient that meets this threshold, you will receive a letter via postal mail informing you of the patient's name, date of birth, and that they met the threshold. Keep in mind the K-TRACS staff makes no judgments on this information, but provides it to prescribers and dispensers as a courtesy. The goal of the K-TRACS program is to improve pain management and reduce diversion by giving prescribers

and dispensers access to controlled substances claims history for their individual patients. All prescribers and dispensers will have access to accurate and timely prescription history data to help determine appropriate medical treatment and interventions. In addition, the data may help identify patients who could potentially benefit from referral to a pain-management specialist or those who are at risk for addiction and may be in need of substance abuse treatment.

For more information on the K-TRACS database, please visit the Kansas Board of Pharmacy Prescription Monitoring Program website at: <http://www.hidinc.com/kansasmpmp/>, e-mail pmpadmin@pharmacy.ks.gov or call the agency directly at 785-296-6547.

PUBLIC MEETINGS

• July 2011

- 7 Disciplinary Panel #25 Meeting
Held via teleconf. at KSBHA @ 7:00 am
- 8 Prehearing Conference, Frank H Boehm, MC
Held at OAH @ 11:00 am
- 21 Disciplinary Panel Meeting @ 12:30 pm
- 25 Sanction Guidelines Review Committee Meeting @ 1:30 pm
- 26 Prehearing Conference, S. J. Schneider, DO
Held at OAH @ 9:30 am
- 28 Status Conference, K. Lewonowski, MD
Held at OAH @ 1:30 pm

• August 2011

- 3 Hearing, Julie R. Burris, MD
Held at KSBHA @ 9:00 am
- 12 KSBHA Board Meeting
Held at KSBHA @ 8:30 am
- 18 Disciplinary Panel Meeting
Held at KSBHA @ 12:00 pm
- 22 Final Prehearing Conference, Ann K. Neuhaus, MD
Held at OAH @ 9:30 am

• September 2011

- 9 Prehearing Conference, Robert T. Tenny, MD
Held at OAH @ 1:45 pm
- 12-15 Formal Hearing, Ann K. Neuhaus, MD
Held at Dist Ct of Shawnee Cnty @ 9:30 am

Complete medical records: Don't yawn it can save you and your patients

Since medical school, every practitioner has heard how important it is to create and maintain complete medical records. Frequently, this idea is captured in the phrase, "if it's not written down, it didn't happen".

Yawn, yet another article on the dull and dry subject of medical record keeping. Quality medical record keeping can protect the patient from harm and protect practitioners from discipline or malpractice.

Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results constitutes unprofessional conduct. [see KSA 65-2837(b)(25)] The minimal requirements for adequacy of a medical record are set forth in KAR 100-24-1. Pull a random medical record from your practice and check to see if it contains all of the following:

1. Legible
2. Contains only those terms and abbreviations that are or should be comprehensible to similar licensees
3. Contains adequate identification of the patient
4. Indicates the dates any professional service was provided
5. Contains pertinent and significant information concerning the patient's condition
6. Reflects what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each
7. Indicates the initial diagnosis and the patient's initial reason for seeking the licensee's services
8. Indicates the medications prescribed, dispensed, or administered and the quantity and strength of each
9. Reflects the treatment performed or recommended
10. Documents the patient's progress during the course of the treatment provided by the licensee, and includes all patient records received from other health care providers, if those records formed the basis for a treatment decision by the licensee.

Do you know how long you have to keep medical records, or what should be done with them when a practitioner leaves a practice, moves to another location or retires? Regulations set forth that each licensee shall maintain the patient record for a minimum of 10 years from the date the licensee provided the professional service recorded. [KAR 100-24-2] Additionally, any licensee may 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. Further, each licensee who terminates the active practice of the healing arts within this state shall, within 30 days after terminating the active practice, provide to the board the following information: 1) the location where patient records are stored, 2) if the licensee designates an agent to maintain the records, the name, telephone number, and mailing address of the agent, and 3) the date on which the patient records are scheduled to be destroyed. [KAR 100-24-3]

Vital Sounds, KaMMCO's Newsletter for health care professionals and facilities featured a trial update in their January/February 2011 issue that described a malpractice suit that resulted in a defense verdict (verdict in favor of the licensee) but cost over \$100,000 to defend. The article provided tips for health care professionals, including: 1) Document office visit discussions and information provided, 2) Keep complete records on medications and dosages, 3) Keep a complete record of all medical conditions treated, and 4) Always note in the patient chart any noncompliance by the patient.

More is better. The tips identified in the KaMMCO article demonstrate the value of following the statutes and regulations relative to keeping complete accurate medical records. In fact, the tips suggest that more than the minimum is better. It's not just a regulation, it is good practice.



BOARD INVESTIGATOR: CLIFF HACKER

Volume 3 / Issue 1

Board Investigator: Cliff Hacker

For the past 10 years I have been employed as an Investigator for the KSBHA. This past May I enjoyed participating in the Medical Society of Johnson and Wyandotte Counties Physician Preceptor Program, along with our Executive Director, Kathleen Selzler Lippert. The program allows participants to spend one-on-one placement time with physicians. There appeared to be twelve to eighteen participants in this year's program, most of whom were associated with the Centers for Medicare and Medicaid Services in Baltimore, Maryland or Washington D.C. Each person's placement in the program was different and consisted of being in a different area for about three hours on each of two mornings and two afternoons.

The morning of the first day I wore scrubs into the surgery rooms of Olathe Medical Center to watch two separate surgeries. The afternoon was spent with a Neurology physician at his office as he saw his patients. The second day of the program I was at University of Kansas Hospital. I spent the morning with an orthopedic physician as he saw patients and I spent the afternoon in the Pulmonary Department with three different physicians in three different areas. Each physician went out of their way to explain the activities and procedures I was observing.

Dress for the program was business casual with a lot of emphases placed on wearing comfortable shoes. I came to understand the need for this as I followed physicians through one busy area after another while they performed their daily activities of seeing patients and completing required paperwork and dictation. There was also some time to discuss the issues between our jobs, the amount of paper work, and non-compliant patients; however, the discussion I felt most directly associated with my responsibilities regarded the amount of time it takes from physician notification of an investigation until the investigation is completed. Physicians stated that the stress they and their associates feel is distracting and felt both at work and at home.

Quality training allows Board Investigators to continue to do their jobs better for both the public and the physicians. The training I received during this program enabled me to see physicians as they work and not just review documentation after their work has been performed. I believe this has given me a better overall perspective and I hope it lets me communicate more knowledgeably with physicians when necessary. I also hope it helps the physicians better understand our job and our goal of protecting public safety.

The physician preceptor program has been in existence for several years. I understand the Board will be invited to participate next year and I would strongly encourage Board staff to attend if they can as I believe it adds greater perspective to the job we do.

**The new location for the Kansas State Board of Healing Arts:
800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612**

