

Approved 2-24-87
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m./~~p.m.~~ on February 18, 1987 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Norman Furse, Revisor of Statutes Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Dr. Lois Scibetta, Executive Administrator, Kansas State Board of Nursing

Others attending: see attached list

Dr. Lois Scibetta appeared before the committee to request extensive revision of the disciplinary section of KSA 65-1120. She stated that many of the changes are to comply with the Administrative Procedure Act and that the law governing disciplinary matters needs to be more specific. Three new statutes were requested relating to disciplinary matters in general and disciplinary matters related to the advanced practice of nursing. (attachment 1)

Senator Salisbury moved that the committee accept these revisions and new statutes. Senator Kerr seconded the motion and the motion carried.

Senator Hayden's pages from Hugoton, Mark Trentham, Justin Gilbert and Tron Stegman were introduced to the committee.

Norman Furse went through SB-264, Division of Assets Bill, with the committee. Mr. Furse stated that although the two original bills, SB-12 and SB-13 had been combined, it had been done in such a way that they could be separated should it become necessary sometime in the future. The new Section 1 provides definitions of institution, home and community based services, income, qualified applicant, and qualified recipient.

Mr. Furse stated that several areas remain confusing. One particular area that needs to be looked at is the language, line 0086. This is a mechanism for determining eligibility and there are problems of correlation between lines 0084-0089 and 0139-0142 as the latter area involves basic policy decision. Questions remain regarding liens and liens against medical bills already paid as it is difficult to tell what the policy was intended to be. The same type of question is in new Section 3.

Continuing his explanations Mr. Furse stated that exempt and non exempt income needs clarification. New Section 3(a) (1) relating to applicant or recipient's spouse sharing a room needs explanation and clarification. New Sections 2 and 3 are the key areas setting up the formula for protecting resources.

The amendatory sections deal with nonsupport of a spouse and (e) (i) page 9 and (ii) page 10 amend said section. Several other amendments are made in pages 17 and 18.

Senator Hayden requested bipartisan support from the committee for the AIDS Concurrent Resolution that will be received by the committee. He stated that this resolution was underway prior to the time the Secretary of Health and Environment announced his plan. This Concurrent Resolution would emphasize nationwide conferences in Kansas for the purpose of highlevel studies and basically embodies the House Resolution. It would be a statement from this committee and from the Senate that we do concur. Senator Hayden also

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 18, 1987

stated that his resolution goes further in asking the Secretary of Health and Environment to have high level conferences in Kansas to study this problem.

The next meeting of the Senate Public Health and Welfare Committee will be held February 19, 1987, at 10:00 a.m.

Meeting adjourned at 10:57 a.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-18-87

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Dr. Louis R. Scibetta L50B-351

Ks St Bd of Juv

Harold Pitts

KCOA

Dennis Frost

SRS

KETH R LANDIS

CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION FOR KANSAS

Susan L. Adkins

Marilyn Bradt

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KDOA

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ADRDA - Overland Park

Robert L. Guthrie

ADRDA Topeka KS.

Pat Donahue

Kansas Legal Services

John D. Miller

AARP

Frank Lawler

AARP - Vice Chairman

Gary Robbins

Ks Optometric Assn



KANSAS STATE BOARD OF NURSING

BOX 1098, 503 KANSAS AVENUE, SUITE 330
TOPEKA, KANSAS 66601

Telephone 913/296-4929

TO: The Honorable Roy Ehrlich, Chairman
and Members of the Senate Public Health & Welfare
Committee

FROM: Lois Rich Scibetta, Ph.D., R.N.

DATE: February 18, 1987

RE: Bill Request - Amendments - Disciplinary Matters

Thank you Mr. Chairman for the opportunity to discuss these amendments today. Our hope is to add these sections to our former Bill request.

What you have before you include an extensive revision of our disciplinary section KSA 65-1120, based upon the recommendations of our legal counsel, and as approved by the Board by telephone conference call on February 13, 1987.

Many of the changes recommended are to comply with the Administrative Procedure Act, and to make the law governing disciplinary matters more specific and add clarity.

In addition, our legal counsel recommended three new statutes related to disciplinary matters in general and disciplinary matters related to the advanced practice of nursing. The Board of Nursing requests that the Senate Public Health and Welfare Committee introduce the attached amendments.

I will be happy to respond to questions from the Committee. Thank you for your consideration.

LRS:vmd

SPH & W
2-18-87
attachment 1

BOARD OF NURSING -- 1987 LEGISLATIVE PROPOSAL

DRAFTING NOTES AND REFERENCES

Amendment and revision of the grounds for discipline accomplishes several goals: (1) specific grounds for discipline are clarified, for the benefit of the board and licensees; (2) new grounds are added which are especially appropriate for advanced level nursing by ARNP and RNA licensees; (3) more specific grounds should assist health care facilities identified "reportable incidents" under the malpractice/risk management laws.

The new statutes dealing with investigations, stipulations, subpoenas and confidentiality of records will improve the board's ability to fully investigate complaints and marshal evidence for a hearing.

65-1120. Amendment.

(a) use of generic term "licensee" permits uniform application of grounds for discipline to four categories of professionals who are regulated by the board.

(b) addition of public and private censure provides a broader range of disciplinary action.

- (1) rewrite of 65-1120 (a) (1)
- (2) rewrite of 65-1120 (a) (2)
- (3) rewrite of 65-1120 (a) (3) and (6)
- (4) rewrite of 65-1120 (a) (4)
- (5) rewrite of 65-1120 (a) (5)
- (6) rewrite of 65-1120 (a) (7)
- (7) new, from Board of Healing Arts (BHA) 65-2836
- (8) new, from BHA

- (9) new, from BHA
- (10) rewrite of 65-1120(a) (8)
- (11) new, from BHA
- (12) new, from BHA
- (13) new, from BHA
- (14) new, from BHA
- (15) new, from BHA
- (16) new, from BHA
- (17) new, but consistent with existing KSNB rules and regulations
- (18) new, from BHA

New Statute A

Professional incompetency, unprofessional conduct, list of acts.
Based upon K.A.R. 60-3-110, and BHA 65-2837.

New Statute B

Investigations, witnesses, costs.
Amendment of former 65-1120(b), (c) and (d).

New Statute C

Stipulations, temporary or emergency action.
New, based upon BHA 65-2838.

New Statute D

Investigations, access to evidence, subpoenas.
New, based upon BHA 65-2839a.

New Statute E

Confidentiality of complaints and reports; disclosure.
Based upon K.S.A. 65-2898a.

BOARD OF NURSING -- 1987 LEGISLATIVE PROPOSAL

DISCIPLINARY PROCEEDINGS

65-1120. Amendment.

(a) As used in this section "licensee" or "licensed" means a person licensed by the board as a professional nurse or practical nurse, a person who holds a certificate of qualification as an advanced registered nurse practitioner; a person who is authorized as a registered nurse anesthetist, or an applicant for such license. "License" shall include comparable terms which relate to regulation similar to licensure, such as registration, certification or authorization. "Advanced nursing" shall include the practice of advanced registered nurse practitioners and registered nurse anesthetist.

(b) The board may refuse to issue or renew a license or a licensee's license may be revoked, limited or suspended, or the licensee may be publicly or privately censured, upon a finding of the existence of any of the following grounds:

- (1) The licensee has committed fraud or misrepresentation in applying for or securing an original or renewal license.
- (2) The licensee has been convicted of a felony or a Class A misdemeanor, and the board determines the licensee has not been sufficiently rehabilitated to warrant the public trust.
- (3) The licensee has committed an act of unprofessional conduct or professional incompetency.

- (4) The licensee is habitually intemperate or has distributed intoxicating liquors or drugs for any other than lawful purposes.
- (5) The licensee has been found to be mentally ill, mentally incompetent, mentally disabled, not guilty by reason of insanity or incompetent to stand trial, by a court of competent jurisdiction.
- (6) The licensee has violated any rule and regulation promulgated by the board, any provision of the nurse practice act or nurse anesthetist act, or any order previously entered by the board.
- (7) The licensee has cheated on or attempted to subvert the validity of the examination for a license.
- (8) The licensee has violated a federal law or regulation relating to controlled substances.
- (9) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.
- (10) The licensee has had a license to practice nursing or any level of advanced nursing denied, revoked, limited or suspended, or has been censured or has had other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of denial, suspension, limitation, revocation or other disciplinary action of the

licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact.

- (11) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (12) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (13) The licensee has surrendered a license to practice nursing or any level of advanced nursing in another state or jurisdiction or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (14) The licensee has failed to report to the board surrender of the licensee's license to practice nursing or any level of advanced nursing in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in

any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

- (15) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (16) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this action.
- (17) The licensee has failed to successfully complete continuing education as required by the board.
- (18) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-4923, and amendments thereto.

New Statute A;
Definitions and List of Unprofessional Conduct

As used in 65-1120 and amendments thereto and in this section:

- (a) "Professional incompetency" means:
- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.
 - (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.
 - (3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing or advanced nursing.
- (b) "Unprofessional conduct" means:
- (1) Performing acts beyond the authorized scope of the level of nursing for which the licensee is licensed;
 - (2) Assuming duties and responsibilities within the practice of nursing without adequate preparation or when competency has not been maintained;
 - (3) Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient;
 - (4) Inaccurately recording, falsifying, or altering a patient's or agency's record;
 - (5) Committing any act of verbal, physical, psychological, or sexual abuse, or exploitation of a patient.

- (6) Assigning or delegating unqualified persons to perform functions of licensees contrary to the Nurse Practice Act or to the detriment of patient safety;
- (7) Violating the confidentiality of information or knowledge concerning the patient;
- (8) Willfully or negligently failing to take appropriate action in safeguarding a patient or the public from incompetent practice performed by a licensee. "Appropriate action" shall include reporting to the Board;
- (9) Diverting drugs, supplies, or property of patients or agency;
- (10) The use of any false, deceptive or misleading statement or the failure to state a material fact in an advertisement or solicitation;
- (11) Aiding or abetting the practice of nursing by an unlicensed, incompetent or impaired person;
- (12) Repeated failure to practice nursing with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;
- (13) The licensee has failed to maintain a policy of professional liability insurance or has failed to pay the annual premium surcharge, if the licensee is required to do so by K.S.A. 40-3402, 40-3403a or 40-3404 and amendments thereto;
- (14) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

New Statute B

(a) Upon its own inquiry or upon the receipt of a complaint or report charging a person with having committed any act enumerated in K.S.A. 65-1120 and amendments thereto, the board shall investigate such acts. The board may authorize and designate any member or members of the board, or any employee, agent or representative of the board to investigate on behalf of the board. In the event such investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings thereon, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against such person for any prosecution for any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(c) If final agency action of the board in a proceeding pursuant to this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according

to the statutes relating to procedure in the district court. All costs accrued at the instance of the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid out of any available moneys in the board of nursing fee fund.

New Statute C

(a) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto against the licensee entering into such stipulation.

(b) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-1120 and amendments thereto for disciplinary action authorized by K.S.A. 65-1120 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

New Statute D

(a) In connection with any investigation by the board of nursing, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record, or other evidence maintained by and in possession of any clinic, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to nursing competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice nursing.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to nursing competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice nursing. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the

proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the boards duly authorized agent to produce evidence relating to the matter under investigation; or

(B) Revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(C) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the

investigation procedure outlined in this section shall be Confidential and shall not be disclosed.

(D) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

New Statute E

(a) 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 such information except:

(1) In a disciplinary proceeding conducted by the board pursuant to law or in an appeal of the order of the board entered in such proceeding, or to any party to such proceeding or appeal or such party's attorney.

(2) To the proper licensing or disciplinary authority of another jurisdiction, if any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto has at any time been taken against the licensee or the board has at any time denied a license to the person.

(3) To a hospital committee which is authorized to grant, limit or deny hospital privileges, if any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto has at any time been taken against the licensee or if the board has at any time denied a license to the person.

(4) To the person who is the subject of the information, but the board may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information.

BOARD OF NURSING -- 1987 LEGISLATIVE PROPOSAL

DISCIPLINARY PROCEEDINGS

65-1120. Amendment.

(a) As used in this section "licensee" or "licensed" means a person licensed by the board as a professional nurse or practical nurse, a person who holds a certificate of qualification as an advanced registered nurse practitioner; a person who is authorized as a registered nurse anesthetist, or an applicant for such license. "License" shall include comparable terms which relate to regulation similar to licensure, such as registration, certification or authorization. "Advanced nursing" shall include the practice of advanced registered nurse practitioners and registered nurse anesthetist.

(b) The board may refuse to issue or renew a license or a licensee's license may be revoked, limited or suspended, or the licensee may be publicly or privately censured, upon a finding of the existence of any of the following grounds:

- (1) The licensee has committed fraud or misrepresentation in applying for or securing an original or renewal license.
- (2) The licensee has been convicted of a felony or a Class A misdemeanor, and the board determines the licensee has not been sufficiently rehabilitated to warrant the public trust.
- (3) The licensee has committed an act of unprofessional conduct or professional incompetency.

- (4) The licensee is habitually intemperate or has distributed intoxicating liquors or drugs for any other than lawful purposes.
- (5) The licensee has been found to be mentally ill, mentally incompetent, mentally disabled, not guilty by reason of insanity or incompetent to stand trial, by a court of competent jurisdiction.
- (6) The licensee has violated any rule and regulation promulgated by the board, any provision of the nurse practice act or nurse anesthetist act, or any order previously entered by the board.
- (7) The licensee has cheated on or attempted to subvert the validity of the examination for a license.
- (8) The licensee has violated a federal law or regulation relating to controlled substances.
- (9) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.
- (10) The licensee has had a license to practice nursing or any level of advanced nursing denied, revoked, limited or suspended, or has been censured or has had other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of denial, suspension, limitation, revocation or other disciplinary action of the

licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact.

- (11) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (12) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (13) The licensee has surrendered a license to practice nursing or any level of advanced nursing in another state or jurisdiction or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (14) The licensee has failed to report to the board surrender of the licensee's license to practice nursing or any level of advanced nursing in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in

any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

- (15) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (16) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this action.
- (17) The licensee has failed to successfully complete continuing education as required by the board.
- (18) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-4923, and amendments thereto.

New Statute A;
Definitions and List of Unprofessional Conduct

As used in 65-1120 and amendments thereto and in this section:

- (a) "Professional incompetency" means:
- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.
 - (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.
 - (3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing or advanced nursing.
- (b) "Unprofessional conduct" means:
- (1) Performing acts beyond the authorized scope of the level of nursing for which the licensee is licensed;
 - (2) Assuming duties and responsibilities within the practice of nursing without adequate preparation or when competency has not been maintained;
 - (3) Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient;
 - (4) Inaccurately recording, falsifying, or altering a patient's or agency's record;
 - (5) Committing any act of verbal, physical, psychological, or sexual abuse, or exploitation of a patient.

- (6) Assigning or delegating unqualified persons to perform functions of licensees contrary to the Nurse Practice Act or to the detriment of patient safety;
- (7) Violating the confidentiality of information or knowledge concerning the patient;
- (8) Willfully or negligently failing to take appropriate action in safeguarding a patient or the public from incompetent practice performed by a licensee. "Appropriate action" shall include reporting to the Board;
- (9) Diverting drugs, supplies, or property of patients or agency;
- (10) The use of any false, deceptive or misleading statement or the failure to state a material fact in an advertisement or solicitation;
- (11) Aiding or abetting the practice of nursing by an unlicensed, incompetent or impaired person;
- (12) Repeated failure to practice nursing with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;
- (13) The licensee has failed to maintain a policy of professional liability insurance or has failed to pay the annual premium surcharge, if the licensee is required to do so by K.S.A. 40-3402, 40-3403a or 40-3404 and amendments thereto;
- (14) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

New Statute B

(a) Upon its own inquiry or upon the receipt of a complaint or report charging a person with having committed any act enumerated in K.S.A. 65-1120 and amendments thereto, the board shall investigate such acts. The board may authorize and designate any member or members of the board, or any employee, agent or representative of the board to investigate on behalf of the board. In the event such investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings thereon, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against such person for any prosecution for any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(c) If final agency action of the board in a proceeding pursuant to this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according

to the statutes relating to procedure in the district court. All costs accrued at the instance of the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid out of any available moneys in the board of nursing fee fund.

New Statute C

(a) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto against the licensee entering into such stipulation.

(b) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-1120 and amendments thereto for disciplinary action authorized by K.S.A. 65-1120 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

New Statute D

(a) In connection with any investigation by the board of nursing, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record, or other evidence maintained by and in possession of any clinic, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to nursing competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice nursing.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to nursing competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice nursing. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the

proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the board's duly authorized agent to produce evidence relating to the matter under investigation; or

(B) Revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(C) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the

investigation procedure outlined in this section shall be confidential and shall not be disclosed.

(D) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

New Statute E

(a) 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 such information except:

(1) In a disciplinary proceeding conducted by the board pursuant to law or in an appeal of the order of the board entered in such proceeding, or to any party to such proceeding or appeal or such party's attorney.

(2) To the proper licensing or disciplinary authority of another jurisdiction, if any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto has at any time been taken against the licensee or the board has at any time denied a license to the person.

(3) To a hospital committee which is authorized to grant, limit or deny hospital privileges, if any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto has at any time been taken against the licensee or if the board has at any time denied a license to the person.

(4) To the person who is the subject of the information, but the board may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information.

BOARD OF NURSING -- 1987 LEGISLATIVE PROPOSAL

DRAFTING NOTES AND REFERENCES

Amendment and revision of the grounds for discipline accomplishes several goals: (1) specific grounds for discipline are clarified, for the benefit of the board and licensees; (2) new grounds are added which are especially appropriate for advanced level nursing by ARNP and RNA licensees; (3) more specific grounds should assist health care facilities identified "reportable incidents" under the malpractice/risk management laws.

The new statutes dealing with investigations, stipulations, subpoenas and confidentiality of records will improve the board's ability to fully investigate complaints and marshal evidence for a hearing.

65-1120. Amendment.

(a) use of generic term "licensee" permits uniform application of grounds for discipline to four categories of professionals who are regulated by the board.

(b) addition of public and private censure provides a broader range of disciplinary action.

- (1) rewrite of 65-1120(a) (1)
- (2) rewrite of 65-1120(a) (2)
- (3) rewrite of 65-1120(a) (3) and (6)
- (4) rewrite of 65-1120(a) (4)
- (5) rewrite of 65-1120(a) (5)
- (6) rewrite of 65-1120(a) (7)
- (7) new, from Board of Healing Arts (BHA) 65-2836
- (8) new, from BHA

- (9) new, from BHA
- (10) rewrite of 65-1120(a) (8)
- (11) new, from BHA
- (12) new, from BHA
- (13) new, from BHA
- (14) new, from BHA
- (15) new, from BHA
- (16) new, from BHA
- (17) new, but consistent with existing KSNB rules and regulations
- (18) new, from BHA

New Statute A

Professional incompetency, unprofessional conduct, list of acts.

Based upon K.A.R. 60-3-110, and BHA 65-2837.

New Statute B

Investigations, witnesses, costs.

Amendment of former 65-1120(b), (c) and (d).

New Statute C

Stipulations, temporary or emergency action.

New, based upon BHA 65-2838.

New Statute D

Investigations, access to evidence, subpoenas.

New, based upon BHA 65-2839a.

New Statute E

Confidentiality of complaints and reports; disclosure.

Based upon K.S.A. 65-2898a.