

Approved: January 25, 2005

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:33 P.M. on January 20, 2005 in Room 526-S of the Capitol.

Committee members absent:

Representative Mike Kiegerl- excused
Representative Patricia Kilpatrick- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Mary Galligan, Kansas Legislative Research Department
Rena Jefferies, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Mark Stafford, General Counsel, Kansas Board of Healing Arts

Others attending:

See attached list.

The Chair announced that the committee will meet for an informal lunch on Monday.

By motion, second and unanimous vote, the minutes for January 18 and January 19 will be considered approved as printed if no corrections are given to the secretary by noon on January 21.

The Chair welcomed Mark Stafford, General Counsel for the Kansas Board of Healing Arts, who gave an overview of the charge and activities of the Board. (Attachment 1) He said he would give some brief comments about what the Board is, what it does, and how it does it, noting that the Board is not a cabinet-level agency; its fifteen members (including 5 medical doctors, 3 doctors of osteopathy, and 3 chiropractors) are appointed by the Governor. He said currently the Board grants licenses to 18,000+ individuals who meet pre-established qualifications, and, when the Radiologic Technologists are added in 2006, the number will total nearly 22,000.

Besides the licensing division, Mr. Stafford said the disciplinary division investigates complaints against professionals over which the board has oversight, noting that all investigations follow a legal due-process model, which includes gathering evidence and conducting a hearing; he noted that the Board has an array of responses to an investigation: dismissing the complaint, revoking, suspending or limiting a license.

Mr. Stafford answered a number of members' questions:

- Kansas' regulations and statutes in the arena of healing arts are 99% parallel to other states; in fact, the national Model Act is based on Kansas law.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:33 P.M. on January 20, 2005 in Room 526-S of the Capitol.

- The Board regulates the licensee, but does not regulate the facilities. Thus an unclean workplace is not under the purview of the Board.
- Competence of a licensee is not based on a set of objective regulations, but upon a more subjective "standard of care" as defined by the licensee's peers.
- If a complaint were lodged regarding a lack of cleanliness in a hospital, the Kansas Department of Health and Environment would investigate using an objective set of regulations; however, there is no direct oversight for a physician's office or workplace, and the Board's oversight would be governed by a standard of care, not a set of regulations. If a Board investigator discovers violations applicable to other agencies, those violations are shared with the appropriate agency.
- Investigators employ guidelines recommended by the Kansas Medical Society.
- The lapse of time for an investigation of a complaint against a licensee is determined by 4 categories: emergency, priority, important, technical. The extent of an investigation can range from a few days to a year, and, occasionally for difficult cases, 2-3 years. Guidelines used by district courts regarding response times have been adopted by Board investigators; however, the ideal response time of a few days is often impossible to meet because of caseloads and the complexity of cases. It is not unusual for a non-emergency investigation to take 9 months to a year.
- During an investigation of a complaint, the licensee under investigation may still have his/her license renewed.
- A physician's staff is under his or her jurisdiction; training, conduct, and competence are the physician's responsibility.
- The Board deals with about 2000 cases each year; in 2004, 537 cases were continued, 523 were opened, and 341 were closed. The Board has 5 full-time investigators, 1.5 contract investigators, no dedicated staff support, and takes about 60 disciplinary actions each year.

To allow the Committee to consider bill introductions, the Chair asked Mr. Stafford to return to complete his testimony at a later time.

Representative Don Hill requested that the Committee sponsor three bills of interest to the Kansas Pharmacy Board:

- A bill repealing obsolete pharmacy statutes;
- A bill broadening the authority of the Pharmacy Board, allowing the Board to accept, limit, suspend, revoke, or deny registration to pharmacy technicians;
- A bill allowing pharmacists to fill on an emergency basis a prescription which has expired.

A motion was made, seconded, and passed to accept all three bills as committee bills.

Representative Bob Bethell, on behalf of Representative Judy Showalter, requested the Committee sponsor a bill extending the length of time an Emergency Medical Technician can make an application in Kansas from 1 to 2 years. He said the bill was requested by David Lake, Administrator, Kansas Board of Emergency Services. A motion and second was made to sponsor the bill. The motion passed.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:33 P.M. on January 20, 2005 in Room 526-S of the Capitol.

Representative Bethell also requested the Committee sponsor two other bills:

- A bill shifting the relation of the Kansas Long-Term Care Ombudsman from Kansas Department of Health and Environment to the Kansas Department on Aging, a technical change since long-term care inspections are now under the authority of the Department on Aging;
- A bill exempting a nursing facility from responsibility for unemployment insurance if an employee convicted of a felony is terminated. Motions and seconds were made to sponsor both bills; the motions passed.

The meeting was adjourn at 2:59 p.m. The next meeting is scheduled for Tuesday, January 25.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

DATE: JANUARY 20 2005

NAME	REPRESENTING
Steve Irwin	KOME
Susan Bumsted	KSNA
Amy Salisbury	Div of Budget
Doug Smith	KAPA
Steve Golden	Intern Rep. Miller
Zach Cole	Intern Rep. Slowitz
Deborah Steen	KMA
Kristina Hillert	Intern Rep. Watkins
Jeanne Heudun	KFL
Ron Seebor	Hein Law Firm
Mark Stafford	Healing Arts Bd
Shelby Wakeman	
Chip Wheelen	Asn of Osteopathic Med.
Nasha Stehms	CWA of Mo
Jeddy Smith	CWA of KS
Joshua Bender	Intern. Rep Bethell
Ashley Wendler	Intern Rep. Storm
Stacy Westerlund	KS chapter, NASW
Elisa Rawls	KNASW intern

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST

DATE: Page 2 1-20-05

NAME	REPRESENTING
GARY Robbins	KS Optometric Assn
Elizabeth Moos	Intern - Landwehr

KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.

EXECUTIVE DIRECTOR

SEBELIUS,

R

KATHLEEN

GOVERNOR

January 19, 2005

The Honorable Jim Morrison, Chair
House Committee on Health and Human Services
Room 171-W
State Capitol

Dear Representative Morrison:

On behalf of the State Board of Healing Arts, thank you for the opportunity to appear before the Committee. You have asked the Board for a presentation on the Board's investigation and disciplinary process. I understand that there are Committee members who are not familiar with the Board and its processes.

The Board is created by statute. It is comprised of fifteen members, each of whom are appointed by the Governor. Of the fifteen, five are licensed to practice medicine and surgery, three are licensed to practice osteopathy, three are licensed to practice chiropractic, one is licensed to practice podiatry, and three are members of the general public. The history of the Board since 1976 is described in Attachment A.

The Board regulates several health care professions. Those professions include:

- 1 doctors of medicine and surgery (MDs)
- 2 doctors of osteopathic medicine and surgery (DOs)
- 3 doctors of chiropractic (DCs)
- 4 doctors of podiatry (DPMs)
- 5 physician assistants (PAs)
- 6 respiratory therapists (RTs)
- 7 athletic trainers (ATs)
- 8 physical therapists (PTs) and physical therapy assistants (PTAs)
- 9 occupational therapists (OTs) and occupational therapy assistants (OTAs)
- 10 doctors of naturopathy (NDs)
- 11 and radiologic technologists (LRTs)

There are presently nearly 18,000 individuals whom the Board licenses or registers in the above list of professions. The Board also registers mail order contact lens distributors. We do not have jurisdiction over hospitals or health care facilities.

Attachment 1
HHS 1-20-05

Regulation of the professions is an exercise of the state's police power, and is accomplished through credentialing, that is, by granting licenses or registrations to those who meet established criteria, and by disciplining the license or registration of those who engage in unprofessional conduct or professional incompetence. The purpose of regulation through credentialing is to protect the public. The terms "unprofessional conduct" and "professional incompetence" are not subjective, rather they are defined by statutes and regulations.

The Board meets as a whole six times a year. These are formal meetings and are open to the public, except for those times when there is statutory authority or a statutory requirement that a particular discussion be held in closed session.

Board staff performs the ministerial acts of the Board. The three general divisions within the agency include administration, legal and licensing. At the present time, the staff consists of twenty nine full-time equivalency positions (FTEs), two part-time contract positions, and one full-time temporary personnel. Investigations are one of the functions of the legal division, and are conducted under the supervision of Disciplinary Counsel, a position that is created by statute. There are five FTE Special Investigator II positions. We also utilize two part-time contract personnel as special investigators.

In addition to staff, the Board also utilizes members of the professions for assistance. The statutes create at least one Review Committee or Advisory Council for each of the professions we regulate. Some of the committee and council members are appointed by the Board and others by the Governor. While these individuals are technically employees for purposes of being paid per diem and travel expenses, we recognize that these persons practically volunteer their time to provide professional assistance.

This overview of the Board, and its, functions, and resources, are described more fully in the narrative portion of the budget. A copy of that document is available upon request. Individual Legislators and the public are also encouraged to visit our web site, located at www.ksbha.org, where our statutes, regulations, statistics, contacts, useful links and more can be found.

The Board's disciplinary process is based upon the well-established principles of procedural due process. Due process is a constitutional guarantee. That guarantee means that a state agency may not take away a liberty or property interest unless there are sufficient procedural safeguards in place to avoid arbitrary state action and administrative error. The statutory procedures that govern our hearings carefully balance the licensee's right to due process with the public's interest in protection.

Our disciplinary process usually begins with some type of a complaint. This may be in the form of a written complaint from a member of the public, including a patient or other health care provider, an adverse finding from a medical care facility following peer review, a report of payment or claim from a liability insurer, an investigation or proceeding by a law enforcement or administrative agency, the filing of a professional

malpractice case, or other type of information.

When complaint information is received, Board staff makes an initial determination that the conduct involves a profession over which we have regulatory authority. Secondly, staff determines whether, assuming that the alleged facts are true, the conduct described constitutes a violation of a law that we administer. Sometimes, additional information must be sought before these determinations can be made. Examples of conduct that is prohibited and that may included in a complaint include multiple acts of negligence, conviction of a felony or Class A misdemeanor, fraudulent billing, false advertisements, prescribing drugs for other than lawful purposes, practice impaired by alcohol, drugs, or mental illness, sexual misconduct, and other actions proscribed by law.

If staff determines that a complaint meets these criteria and should be investigated, a case is opened, given a priority rating, and assigned to an investigator. The priority rating assists in determining which investigator will receive the assignment, and how quickly the investigator is expected to pursue the investigation. The ratings are as follows:

- 1 Category 4 - Emergency. This category is appropriate only when the alleged conduct poses imminent harm to patients or others if the behavior is allowed to continue, and is a violation of law. Harm is imminent when it is predictable and immediate. An example of an emergency might involve a licensee who is actively practicing while impaired by alcohol, drugs, or mental illness, or a person who intentionally engages in conduct that is prohibited for the purpose of protecting the public. These cases require the investigator's immediate and occasionally full attention.
- 2 Category 3 - Priority. This category involves serious violations of law to a degree that harm to a patient or other person is reasonably likely to result. An example of a priority case might involve multiple instances of negligent practice resulting in patient injury, or multiple findings by a peer review committee that the licensee is not professionally competent.
- 3 Category 2 - Important. This category is assigned when conduct might result in patient harm or injury to another person.
- 4 Category 1 - Other. This is a catchall category for all other cases assigned, and may involve only technical violations.

Ideally, high priority cases will be distributed among the investigators evenly.

The Board has not established a specific set of tasks to be performed with each investigation. Each case is treated individually, depending upon the nature of the allegations and the situation in which the alleged facts arose. Some of the common steps in an investigation include corresponding with the licensee, when appropriate, to receive a written response to the allegations. The investigator would gather appropriate patient records from the licensee at this time. Documents that are in the possession of some other person or facility are subpoenaed. The investigator interviews witnesses and searches for other physical or documentary evidence. Information, records, and other evidence is documented in the investigative file in much the same manner as in criminal investigations so that an appropriate foundation is made for admission at hearing, if

necessary. The conversations with witnesses and steps taken throughout the investigation are documented in reports. When the investigation is complete, the investigator makes a final report that summarizes the evidence obtained. The Board expects that in most cases, investigations labeled as Category 2 or 3 will be complete and a final report written within six to twelve months after the investigator receives the case.

Upon completion of an investigation, the case is reviewed. If there are claims that a licensee's conduct is below the standard of care (defined as that degree of care expected from a prudent practitioner in like circumstances) to a degree constituting negligence, the case is brought to one of the Board's peer review committees. The review committee, comprised of members of the same profession, advises Board staff whether they believe the licensee practiced within the standard of care. If the case does not involve allegations of practice below the standard of care, the case is not presented to the review committee. In either situation, the case is then reviewed by a Board attorney to determine whether there is sufficient evidence to prove a violation of law. Sometimes this requires consultation with an expert witness.

After all of the internal review has occurred and it appears that the investigation is sufficiently completed, the case is taken to a panel of Board members. This panel, called the Disciplinary Panel, reviews the case and either directs that the case be closed, or authorizes a Board attorney to take the case to a hearing by filing a disciplinary petition. This Disciplinary Panel also recommends potential resolutions of the case. The Disciplinary Panel does not make the final determination of the case, but rather serves a prosecutorial function, much like a grand jury in criminal matters.

If the Disciplinary Panel authorizes a disciplinary hearing, Board counsel files a petition, sometimes after engaging an expert witness. The hearing process is regulated by the Kansas administrative procedure act. A hearing may be very informal, or it might have all of the trappings of multiple malpractice cases combined into one proceeding.

At the conclusion of a hearing, the Board issues an order that makes findings of fact, conclusions of law, and may impose some type of disciplinary order. Such an order may include revocation, suspension, or limitation of a license, or censure or fine of a licensee. This order may be appealed to the district court and then to the appellate courts.

The healing arts act provides that the Board's investigations are confidential. Exceptions to confidentiality exist so that the Board may share information with other states, law enforcement entities, and with the person who is the subject of the complaint. This rule of confidentiality does not apply to hearings. It is generally assumed that the entire record of a disciplinary hearing is an open public record, subject to specific prohibitions against disclosure. For example, patient identities are protected. Records regarding alcohol and drug treatment are confidential under federal law. Peer review findings, thought processes and conclusions are privileged.

The Board can expect to receive approximately 2000 complaints a year. Of those complaints, about 400 or more cases will likely be opened as investigative cases. Of those investigative cases, the Board will likely take approximately 60 disciplinary actions a year. Our full time investigators each have approximately 85 to 90 open cases at any

given time. A table of statistics appears as Attachment B.

I hope this description is helpful. We will be happy to prepare written responses to more specific questions.

Respectfully submitted,

Mark W. Stafford
General Counsel

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ATTACHMENT A

MEMO

TO: All Board Members

FROM: Lawrence T. Buening
Executive Director

DATE: August 15, 2003

RE: **History of the Board since 1976**

1976----Sweeping changes were made to the Healing Arts Act in 1976. Only a few of these will be mentioned as the memorandum from the Kansas Legislative Research Department of October 20, 1994, has a fairly comprehensive description of these changes. The Legislature directed that the Board membership be increased by 13 by adding a podiatrist. The Health Care Stabilization Fund was created and all health care providers as defined in K.S.A. 40-3401 were mandated to maintain professional liability insurance and participate by paying a premium surcharge to the Fund. M.D.s, D.O.s, D.C.s, D.P.M.s, and P.T.s, all of whom are regulated by the Board, were included among those who were required to maintain insurance. As part of the insurance overhaul, K.S.A. 40-3416 directed the Insurance Commissioner to report any suspected health care providers rendering professional services in violation of the insurance law to the Board for investigation. As directed by the Legislature the previous year, the Board office was moved from Kansas City to Topeka. As a result, all five staff were new and the Board also had to obtain the contractual services of a new attorney since all employees of the Board and the Board's attorney did not move from Kansas City. Also in 1976 the Insurance Commissioner was directed to provide to the Board copies of any closed claim reports which were received pertaining to medical malpractice cases.

1978----The Kansas Legislature enacted a Sunset Law and July 1, 1983, was set as the date for the abolition of the Board under that initial statute.

1980----A new secretarial position was added to the full-time staff bring the total number of staff members to six.

1982----The requirement that individuals appointed to the Board by the Governor be confirmed by the Senate was deleted from the Healing Arts Act.

1983----Monies were appropriated by the Legislature for the employment of a general counsel and a new secretarial position, increasing Board staff to eight full-time positions. A requirement was made in the law that any attorney employed by the Board would be in the unclassified service under the Kansas civil service act and would receive a salary fixed by the Board and approved by the Governor. The life of the Board under the Sunset Law was extended for one year, until July 1, 1984. For the first time, the Insurance Commissioner was directed to provide to the Board copies of all malpractice claims which were received when a claim is made for malpractice on the Health Care Stabilization Fund.

1984----During this session, the Legislature made substantial changes to the Healing Arts Act as part of the 1984 Tort Reform Act. The position of Disciplinary Counsel was established. The Disciplinary Counsel was to be an attorney who specialized in disciplinary matters and was not otherwise utilized by the Board. The Disciplinary Counsel was given power to investigate "all matters involving professional incompetency, unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license....". In exercising these powers the Disciplinary Counsel could apply to the appropriate court for subpoenas for the attendance of any person or the production of documents. Subject to approval by the Board, the Disciplinary Counsel could employ clerical and other staff.

Review committee were created to hear matters which, in the opinion of Disciplinary Counsel, had merit. The review committees were composed of three members appointed by the Board from the same branch of the healing arts as the person whose conduct was being reviewed. Members of the Board were not eligible to act as members of review committees. The review committees could subpoena witnesses and information. Upon the finding of probable cause by the review committee, the review committee would recommend the matter for a hearing. If the review committee recommended the matter be referred for hearing, the Disciplinary Counsel would institute formal proceedings before the Board.

In addition to appropriating monies for the Disciplinary Counsel, the Legislature also authorized funds for the employment of one full-time investigator, increasing total Board staff to ten. The Board was continued in existence under the Sunset Law until July 1, 1992. Also in 1984 the Kansas Administrative Procedure Act was enacted by the Legislature and made applicable to all disciplinary and licensing matters involving the Board.

1985----The sections of the 1984 enactment which provided for the Disciplinary Counsel to bring disciplinary matters before the review committee, which gave the review committee the power to subpoena witnesses and information and which limited the

referral of complaints for a hearing to those found by the review committee to have probable cause were repealed. The 1984 section which authorized the Board to appoint review committees "as necessary to implement the provisions of this act" was retained.

Fellowship licenses were abolished and two-year institutional licenses were authorized. This modified Board procedure insofar that either National Boards I and II or Flex I would not hereafter be required for applicants for institutional licenses. Also in 1985 the statute regarding temporary permits for full-time approved postgraduate training programs was amended to require applicants to have the basic science examination of either National Boards I and II or Flex I prior to entering a postgraduate training program. This same year legislation was adopted modifying K.S.A. 65-2873 relating to the requirements for initial licensure particularly as they related to foreign medical graduates and Board approval of foreign medical schools.

1986----The Legislature again made broad changes to the Board and the Healing Arts Act. The Board was expanded from 13 to 15 members by increasing the number of public members from one to three. No member representing the general public could be from the same United States Congressional District as another general public member, be the spouse of a licensee of the healing arts or be a person or the spouse of a person who has a financial interest in any person's practice of the healing arts.

The Legislature authorized the registration of occupational and respiratory therapists and occupational therapy assistants for the first time, placing these profession under the Board and directed that registration be commenced not later than July 1, 1987. A Respiratory Therapy Council and an Occupational Therapy Council were created, each to expire on July 1, 1987.

House Bill No. 2661 gave the Board additional subpoena power, additional grounds for discipline were created and the definition of unprofessional conduct was expanded. The types of discipline which could be administered were included, including the ability to impose fines for violations of the Healing Arts Act. All medical care facilities were required to initiate peer review activities and have a risk manager. All of these medical care facilities were then required to make reports every 90 days to our office of reportable incidents and also to report to the Board any adverse findings which were made. The same legislation also required that all insurance carriers report to the Board all written or oral claims made upon them by any persons alleging malpractice by individuals the Board regulates. Furthermore, attorneys were required to provide to the Board expert opinions which are available to all sides in a malpractice suit. Impaired physicians were able to be referred by the Board to the individual state professional associations for handling. Finally, as part of the grounds for discipline, all licensees of the Board were mandated to report any adverse judgment, settlement or finding against them or be guilty of unprofessional conduct.

The Legislature appropriated monies for four additional full-time staff—one clerical, one secretarial and two investigators----bring the number of full-time staff to 14.

1987----The positions of Secretary and Executive Secretary of the Board were eliminated and replaced with an Executive Director and an Administrative Assistant commencing January 1, 1988. The Secretary of the Board had previously been a member of the Board. The new law provided that the Executive Director could not be a member of the Board. The Executive Director was to be appointed by the Board and was subject to Senate confirmation. The Executive Director became the chief administrative officer of the Board and the custodian of all Board records. The Administrative Assistant position was created to assist the Executive Director in the performance of the director's duties. Employees of the Board were placed under the supervision of the Executive Director. The Occupational and Respiratory Therapy Councils were extended until July 1, 1988. Specific funds were appropriated by the Legislature to enable the Board to pay the various professional associations for their work in dealing with impaired providers. The Legislature also authorized the Board to issue exempt licenses. Finally, statutes regarding physicians' assistants were substantially changed to require the Board to adopt rules and regulations dealing with their scope of practice and the transmittal of prescription orders.

1988----The expiration dates were eliminated from the Occupational and Respiratory Therapy Councils making these entities permanent.

1989----A statute was enacted which authorized the Board to employ individuals as agents of the Board to evaluate and review investigative materials, conduct interviews and render opinions, reports and testimony on matters which may result in disciplinary action against individuals who are licensed or registered by the Board. These individuals were provided with immunity from liability in a civil action for any testimony provided or recommendation or opinion made by such individuals acting without malice and in good faith within the scope of their capacity as an agent of the Board. The Legislature also added two additional positions to the Board, bringing full-time staff to 16.

1990----The Legislature increased the Board's expenditure limitation from \$807,063 the previous year to \$1,253,198. This was the first time the Board's expenditure limitation exceeded \$1 million and enabled the Board to purchase an IBM AS/400 computer and to develop software for licensing and disciplinary tracking. The Board also moved from the Landon State Office Building to its present location.

1991----The Legislature authorized the employment of four additional full-time staff, make 20 FTEs. Also, the statute pertaining to reinstatement of licenses was changed to require a person who had their license revoked to wait three years before they could apply for reinstatement of that license. The Board was also given the authority to assess the costs of investigations and hearings to the licensee in disciplinary cases when the order was adverse to the licensee.

1992----The Legislature enacted the Kansas Governmental Operations Accountability Law to (K-GOAL) replace the Sunset Law. The Board, scheduled to expire on July 1, 1992, underwent sunset review. The application of the Sunset Law to the Board was eliminated and K-GOAL was not made applicable to the Board. Therefore, no future date

for the abolition or expiration of the Board was established. The Podiatry Advisory Council was abolished and the Board was directed to establish and appoint a review committee of not less than two members for the practice of podiatry. The podiatry review committee members must be licensed podiatrists. Two additional staff were authorized to be employed. This brought full-time staff to 22.

1993----A bill was passed making it unprofessional conduct to refer a patient to a health care entity for services if the licensee has a significant investment interest in that entity, unless the licensee informs the patient in writing of the existence of the interest and that the patient may obtain services elsewhere. Significant investment interest was defined as at least 10% ownership,

1994----The full-time staff was increased to 24.

1995----The Legislature enacted the Athletic Trainers' Registration Act calling for the registration of athletic trainers by July 1, 1996 and placing the regulation of this profession under the Board.

The Legislature also passed a multi-section bill dealing with the Board and the Healing Arts Act. Inactive and federally active license designations were created. Post-graduate permits were limited to 36 months in duration. Authority was given to the Board to limit the number of times an applicant for license could retake the license examination, after failure. A limited license category was also created and persons issued that permit and those with federally active license designations were included among those persons who could qualify as a charitable health care provider and receive coverage for any malpractice from the Kansas Tort Claims Fund. The duty was also placed upon licensees to notify the Board within 30 days of any change in their mailing address. Physical therapists were removed from having to carry professional liability insurance and pay a premium surcharge to the health care stabilization fund. Full-time staff was again increased by two, bring total full-time employees to 26.

1996—Physicians' assistants were included within the definition of charitable health care provider and were provided coverage by the Kansas Tort Claims Fund for professional services rendered in that capacity. One additional FTE was added to the Board.

1997----A bill was passed expanding the scope of practice of podiatry to include the amputation of toes. The Woman's-Right-To-Know Act pertaining to abortion was enacted and it was made unprofessional conduct for a licensee to knowingly and intentionally fail to provide the notices required by that act. Statutory maximums for fees charged by the Board were increased for every profession. The locations at which institutional licensees could practice were expanded to accommodate those individuals who has lost employment due to the closure of Topeka State Hospital. The statutes relating to temporary permits for occupational therapist, occupational therapy assistants, and respiratory therapists were changed to only allow for one such permit.

1998----K.S.A. 65-28,127 was enacted by the Legislature and placed certain obligations on licensees under the Healing Arts Act who supervise, direct or delegate functions to

nonlicensees. The Board, in October, adopted Guidelines for the use of controlled substances for the treatment of pain.

1999----Two bills of note were enacted. The first changes the credentialing level of respiratory therapists from registration to licensure. The other bill enables physicians' assistants and nurse practitioners to prescribe medication, including controlled substances, under rules and regulations to be adopted and pursuant to protocols approved by the Board. Previously, these providers could only transmit a prescription order pursuant to a protocol. Staff was increased to 29 starting July 1, 1999.

2000----Two bills were enacted by the Legislature that had an impact on the Board. The first bill amended several provisions of the healing arts act. The Legislature deleted all references to "annual" renewal of licenses and also added language that enables licenses to be renewed for a period of more than 12 months. Provisions dealing with postgraduate permits were amended to have these issued for the expected length of the entire residency program rather than limiting the validity of the permits to 36 months. This same bill included a provision that requires the Board to revoke a licensee's license following the conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the Board determine by clear and convincing evidence that the licensee will not pose a threat to the public and has been sufficiently rehabilitated to warrant the public trust. Likewise, an application for a new license or for reinstatement of a canceled license filed by someone who has been convicted of a felony must be denied unless these same standards are met. Finally, the bill empowers the Board to compel a licensee to submit to a mental or physical examination or a drug screen, or a combination thereof, during the course of an investigation if there is reasonable suspicion to believe the licensee has the inability to practice with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. Also, the requirement was deleted that the Board prepare and distribute to all physicians a standardized summary of alternative methods of treatment which was then to be given to every patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment.

A second bill made numerous changes to the existing laws governing the registration of physician assistants. After February 1, 2001, physician assistants became licensed instead of registered. Additional grounds for revoking, suspending or limiting a license of a P.A. were also added.

2002----The Legislature took several actions that affected the Board. The first action was to direct that \$200,000 be transferred from the Board's Healing Arts Fee Fund to the State General Fund. This transfer was over and above the \$200,000 the Board has transferred to the State General Fund for many years to reimburse the state of Kansas for services provided to the Board such as payroll, accounting, auditing, personnel and purchasing services. As a result, the Board was required to increase fees charged to all professions.

Substantial amendments were also made to the Occupational Therapy Practice Act that became effective April 1, 2003. The new law amended the definition of the "practice of occupational therapy" and changed the credentialing designation from registration to

licensure. New certificates were mailed to all occupational therapists that had previously been registered.

The 2002 Legislature also enacted the Patient's Contact Lens Prescription Release Act that is now codified at K.S.A. 65-4965 through 65-4973. This law called for the Board to register persons and entities, not otherwise licensed by the Board or the Board of Optometry, who mail contact lenses to patients in Kansas pursuant to a contact lens prescription which such person or entity did not determine. Registration commenced January 1, 2003. The law also establishes a Contact Lens Advisory Council to advise the Board. The Council, when established, will consist of three members. One member is a person licensed to practice medicine and surgery specializing in ophthalmology, one is a licensed optometrist, and one is a person dispensing contact lenses.

Finally, the Naturopathic Doctor registration was enacted in 2002 and became effective January 1, 2003. It is located at K.S.A. 65-7201 through 65-7218. In addition to registering qualified naturopaths, the law establishes a Naturopathic Advisory Council to advise the Board. The Council consists of 5 members. Three members are naturopathic doctors appointed by the Board, one is the Board President or President's designee, and one is appointed by the Governor from the public sector. In addition, the laws created a Naturopathic Formulary Committee appointed by the Board to advise the Board and make recommendations on the list of substances which may be included in the naturopathic formulary. This Committee is comprised of a licensed pharmacist, a person knowledgeable in medicinal plant chemistry, two person licensed to practice medicine and surgery, and two naturopathic doctors registered under the act. As of this date, this Committee has met on one occasion.

2003----The most recent Legislative session concluded with several enactments affecting the Board. Substantial changes were made to the Physical Therapy statutes, including changing the credentialing from registration to licensure. These will go into effect on April 1, 2004. In addition, the \$128,208 of additional funds from the Board fee funds were directed to be transferred to the State General Fund. Lastly, the Legislature authorized expenditures of \$300,000 in FY04 and \$250,00 in FY05 to enhance the Board's computer operations.

Attachment B

SCHEDULE OF OPEN INVESTIGATIVE CASES
AND
ASSIGNMENT TO INVESTIGATOR

	July 1, 2003	July 1, 2004
CH	79	104
PM	81	93
SD	90	106
SF	89	109
KD	55	0
PH - <small>Regulates KID</small>	0	83
AC/ MM (.7)	66	59
HH (.8)	66	82
TOTAL	526	636

THE KANSAS BOARD OF HEALING ARTS
BOARD CASE STATISTICS

	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 06	FY 07	FY 07
	Actual	Actual	Actual	Actual	Estimated	Estimated	Enhanced	Estimated	Enhanced
Open Cases Forwarded	410	400	477	537	719	799	799	879	804
New Cases Opened	314	409	423	523	500	500	500	500	500
Total Cases Closed	324	332	363	341	420	420	495	420	570

The Board currently has 5 FTE Special Investigators and 2 individuals (Investigators) who contract with the Board and are the equivalent of 1.5 FTE. The enhanced FY 06 and FY 07 budget includes the addition of 1 FTE Special Investigator in FY 06 and another 1 FTE in FY 07.

**THE KANSAS BOARD OF HEALING ARTS
STANDARD OF CARE CASES
SUBMITTED TO REVIEW COMMITTEES AND COUNCILS IN FY04**

Medicine and Surgery #1	63
Medicine and Surgery #2	67
Medicine and Surgery #3	70
Osteopathic	42
Chiropractic	16
Podiatry	10
Physician Assistant	10
Physical Therapy	8
Respiratory Therapy	1
Occupational Therapy	<u>3</u>
Total	290