

<b>Kansas State Board of Healing Arts</b>	
<b>Policy Title:</b> Conflict of interest – legal counsel appearing before the Board.	<b>Policy Number:</b> 19-01
<b>Author:</b> Tucker Poling	<b>Effective Date:</b> June 14, 2019
<b>Date Authored:</b> June 14, 2019	<b>Last Modified:</b>
<b>Responsible for Updates:</b> General Counsel	

**Purpose:**

At times, attorneys who have previously represented the Board appear before the Board as counsel for parties in administrative matters that are substantially related to matters in which the attorney previously represented the Board. The purpose of this policy is to quickly and efficiently address and eliminate conflicts of interest of legal counsel, pursuant to Kansas Rules of Professional Conduct (“KRPC”) 1.09 and 1.11: (1) appearing before the Board or before another presiding officer in administrative proceedings; or (2) representing parties adverse to the Board in courts of competent jurisdiction in actions in which the Board is a party.

**Authority:**

KRPC 1.09; KRPC 1.11; *Lowe v. Experian*, 328 F. Supp. 2d 1122, 1125 (D. Kan. 2004); *Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1383 (10th Cir. 1994).

**Definitions:**

“Conflict of interest” means a legal representation in violation of KRPC 1.09 or KRPC 1.11.

**Summary:**

The Board authorizes its General Counsel to determine whether a conflict of interest exists and take any lawful action to disqualify legal counsel who have a conflict of interest.

**Policy:**

The Board of Healing Arts is the state agency charged with regulating the practice of the healing arts within the State of Kansas. To carry out these duties, the Board conducts administrative proceeding pursuant to the Kansas Administrative Procedures Act (“KAPA”). In such proceedings conducted before the Board pursuant to KAPA, the presiding officer (whether the full Board or a member of the Board designated pursuant to K.S.A. 77-514(g)), operates in the judicial capacity for the purposes of such proceedings and therefore “has the inherent power to disqualify counsel where necessary to preserve the integrity of the adversary process.” See *Lowe v. Experian*, 328 F. Supp. 2d 1122, 1125 (D. Kan. 2004); *Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1383 (10th Cir. 1994). The Board believes preventing legal counsel from representing parties in proceedings before the Board in which a conflict of interest exists pursuant to KRPC 1.09 and 1.11 is necessary to preserve the integrity of the administrative

hearing process. Therefore, pursuant to K.S.A. 77-551(c), in administrative proceedings, the Board authorizes and designates the Board's General Counsel to determine whether a conflict of interest exists, including but not limited to conducting any necessary conference proceedings, and to issue an order disqualifying counsel if a conflict of interest is determined to exist.

In administrative proceeding in which an administrative law judge employed by the office of administrative hearings is designated as the presiding officer, the General Counsel may, upon receiving notice of a potential conflict of interest, authorize any attorney representing the Board in such proceeding to file and prosecute any appropriate motion to seek disqualification of counsel.

The Board also appears as a party in courts of competent jurisdiction. In such actions, the General Counsel is authorized to determine whether a conflict of interest exists as to any counsel representing another party in the action and file and prosecute any appropriate motion to seek disqualification of counsel.

**Approved** by unanimous vote of the Kansas State Board of Healing Arts this 14<sup>th</sup> day of June, 2019.

*/s/ Robin Durrett*  
Robin Durrett, D.O., Board President