

Approved: February 7, 2008
Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:47 P.M. on February 6, 2008, in Room 526-S of the Capitol.

All members were present except Representatives Johnson, Kelley, Tafanelli, Wilk, Frownfelter, Holland, Mah, and Ruiz, all of whom were excused.

Committee staff present:

Mary Galligan, Kansas Legislative Research Department
Jennifer Thierer, Kansas Legislative Research Department
Rena Jefferies, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees appearing before the committee:

Mark Stafford, General Counsel, Kansas Board of Healing Arts
Shelly Wakeman, Disciplinary Counsel, Kansas Board of Healing Arts

Others attending:

See attached list.

The Chair announced that the minutes for Tuesday, February 5, 2008, will be considered approved as printed unless there are corrections submitted by Thursday at 5:00 p.m.

The Chair welcomed Mark Stafford, General Counsel, Kansas Board of Healing Arts, who explained that the Executive Director, Larry Buening, who was scheduled to testify, was detained in Wichita by the snowstorm. Mr. Stafford introduced Shelly Wakefield, Disciplinary Counsel, Kansas Board of Healing Arts, referenced the written testimony ([Attachment 1](#)), and explained that he would primarily focus on responses to the Legislative Post Audit report from 2006. He said the Post Audit report produced significant changes in the way the Board functions; he commented that the Board's website lists policy statements as well as extensive information about the activities of the Board.

Explaining the Board's process for handling complaints, he said a complaint may come from a variety of sources. Whenever a complaint is received, it is recorded and a decision is made whether or not to order an investigation. If the complaint suggests a violation of the statutes regulated by the Board—primarily, malpractice, an investigation is ordered. Explaining the misunderstanding that no action is taken until three complaints have been made, Mr. Stafford said the previous policy was to investigate every complaint, a policy that overwhelmed the investigative staff, since some complaints need no response; the new policy states that if three complaints of sub-standard care are received about a health-care professional, an investigation is ordered.

Members repeatedly questioned the timeliness of the Board's response to complaints. Mr. Stafford replied that the review, investigation, and hearing/disciplinary process is based on judicial rules, not rumors or allegations, a process that requires time, especially since it includes examining extensive medical records.

CONTINUATION SHEET

MINUTES OF THE House Government Efficiency and Technology Committee at 3:47 P.M. on February 6, 2008 in Room 526-S of the Capitol.

Shelly Wakeman traced the anatomy of a complaint, saying the complaint is first scanned into the system, assigned a number within a week, and must be reviewed within seven days. Each Monday she evaluates the complaints; if she decides the complaint does not meet the standards for investigation, a letter is sent to the complainant. Otherwise, the complaint is assigned to an investigator, who has 90 days to contact the licensee regarding the complaint unless the case involves fraud, which requires a more timely response. Answering a question, she replied that the case must be closed within six months; however, some complex cases require more than six months to complete. She replied that most of the disciplinary actions are listed on the Board's website with hotlinks for those desiring further information. She stated that all proceedings are confidential until a disciplinary action is taken, at which time all information is released to the public.

Members commented on the length of the process and the span of time without any communication to the complainant; members recommended that the Board develop a process to keep the complainant better informed during the investigative process, a recommendation that Mr. Stafford agreed was needed. Mr. Stafford said the new computer system assists in tracking cases, and quarterly review of each investigator's cases is conducted. He replied that, at any given time, each of the eight investigators may have a caseload from 40 to 90 open cases. To another question he commented that most of the Board's guidelines are statutory and leave limited interpretive leeway.

Mr. Stafford explained that when an investigation is completed, a review committee of volunteer health-care professionals in the same field as the licensee act as a grand jury and make a determination whether or not to proceed to a hearing, and, if not a hearing, what other actions might be taken. He replied that nearly all the investigators have a law enforcement background. He responded that the Board is presently considering a graduated series of sanctions. He replied that if an investigator discovers a licensee's criminal conduct, the case is turned over to the Kansas Attorney General. When members pressed Mr. Stafford regarding a timely response to complaints, he replied that presently 550 cases are open for investigation and that with more staff, perhaps the response time could be reduced.

The meeting was adjourned at 4:49 p.m. The next meeting is scheduled for Thursday, February 7, 2008.



KATHLEEN SEBELIUS
GOVERNOR

STATE BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

MEMO

TO: House Governmental Efficiency and Technology Committee

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: February 5, 2008

RE: Response to Post Audit Report

Thank you for the opportunity to appear before you and respond to the information provided to the Committee last Thursday by Barbara J. Hinton, Legislative Post Auditor. Also present today is Shelly Wakeman, the Disciplinary Counsel for the Board. Under K.S.A. 65-2840a, the Disciplinary Counsel has the power and duty to investigate or cause to be investigated all matters involving violations of the Healing Arts Act.

The Post Audit Report entitled *Board of Healing Arts: Reviewing Issues Related to Complaint Investigations, Background Investigations, and Composition of the Board* ("Audit Report") was submitted to the Legislative Post Audit Committee on October 17, 2006. Pages 40-46 of the Audit Report include the Board's initial response. Thereafter, the Chair of the Committee requested a further response prior to the beginning of the 2007 Legislative Session. This was provided to the Legislative Post Auditor on January 11, 2007. Subsequently, the Post Auditor requested an update on the recommendations made in the Audit Report. This was provided to Rick Riggs, Administrative Auditor, on May 21, 2007.

During this past interim, the Special Judiciary Committee was charged with studying the operations of the Board. This study specifically included a review of the Audit Report. On November 8, 2007, I appeared before this Committee and provided testimony. **ATTACHMENT 1** is the Report of the Special Committee on the Judiciary concerning its study of the Board operations.

The 2007 Omnibus Appropriations Bill (2007 H.B. No. 2368) included provisions that a report was to be prepared detailing the steps taken by the Board to address the concerns and issues raised by the Audit Report. This report was prepared and delivered to all of the members of the Senate Committee on Ways and Means and the House Committee on Appropriations on February 1, 2008.

BOARD MEMBERS: BETTY McBRIDE, Public Member, PRESIDENT, Columbus - VINTON K. ARNETT, D.C., VICE PRESIDENT, Hays - MICHAEL J. BEEZLEY, M.D., Lenexa
MYRA J. CHRISTOPHER, Public Member, Fairway - RAY N. CONLEY, D.C., Overland Park - GARY L. COUNSELMAN, D.C., Topeka - FRANK K. GALBRAITH, D.P.M., Wichita
MERLE J. "BOO" HODGES, M.D., Salina - SUE ICE, Public Member, Newton - M. MYRON LEINWETTER, D.O., Rossville - MARK A. McCUNE, M.D., Overland Park - CAROLINA M. SORIA, D.O., Wichita
ROGER D. WARREN, M.D., Hanover - NANCY J. WELSH, M.D., Topeka - RONALD N. WHITMER, D.O., Ellsworth

235 SW TOPEKA BLVD., TOPEKA, KS 66603

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Attachment 1
HGE7 2-6-08

All of the above responses and testimony are available and we will be pleased to provide them to members of this Committee. However, this Memo is intended to provide cumulative information on actions taken by the Board in response to the Audit Report, including those mentioned in previous reports that have been made to either Post Audit or the Legislature. The Board responses to the Audit Report recommendations are:

Question 1 Recommendations. (Pages 19 and 20).

1. To help ensure that complaints are dealt with in a timely and appropriate manner when they are received, Board management should do the following:

a. assign sufficient staff resources to review and screen complaints so that the agency standard of reviewing complaints within two weeks is met.

Prior to the Audit Report, the Board was aware of the need for additional staff to assist with reviewing and screening complaints prior to the commencement of the audit work. As indicated in the October 6, 2006 response that was included in the Audit Report as Appendix D, the Board had requested an FTE position of Public Service Administrator I to provide assistance to the Disciplinary Counsel in the review of complaints in the budget request submitted just a month before the Audit Report was issued. Section 73 of 2007 H.B. No. 2368 provided for the addition of and funding for five new FTE positions and the conversion of two full-time temporary positions to FTE positions. One of the new positions is a Public Service Administrator I. This position was filled December 2, 2007. The duties of the Public Service Administrator I primarily involve reviewing and screening complaints so that the agency standard of reviewing complaints within two weeks is met. The reason for the delay in filling the position has been due to cash flow issues that have existed each year since \$750,000 was swept from the Board fee funds in FY2005.

b. periodically review a sample of the complaints screened out (not assigned for investigation) by the Disciplinary Counsel to ensure that those decisions were reasonable.

The Board has agreed with this recommendation and on December 1, 2006, the Board adopted the position to have the Board's Disciplinary Panel review 10% of complaints that are not assigned for investigation by the Disciplinary Counsel. All complaints are scanned and capable of being placed on a CD. Members of the Disciplinary Panel that met January 19, 2007, were provided with a CD that contained all of the complaints that had been closed without investigation for the period from approximately December 18-29, 2006. The Disciplinary Panel that met March 23, 2007, was provided with all of the complaints that were closed without investigation from approximately February 13 through 17, 2007. A program has now been developed that randomly selects 10% of the complaints that are not made into investigative cases. Therefore, at the Disciplinary Panel meeting on May 16, 2007, the members were provided with a CD that contained 10% of all complaints that had been closed from February 2 through April 19. A sample of 10% of the complaints that were not assigned for investigation has been provided to the members at each subsequent bi-monthly Disciplinary Panel meeting.

- 2. To help ensure that instances of substandard patient care have the best chance of being verified and corrected, Board management should do the following:**
- a. investigate allegations of substandard patient care when they are received, rather than waiting for a pattern of such complaints to develop.**

In the October 6, 2006 response included with the Audit Report, it was indicated that the Board disagreed with this recommendation. It was explained that a single instance of ordinary neglect does not constitute a violation of the Healing Arts Act under K.S.A. 65-2837(a). Further, it was explained that in 1999, the Board had adopted a policy to investigate all allegations of substandard patient care, including those in malpractice petitions. However, the result was an increasing backlog of open investigative cases. Therefore, in June 2005, the Board adopted a policy to not investigate single instances of allegations of substandard care.

At its meeting on October 20, 2007, the Board adopted Policy Statement No. 07-02. This is included as **ATTACHMENT 2**. This policy declares that “alleged practice below the standard of care described in written complaints from the public, including other health care professionals, and reports of adverse findings from medical care facilities or peer review organizations warrant investigation without waiting for repeated instances or a pattern of practice to develop”. The investigation is to “include gathering pertinent patient records, communicating with the licensees involved and obtaining their statements, interview other witnesses as staff determine is appropriate, and presenting the records to a peer review committee”.

H.B. 2620 is the bill the Special Judiciary Committee recommended for introduction during the 2008 Legislative Session. This bill would enable the Board, as a non-disciplinary resolution of matters in which standard of care is an issue, to enter into a written agreement with a licensee for a professional development plan, to make written recommendations to the licensee, or to issue a written letter of concern to the licensee. A hearing on the bill is scheduled before the House Judiciary Committee at 3:30 p.m. on February 5.

- b. notify the licensee when an investigation reveals a problem exists, even if no formal action can be taken at that time.**

As previously advised in Appendix D to the Audit Report, a letter is sent to the provider when we receive a report from a hospital of an adverse finding made pursuant to K.S.A. 65-4925 that does not result in an investigation. Further, when an investigation of a patient complaint is concluded without the initiation of a disciplinary action, the practitioner receives a letter. However, under both the Kansas Administrative Procedure Act and the United States Constitution, notification that a “problem exists” may have significant legal implications. Any such notification must clearly explain that no findings have been made. Otherwise, the Board would have to conduct a hearing to provide appropriate due process to the licensee. This would greatly increase the number of hearings and substantially decrease the Board’s ability to take meaningful and appropriate actions in those cases where violations have actually occurred.

H.B. No. 2620 contains specific authority to issue administrative warnings when disciplinary action is not appropriate or allowed and will make the warning letters non-discoverable and inadmissible.

c. request additional resources if current staff resources are not sufficient to handle the increased workload that would result from this change.

When the Board originally submitted its request for additional FTE positions in September 2006, the request included an Administrative Assistant for the Licensing Program and a Senior Administrative Assistant for the Administrative Program. However, the Board recognized that additional investigators would be necessary to handle the increase in cases if all allegations of substandard care were investigated as directed in Policy Statement 07-02 (see ATTACHMENT 2). Therefore, in August 2007, the Board directed that the revised budget for FY2008 and FY009 convert the Administrative Assistant and Senior Administrative Assistant positions to Investigator positions. In the revised budget submitted September 2007, reductions were made in other Board programs and items to provide for the additional salaries for investigators and other costs associated with conducting an increased number of investigations. The position descriptions have been developed for the two new investigator positions and the Division of Personnel Services has reclassified the two positions. The Investigator II position was recently filled and that individual will start in the near future. At its meeting February 22, 2008, the Board will discuss the utilization of the remaining investigator position authorized by the 2007 Legislature. This position has been initially classified as an Investigator I. ATTACHMENT 3 provides the current organizational structure of the Board as approved by the Division of Personnel Services. However, the Board will review this structure and the current needs of the Board and will discuss the best utilization of this position at its meeting February 22. The delay in hiring these new positions has been due to cash flow issues as explained in 1a above.

3. To help ensure that investigations proceed in an efficient and timely manner, Board management should do the following:

a. move from annual review of investigation status to a quarterly review

This recommendation has been implemented and review will be conducted at the end of each calendar quarter. A review was conducted with each investigator during the two-week period from December 8 through 20, 2006. Reviews for the first quarter of calendar year 2007 were held April 10, 12 and 13. Reviews for the second quarter of this calendar year were performed July 23-27. A review of all cases with the investigators was also conducted in November and reviews are again scheduled for February.

b. pursue the ability to generate electronic reports to provide management a way to systematically review all investigations.

This recommendation has been implemented. When the audit work commenced, the Board was just concluding the first year of implementation of a new licensing and

disciplinary management system. In addition to increasing the number of electronic reports that can be produced, these reports can now be provided in Excel format which are capable of analyzing the data from a number of aspects. Reports on investigative cases are now provided to the Board as a whole at each meeting.

4. To help ensure that adequate and timely action is taken on all cases, and that licensees receive timely resolution of complaints against them, Board management should do the following:

a. develop a system to actively and regularly track the progress of all open cases

At the time of the issuance of the Audit Report, the Board could generate certain reports on the new database system, but those reports were limited. Since the issuance of the Audit Report, Board Information Technology staff has been sent to classes and received training on creating various reports from the disciplinary tracking system that was installed in July 2005. Currently, the reports can be generated in a spreadsheet format in Excel. Therefore, the data can now be sorted in a variety of ways to create a much wider variety of reports than could be provided previously. The Disciplinary Counsel can now obtain reports whenever desired and have the data sorted depending on the information being desired. Investigators can also obtain these reports and have also been instructed to run a report on all of their open cases the first of each month.

b. institute an immediate review of all open cases, beginning with the oldest cases, to see what action needs to be taken to appropriately resolve them.

The Disciplinary Counsel met with each investigator during the 14-day period December 8 through 20, 2006, and reviewed every open case.

5. To help ensure that investigators are unbiased and impartial, the Board should require them to periodically disclose any actual or perceived impairments. This is a recognized best practice for a regulatory program's complaint investigators.

All of the full-time investigators and both of the contract investigators have signed a Conflicts of Interest Disclosure Statement that has been placed in their personnel files and will be reviewed and initialed at the time of their performance review each year.

6. To ensure that enforcement actions or discipline ordered by the Board is consistent and equitable, the Board should adopt a formal list of graduated sanctions. This should include guidance regarding the number and severity of violations that could trigger each sanction. This is a recognized best practice for medical boards' disciplinary processes.

In the October 6, 2007, response included in the Audit Report, the Board disagreed with this recommendation. It was indicated that this had been considered prior to the issuance of the Audit Report. However, in the past year, the Board and its staff have continued to obtain information. The Board has discussed this recommendation at length on several

occasions. Guidelines that have been adopted in other states have been obtained. A Board Committee has been established to study this issue. The Committee met on October 10, 2007, and January 22, 2008. Progress on this issue will be presented to the Board at its meeting February 22, 2008.

QUESTION 2 RECOMMENDATIONS. (Page 26).

1. To ensure that the Board has all recommended information pertaining to applicants coming from other states-both professional and personal-Board staff should re-introduce a bill this session which would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.

At its meeting December 1, 2006, the Board authorized staff to proceed with drafting a proposed bill to authorize fingerprinting and criminal background checks on all applicants for a new license or for reinstatement of an existing license. The Board also directed that the bill contain authority to require fingerprinting and criminal background checks during the course of an investigation involving an existing licensee. S.B. No 81 is included as "Attachment 3" and was introduced through the Senate Public Health and Welfare Committee and assigned to the Senate Judiciary Committee. After being favorably recommended for passage by the Judiciary Committee, the bill was passed by the Senate with a vote of 40-0. However, the bill was assigned to the House Health and Human Services Committee and, following a hearing held March 1, 2007, received no further consideration. Therefore, the bill remains in the House Committee. There was some discussion during the 2007 Session that an interim study be conducted on this issue for all licensing boards, but the topic was not assigned to any Committee. The Board has again directed that attempts be made to have this bill enacted during the 2008 Legislative Session and requests this Committee express its support for S.B. No. 81.

2. The Board should continue to pursue readily available information on podiatrists and chiropractors applying for licensure in Kansas.

For podiatrists, the only source of information that was readily available that had not previously been obtained as part of the application process is the information contained in the two national data bases that exist pursuant to federal law---NPDB and HIPDB. For chiropractors, the Board had not previously required a report from the two national data bases and had not required a report from the CIN-BAD database maintained by the Federation of Chiropractic License Boards. The Board is now requiring that all new applicants for podiatry and chiropractic licenses self query the two national data bases and have the report provided to the Board. Further, since the Board may query CIN-BAD at no cost by virtue of being a member of the Federation of Chiropractic Licensing Boards, licensing staff is now doing a query and obtaining a report from CIN-BAD on all new chiropractic applicants.

3. To ensure that all applicants are treated consistently, that records are maintained properly, and that errors and duplicative efforts are reduced, the Board should develop written policies and procedures for conducting background investigations of both in-State and out-of-State applicants.

The former Licensing Administrator developed a draft of a training manual prior to her retirement in June 2007. However, this is more of a step-by-step description of the mechanical process for data input of information from applications. The Board's new Licensing Administrator is currently undertaking a complete review of all original and renewal application forms. Information obtained by other states and organizations is being reviewed. Once the applications have been reviewed and revised, the Licensing Administrator is intending to create a comprehensive manual setting forth detailed policies and procedures for the analysts to utilize in conducting reviews of applicants.

Question 3 Recommendations. (Page 33).

No recommendations are directed to the Board. However, the Board has directed that the minutes from each advisory council meeting be forwarded to all Board members so the Board can be better advised of the topics and issues of concern that are addressed during these meetings. Minutes of all council meetings have been provided to the Board members at each Board meeting since April 2007. The Board also sent a questionnaire/survey to all the professional association and council members. At its meeting December 7, 2007, all council members and professional associations for those professions that do not have a member on the Board were invited to attend. For those that did attend, specific time was made on the agenda for comments, input and any concerns.

Thank you for the opportunity to appear before you and I would be happy to respond to any questions.

Report of the Special Committee on Judiciary to the 2008 Kansas Legislature

CHAIRPERSON: Senator John Vratil

VICE-CHAIRPERSON: Representative Mike O'Neal

RANKING MINORITY MEMBER: Senator Greta Goodwin

OTHER MEMBERS: Senators Phillip Journey, Julia Lynn, and Derek Schmidt; and Representatives Sydney Carlin, Marti Crow, Lance Kinzer, Bill Light, Jan Pauls, Marc Rhoades, and Vern Swanson

STUDY TOPICS

- Operations of the Board of Healing Arts
- Kansas Administrative Procedure Act and the Act for Judicial Review of Agency Actions
- Operations of the Kansas Parole Board
- Medical Assistance for Trust Beneficiaries
- Subrogation Clauses in Health Insurance Contracts
- Change in Judge in a Civil Action
- Allow a Parent to Remove a Child from the Custodial Parent to Protect the Child from Abuse
- Aggravated Incest
- Establishment of District Attorney Offices
- Submission of Blood or Other Biological Samples to the Kansas Bureau of Investigation
- Settle Damages Between Landowners and Their Farm Tenants and Gas and Oil Operators
- Vehicular Homicide
- Indemnification Agreements
- Release of Inmates to House Arrest by the Secretary of Corrections
- Child Care Custody-Military Deployment

Special Committee on Judiciary

OPERATIONS OF THE BOARD OF HEALING ARTS

CONCLUSIONS AND RECOMMENDATIONS

It was the consensus of the Committee that the Board of Healing Arts (BOHA) has made a reasonable, good faith response to the recommendations of the Post Audit Report.

The BOHA has proposed statutory language that would authorize the Board to accomplish competency maintenance in a nondisciplinary setting. The Committee recommends legislation on alternative sanctions as recommended by Larry Buening, Executive Director of the BOHA.

The Committee also supports the bills authorizing fingerprinting, 2007 SB 81 and 2007 SB 107, which currently are in the House. The Committee recommends that the Committee where the bills are assigned take appropriate action. It was further recommended that the Executive Director of the BOHA, report the status of items under advisement to the Chairpersons of the House and Senate Judiciary Committees and the House Health and Humans Services Committee and Senate Public Health and Welfare Committee.

The Committee recommends the alternative sanctions legislation be introduced in the House.

Proposed Legislation: The Committee recommends the alternative sanctions legislation be introduced in the House.

BACKGROUND

The Committee was directed to review the recent Legislative Post Audit report on operations of the BOHA. The Committee also was called on to study the appointment of members to the BOHA; the professions covered by the BOHA's jurisdiction; the nature, fairness and quality of the BOHA's investigations; and recommendations regarding implementation of graduated sanctions.

COMMITTEE ACTIVITIES

Chris Clarke, Performance Audit Manager, Legislative Division of Post Audit, reviewed the findings, conclusions, and recommendations of the Legislative Division of Post Audit as

of October 2006. She reviewed the mission, membership and the responsibilities of BOHA. Post Audit reviewed three questions covering key issues regarding the complaint-handling system of the BOHA:

- Does the BOHA conduct timely and thorough investigations of complaints it receives, and take timely and appropriate actions to correct regulatory violations it finds?
- Does the BOHA conduct background investigations that would enable it to know whether a potential licensee has had malpractice or negligence problems in another jurisdiction before being licensed in Kansas?

- Does the BOHA composition give fair representation to all healing arts practices and, if not, what could be done to address any deficiencies?

The conclusions and recommendations of these questions are contained in the Performance Audit Report.

Larry Buening, Executive Director, BOHA, introduced to the Committee, the Chairperson, Vice Chairperson, and various members of the BOHA. He reviewed actions taken by the Board in response to the recommendations made in the October 2006 Post Audit Report.

Mr. Buening expressed support for 2007 SB 81, which, as amended by the Senate Judiciary Committee, would authorize the BOHA to require new licensees to be fingerprinted and to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI), for a national criminal history record check for the purpose of determining initial qualifications and suitability to obtain a license. The conferee also expressed support for SB 107, as amended by the Senate Committee on Public Health and Welfare, to authorize the fingerprinting requirement to apply to the State Board of Nursing. In addition, the bill authorizes the State Board of Nursing to set a fee for fingerprinting in an amount necessary to reimburse the Board for the cost of fingerprinting and criminal history record check and to deposit such fees to the Criminal Background and Fingerprinting Fund created by the bill.

The Committee submitted questions regarding the guidelines used in investigation of

patient complaints, availability of information to the public, website availability, and investigation of malpractice suits.

CONCLUSIONS AND RECOMMENDATIONS

It was the consensus of the Committee that BOHA has made a reasonable, good faith response to the recommendations of the Post Audit Report.

The BOHA has proposed statutory language that would authorize the Board to accomplish competency maintenance in a nondisciplinary setting. The Committee recommends legislation on alternative sanctions as recommended by Larry Buening.

The Committee also supports the bills authorizing fingerprinting, 2007 SB 81 and 2007 SB 107, which currently are in the House. The Committee recommends that the Committee where the bills are assigned take appropriate action. It was further recommended that Mr. Buening, as Executive Director of the BOHA, report the status of items under advisement to the Chairpersons of the House and Senate Judiciary Committees and the House Health and Human Services Committee and Senate Public Health and Welfare Committee.

The Committee recommends the alternative sanctions legislation be introduced in the House.

KANSAS STATE BOARD OF HEALING ARTS

POLICY STATEMENT NO. 07-02

Subject: Allegations of practice below the standard of care
Date: October 20, 2007

WHEREAS:

The healing arts act grants authority to the Board, its agents and employees to investigate matters of professional incompetency. The act defines professional incompetency at K.S.A. 2006 Supp. 65-2837(a) as follows:

"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 medicine.

Similar definitions of professional incompetency apply to other professions the Board regulates.

Investigating allegations of practice below the standard of care includes, at a minimum, gathering pertinent patient records, communicating with the licensees involved and obtaining their statements, and presenting the records to a peer review committee.

The Board determines that alleged practice below the standard of care described in written complaints from the public, including other health care professionals, and reports of adverse findings from medical care facilities or peer review organizations warrant investigation without waiting for repeated instances or a pattern of practice to develop.

The Board projects that investigating all allegations of practice below the standard of care described in written complaints from the public, including other health care professionals, and reports of adverse findings from medical care facilities or peer review organizations would increase the number of cases opened each fiscal year by approximately 60. Investigation of these additional cases will require the addition of one FTE special investigator and the expenditure of approximately \$15,000 per year to obtain medical records.

IT IS, THEREFORE, DECLARED THE POLICY OF THE BOARD THAT:

1. All alleged practice below the standard of care described in written complaints from the public, including other health care professionals, and reports of

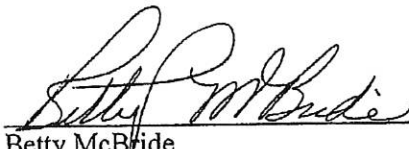
adverse findings from medical care facilities or peer review organizations, should be investigated without regard to prior complaints against the involved licensee.

2. Investigation should include gathering pertinent patient records, communicating with the licensees involved and obtaining their statements, interviewing other witnesses as staff determine is appropriate, and presenting the records to a peer review committee, except that Board staff may terminate an investigation when there is discovery of credible and persuasive evidence establishing that a complaint lacks merit or was made in bad faith.

3. The Board will continue to pursue legislative authority for alternative means of concluding investigations suggesting practice below the standard of care but not establishing grounds to initiate disciplinary action.

4. The Board will dedicate appropriate resources, and will seek sufficient legislative appropriations of staff and expenditure limitations to implement this policy.

ADOPTED THIS 20th Day of October, 2007.



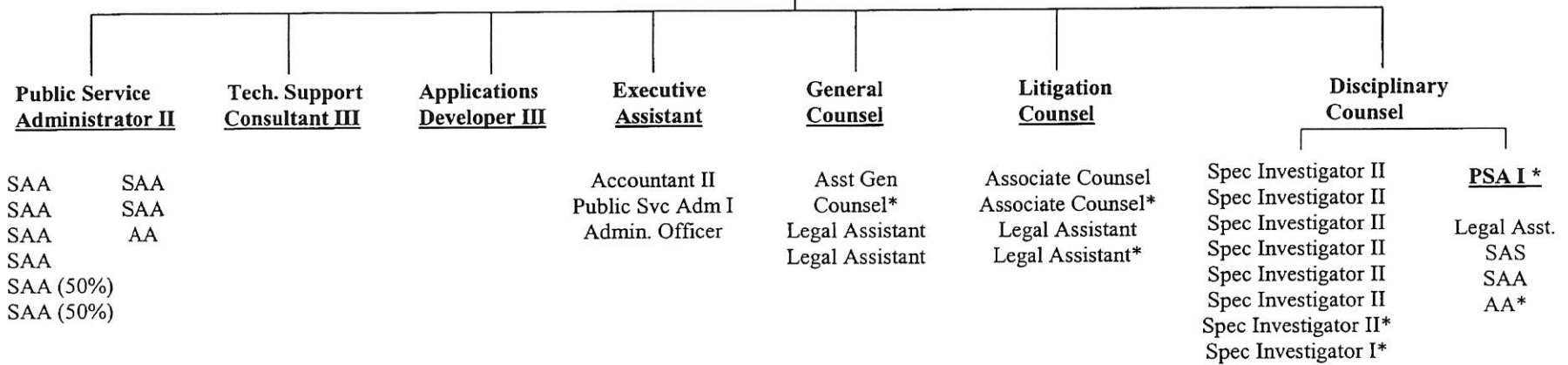
Betty McBride
President

KANSAS STATE BOARD OF HEALING ARTS
Organization of Positions

Attachment #3

15-MEMBER BOARD

Executive Director



*Authorized by 2007 H.B. 2367, Section 73 & 88, L. 2007, Ch. 167, Sections 73 & 88.

HP LaserJet P1505n

Self Test / Configuration

Product Information

Product Name = HP LaserJet P1505n
Formatter Number = KQ01H99
Product Serial Number = CNBK520538
Service ID = 18016
Firmware Datecode = 20070914
Max Print Quality = FastRes 1200

Page Counts

Total Pages Printed = 609
Input Jams = 0
Output Jams = 0
Cartridge Jams = 0
Narrow Media Page Count = 16
Total Jobs Printed = 171
Average Job Size = 3.56
Average Coverage = 5

Memory Settings

Total Memory = 32 MBytes
Total PCL Memory = 6.0 MBytes
Available PCL Memory = 5.3 MBytes

Print Settings

Copies = 1
Auto Continue = ON
Orientation = PORTRAIT
RET = ON
Economode = OFF
Print Density = 3
PCL Resolution = 600 dpi
IO Timeout = 5 secs
Jam Recovery = OFF
Symbol Set = PC8
Default Typeface = Courier
Paper Size = LETTER
Paper Type = Plain
Manual Feed = OFF

Network Information

Status = Connected
Host Name = NPIOD105E
Hardware Address = 001B780D105E
Link Speed/Duplex = 100TX Full
Total Packets Received = 86620
Bad Packets Received = 1
Total Packets Transmitted = 396
IP Address = 172.16.18.121
Subnet Mask = 255.255.252.0
Default Gateway = 172.16.16.1
Bonjour Printer Name = Disabled
IP Configured By = Manual
DHCP/BOOTP Server = 0.0.0.0
WINS Server = 172.16.21.12
IPv6 Link Local Address =

IPv6 Stateless Addresses =

IPv6 DHCP Addresses =

Installed Personalities and Options

PCL Firmware Datecode = 20070914

Status Log

Code	Page
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