



KSBHA: INVESTIGATIONS

Courtney Cyzman – General Counsel

DISCLAIMER

The Kansas State Board of Healing Arts does not render legal advice or services to private individuals or entities. All statements are intended as general guidance and do not necessarily represent the position of the Board. No warranties or representations are made regarding the completeness or adequacy of the information provided. You should not construe this general guidance as legal advice or the establishment of an attorney-client relationship. It is necessary that you obtain independent legal counsel for an application of the law to your particular situation.



Disciplinary & Litigation overview



Investigations



Potential outcomes



Prevention and resources

ROADMAP



THE BOARD'S MISSION

- To protect the public by authorizing only those persons who meet and maintain certain qualifications to be licensed in the healthcare professions regulated by the Board.
- To protect the public from incompetence or unprofessional conduct by persons who have been licensed to practice in Kansas and from unauthorized practice by persons and entities who have not been licensed to practice in Kansas.



Board meeting
second Friday of
every other month



Next Board
meeting is August
11, 2023



15 Board members,
appointed by the
Governor



Councils



33,000+ licensees

KSBHA LOGISTICS

DISCIPLINARY DEPARTMENT



Complaints



Investigations



LITIGATION



MONITORING

LITIGATION

GENERAL OVERVIEW OF DISCIPLINARY PROCESS



Clients

Investigations

Su

018

CONFIDENTIALITY OF COMPLAINTS & INVESTIGATIONS

- “Any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the board shall be confidential and shall not be disclosed by the board or its employees in a manner which identifies or enables identification of the person who is the subject or source of the information...”
K.S.A. 65-2898a.

8 Investigators, 1 Investigator
Supervisor

Opened → Investigator assigned

Investigative plan, begins process
of investigating allegations in the
complaint

INVESTIGATION -
OPENED

INVESTIGATION PROCESS, GENERALLY

- Request records
- Conduct interviews of relevant parties
- Interview licensee under investigation
- Gather other relevant evidence
- Issue subpoenas
- Visit the scene



HOW LONG DO INVESTIGATIONS TAKE?

- Varies
- Average 6 months – 1 year
- Variety of factors that impact length:
 - Waiting for information from 3rd parties
 - Waiting for information from Licensee
 - Cooperation
 - Review Committee/Council for review



INVESTIGATION LOGISTICS



Licensee generally receives a letter when an investigation is opened.



Licensee can request status updates directly from the investigator assigned.



Licensee receives a letter when the investigation has been closed.

DUTY TO PROVIDE INFORMATION

- “...Every licensee, registrant, permit holder or certificate holder in this state, including members of the board, shall furnish the board such evidence as such person may have relative to any alleged violation which is being investigated...” K.S.A. 65-2864
- A licensee’s license may be disciplined for failing to furnish the board, or its investigator any information legally requested by the Board. K.S.A. 65-2836(r).
- Considered unprofessional conduct, and grounds for disciplinary action, to obstruct a Board investigation by falsifying or concealing a material act; knowingly making or causing to be made any false or misleading statement or writing; or other acts or conduct likely to deceive or defraud the Board. K.S.A. 65-2837(34).

Professional competency

Unprofessional conduct

Impairment

Boundary violations

Collateral violations

Practicing outside scope of license

Unlicensed practice

COMMON INVESTIGATIONS

PROFESSIONAL INCOMPETENCY



- One or more instances of **gross negligence**.
 - *Wanton conduct; reckless disregard.*
- Repeated instances of **ordinary negligence**.
 - *What a reasonable [healthcare professional] would have done under the same or similar circumstance.*
- A pattern or practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts.

UNPROFESSIONAL CONDUCT, GENERALLY

- Dishonesty
- Fraudulent advertising
- Fraudulent billing
- Failing to adequately supervise
- Willful betrayal of confidential information
- Delegated professional responsibilities to a person licensee knows or has reason to know such person is not qualified by training, experience, or licensure to perform.
- *See Kan. St. Bd. Healing Arts v. Foote*, 200 Kan. 447, 453-54 (1968).

IMPAIRMENT

- Inability to practice [healthcare profession] with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs, or controlled substances.

Sexual harassment

Sexual abuse, sexual misconduct

BOUNDARIES

COLLATERAL

- Felony
- Disciplinary action by another state
- Sanctions taken against a licensee by a peer review committee, healthcare facility, etc.
- Adverse judgment, award, or settlement resulting from a medical liability claim related to acts or conduct that would constitute grounds for disciplinary action
- Failing to furnish the Board legally requested information

Closed for lack of evidence of a violation of the applicable practice act

Sent to a Review Committee/Council – Standard of Care

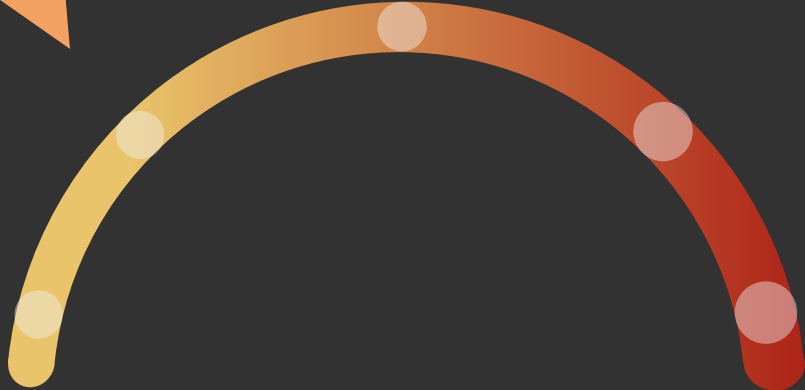
Sent directly to Disciplinary Panel for review (conduct)

INVESTIGATION OUTCOMES

COMPLAINT

INVESTIGATION

REVIEWED BY
REVIEW
COMMITTEE
OR COUNCIL
(IF SOC)



REVIEW COMMITTEES

- Members of the same profession
- Appointed by the Board
- Generally, meet quarterly
- Review investigation
- Determine whether standard of care was met
- 5 MD Review Committees; DO Review Committee; DC Review Committee; DPM Review Committee

COUNCILS

- Created by law
- Members of the profession appointed by the Governor; additional members appointed by the Board
- Generally, meet quarterly
- Review investigation
- Determine whether standard of care was met
- PA, LRT, RT, OT, PT, AT, CNMI, LAc, ND

Standard of care
was met →
closed

Standard of care
was not met →
Disciplinary Panel

REVIEW
COMMITTEE/COUNCIL
OUTCOMES

DISCIPLINARY PANEL

- Subcommittee of the Board
- Generally, 1 MD, 1 DO, 1 DC, and 1 public member
- Meets monthly
- Reviews the investigation, Review Committee/Council determination if applicable, the law, and determines action to pursue in a case. (Close → Disciplinary Action)



COMPLAINT

INVESTIGATION

REVIEWED BY
REVIEW
COMMITTEE
OR COUNCIL
(IF SOC)

REVIEWED BY
DISCIPLINARY
PANEL

BOARD

BOARD ACTIONS

Letter of
Concern

Professional
Development
Plan

Public
Censure

Fine

Probation

Limitation

Suspension

Revocation

Statutorily authorized under K.S.A. 65-2838a

Letter of Concern

Professional Development Plan

Not reported to NPDB, FSMB, FSBPT, CINBAD, etc.

Not posted on website

**NON-DISCIPLINARY, CONFIDENTIAL
BOARD RESOLUTION**

Part of public agency record

Reported to NPDB, FSMB, FSBPT, CINBAD, etc.

Posted on the Board's website under "Board Actions"

Press Release (Emergency suspension or limitation, revocation, voluntary surrender in lieu of formal proceeding)

PUBLIC DISCIPLINARY ACTION

Can be used if determined there is reasonable cause to believe:

Grounds exist for disciplinary action; and

The immediate continuation in practice by the licensee would constitute an imminent danger to the public health and safety



Emergency hearing held to determine if the emergency suspension/limitation should be vacated, lifted, lifted with conditions, or remain in place pending litigation on the underlying Petition.

EMERGENCY SUSPENSIONS & LIMITATIONS

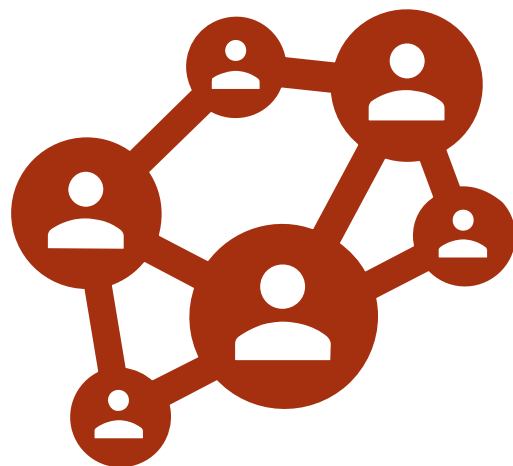
PREVENTION



- Renew license on time
- Practice within scope of profession
- Be honest
- Stay current with CEUs
- Seek help and/or treatment early
- Consider seeking independent legal counsel
- Utilize state association as a resource
- Don't break the law
- Cooperate in Board investigations

KEY TAKEAWAYS

- Investigations serve as an objective fact gathering process.
- Investigations are confidential.
- If a licensee is under investigation, best point of contact for that person is the investigator assigned.
- Many resolutions of investigations and cases (close → confidential non- disciplinary → public disciplinary action)
- Integral process of the Board that helps us protect Kansans.



RESOURCES

PROTECTING THE PUBLIC

FSMB supports America's state medical boards in licensing, disciplining and regulating physicians and other healthcare professionals. Our end goal: keep patients safe.

[Learn More](#)

2022 FSMB Board Attorneys Workshop



Register Today

Join us November 3-4 in San Diego, CA for this two-day event that highlights the current legal issues and trends facing state medical boards



COVID-19



COVID-19 Resources



New: U.S. Licensing and Disciplinary Data



MD/DO/PA/DC

- **Kansas Medical Society – Professionals Health Program**
 - (785) 231-1306
 - Angela Grittman
 - agrittman@kmsonline.org
- **Kansas Association of Osteopathic Medicine**
 - (785) 234-5563
 - Kemper Tell, Executive Director
 - kemper@kansasdo.org

PT/PTA/OT/OTA/RT/AT

- **Heart of America Professional Network**
 - (913) 236-7575
 - Jennifer Payea, Executive Director
 - ed@hapn.org

PROFESSIONAL HEALTH PROGRAMS

Physician Support Line

1 (888) 409-0141

Psychiatrists helping our US physician colleagues
and medical students navigate the many intersections
of our personal and professional lives

Free & Confidential | No appointment necessary
Open 7 days a week | 8:00AM - 1:00AM ET

[Call Now](#)

Welcome.

The Emotional PPE Project connects healthcare workers in need with licensed mental health professionals who can help.

No cost. No insurance. Just a trained professional to talk to.

Healthcare Workers Affected By The
COVID-19 Crisis

Mental Health Practitioners Looking To
Help

All Services Provided Through The Emotional PPE Project Are Free Of Charge.

The Emotional PPE Project is a directory that provides contact information of volunteer mental health practitioners to healthcare workers whose mental health has been impacted by the COVID-19 crisis.

The Emotional PPE Project is an independent tax-exempt nonprofit (501(c)(3)) organization fully staffed by volunteers.

You may contact us at: contact@emotionalppe.org // [Click here to review our Terms of Use](#) // [Click here to read our FAQs](#)

Follow Us On Social Media!

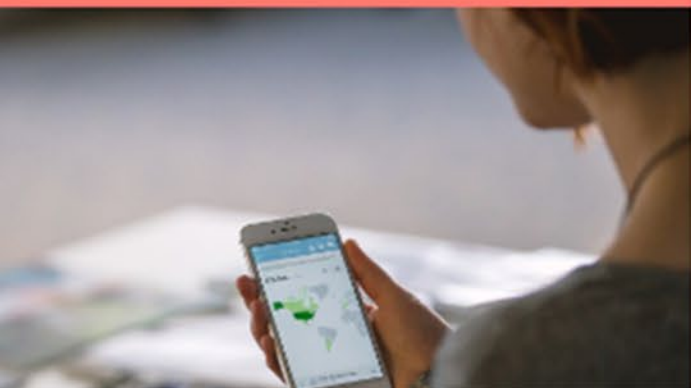


988 Suicide & Crisis Lifeline

We can all help prevent suicide. The Lifeline provides 24/7, free and confidential support for people in distress, prevention and crisis resources for you or your loved ones, and best practices for professionals in the United States.



ANNOUNCEMENT



The 988 Lifeline

988 is now active across the United States. This new, shorter phone number will make it easier for people to remember and access mental health crisis services. (Please note, the previous 1-800-273-TALK (8255) number will continue to function indefinitely.) Click below to learn more about 988.

[LEARN MORE](#)



Practice Handbooks

Policies

Education & Outreach tab on www.ksbha.org

KSBHA_complaints@ks.gov

KSBHA_Licensing@ks.gov

KSBHA_LegalQuestions@ks.gov

KSBHA RESOURCES

CONTACT

Nancy Dodik, JD, RN
Disciplinary Counsel

- 800 SW Jackson, Lower Level – Suite A
- Topeka, KS 66612
- Nancy.dodik@ks.gov

Courtney Cyzman, JD
General Counsel

- 800 SW Jackson, Lower Level – Suite A
- Topeka, KS 66612
- Courtney.Cyzman@ks.gov