Approved: March 6, 2008
Date

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 P.M. on January 22, 2008 in Room 136-N of the Capitol.

Committee members absent:

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department
Mrs. Terri Weber, Kansas Legislative Research Department
Ms. Nobuko Folmsbee, Revisor of Statutes Office
Mrs. Renae Jefferies, Revisor of Statutes Office
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Mr. Larry Buening, Executive Director, Kansas State Board of Healing Arts

Others in attendance: Please see attached guest list

Handouts

Upon opening the meeting Chairperson Wagle recognized the returning Staff and Committee Secretary. She then asked the Committee to turn their attention to their first handout which consisted of newspaper clippings concerning an investigation of Dr. Stephen J. Schneider, a Kansas physician. A copy of the handout is (Attachment 1) attached hereto and incorporated into the Minutes by reference.

She then called upon Mr. Larry Buening, Executive Director, Kansas State Board of Healing Arts, who had offered to come in today to speak to the Committee about the investigative role for the Kansas Board of Healing Arts when they first received notice and how they responded.

Mr. Buening began his testimony with a history of the Board, ex. When it was created, regulatory functions, statutory responsibilities. etc. He then provided information on the Board's investigative processes, attachment 1 of his testimony, and the disciplinary procedure, attachment 2 of his testimony. And lastly, he provided the Committee with information on the investigation of Dr. Schneider. A copy of Mr. Buening's testimony is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

As there was no further testimony, the Chair asked for questions from the Committee for Mr. Buening, which came from Senators Barnett, Palmer, Brungardt, Schmidt, Journey, and Wagle ranging from: clarification of "Agreed Order of Stay", what can practitioners do to shorten this time frame, do you have a range of sanctions, is this doctor prescribing at this time, does he still have his active license, and is there a time line of when his license will be pulled, can physician assistants prescribe , too, are there other pain management clinics physicians can refer to?

Adjournment

As it was going on Senate session time, Chairperson Wagle thanked Mr. Buening and the meeting was adjourned. The time was 2:35 p.m.

The next Committee meeting is scheduled for Monday, January 29, 2008.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

16. att

GUEST LIST

DATE: Tuesday, January 22, 2008

NAME	REPRESENTING
Michelle Peterson	Capitol Strategies
Ron Seeber	Hein Law Firm
Dodie Wellshear	KAFP
Amy Penrod	DOB
Sandra Braden	Gaches, Braden, Barbee & Assoc
Jennifer Shaker	HCSF
Chip Wheelen	HCSF
Todd Fleischer	Ks. Optometric Association
Bob Williams	Ks. Osteopathic Medical Assoc
Gabrielle Huckaby	Dennis Pyle
Alex Earles	———
Callie Denton Hartle	KS Assn. for Justice (KsAJ)
Larry Buening JR.	KS Bd of Healing Arts
Shelly Wakeman	KS Bd of Healing Arts
Dan Morin	KS Medical Society

16 in att.

LJWorld.com

Doctor accused of illegal drug scheme

By Roxana Hegeman - Associated Press Writer

December 21, 2007

Wichita — A Kansas physician who allegedly operated a "pill mill" out of his Haysville clinic was charged Thursday with illegally prescribing drugs in a scheme that caused the deaths of at least four patients, federal prosecutors said.

Dr. Stephen J. Schneider, 54, and his wife, nurse Linda K. Schneider, 49, were arrested Wednesday, a day before a Topeka grand jury returned the 34-count indictment, U.S. Attorney Eric Melgren said.

The Schneiders are charged with one count of conspiracy, five counts of unlawful distribution of a controlled substance, 11 counts of health care fraud, 13 counts of illegal monetary transactions, and four counts of money laundering. They were being held in federal custody Thursday, with their first court appearance scheduled for 1:30 p.m. today in U.S. District Court in Wichita.

According to the indictment, 56 of Stephen Schneider's patients have died from accidental prescription drug overdoses in the last five years. However, the indictment alleges that only four deaths were directly caused by drugs Schneider's clinic prescribed and 11 deaths in which the drugs were a contributing factor, Melgren said.

Schneider is not charged with killing any patients.

"He called patients who died from accidental overdoses 'bad grapes,"' Melgren said. "They emphasized volume over quality of care."

The person who answered the phone at the Schneider Medical Clinic on Thursday said no one was available to comment about the indictment. Schneider's lawyer, David Schippers, did not immediately return a call seeking comment. Christopher Cole and Steven Day, lawyers who have represented Stephen Schneider in several medical malpractice lawsuits, also did not immediately return calls for comment.

If convicted of illegal distribution of controlled substances where a death or serious injury occurred, the Schneiders would face 20 years to life in prison. The other charges carry sentences ranging from up to five years for conspiracy to up to 20 years for health care fraud and money laundering.

The 65-page indictment alleges that the doctor and his assistants wrote unlawful prescriptions for narcotic painkillers, muscle relaxers and other drugs. Drugs mentioned in the indictment included fentanyl, methadone, morphine and oxycodone.

The indictment also states that Schneider was known as "Schneider the Writer," "the pill man" and "the candy man."

According to the indictment, Linda Schneider bragged when interviewing prospective employees that the clinic, with its large number of pain-management patients, wrote more narcotics prescriptions than any other medical clinic in the state.

The indictment also says that Schneider Medical Clinic operated seven days a week and was open for 11 hours daily. Patients were scheduled 10 minutes apart, and the clinic billed more than $4.24 million to health benefit programs, including Medicaid and Medicare, the indictment says.

The indictment alleges that the clinic did not change its practices despite patients' deaths and that it ignored warning signs that patients were abusing, diverting or becoming addicted to the medications.

The illegal monetary transactions and money laundering charges stem from alleged proceeds from the crimes. The transactions involved between $50,000 and $130,000 that were moved among accounts, the indictment says.

Originally published at: http://www2.ljworld.com/news/2007/dec/21/doctor_accused_illegal_drug_scheme/

Senate Health Care Strategies Committee
Date: January 22, 2008
Attachment 1

Legislative Administrative Services

Date: Sat 12 · 22 - 07

( )	Topeka Capital Journal	( )	Hays Daily News	( )	Leavenworth Times
(X)	Wichita Eagle	( )	Hutchinson News	( )	Manhattan Mercury
( )	Kansas City Star	( )	Iola Register	( )	Olathe Daily News
( )	Chanute Tribune	( )	Johnson County Sun	( )	Pittsburg Morning Sun
( )	Dodge City Daily Globe	( )	Junction City Daily Union	( )	Salina Journal
( )	Emporia Gazette	( )	Kansas City Kansan	( )	Winfield Daily Courier
( )	Garden City Telegram	( )	Lawrence Journal World		

HAYSVILLE OSTEOPATH HELD ON 34 FEDERAL CHARGES

Board may pull doctor's license

pg 1

BY RON SYLVESTER
The Wichita Eagle

After a federal judge in Wichita found Friday that osteopath Stephen Schneider posed a danger to the community, a lawyer for the Kansas Board of Healing Arts said the order may be enough to pull his medical license.

U.S. Magistrate Don Bostwick ordered Schneider and his wife, Linda, held in jail without bond on 34 federal charges related to their practice of prescribing painkillers at their Haysville clinic.

The Schneiders pleaded not guilty Friday. Outside the courtroom, the Schneiders' relatives defended the doctor and his practice.

"He treats your soul as well as your sickness, because he has a good heart," said Pat Hatcher, Linda Schneider's sister, who is caring for the couple's two teenage daughters.

Prosecutor Tanya Treadway told the judge that Schneider stands accused of contributing to the lethal overdoses of 56 patients by giving them illegal access to powerful drugs.

"And we still have 35 more (deaths) to investigate," Treadway said.

Bostwick's order may give the Board of Healing Arts the authority it needs to act.

Kelli Stevens, litigation specialist for the board, said the board would look over the court order next week and see if it would prompt an emergency action against Schneider's license.

To do that, the board needs proof Schneider provides "imminent harm to the community."

"In this case, especially now with the judge's order, we may be there," Stevens said.

The board filed a petition against Schneider in 2006, but it was delayed as the state added extra patients to the case; then federal investigators asked the board to delay the case so federal prosecutors could proceed with theirs, she said.

The original six-page petition had grown to more than 50 pages by the Nov. 13 filing.

Board's role

Schneider, 54, wouldn't give up his license voluntarily, he said through his lawyer at Friday's hearing.

"Dr. Schneider still has patients out there who at least will need referrals to other health care providers," lawyer Jay Greeno said. "Not all of his patients are there for pain management issues. They have other health issues that need to be taken care of."

Bostwick said he doesn't have the power to order a doctor to give up a medical license.

"I do have authority to say if he's released, he couldn't prescribe medications or practice medicine," Bostwick said.

He said he didn't know how he could ensure Schneider wouldn't continue seeing patients or authorizing prescriptions without 24-hour surveillance.

"I don't know how I can effectively and efficiently police that," Bostwick said.

Schneider didn't change his medical practices, even as federal investigators scrutinized him for two years before Thursday's grand jury indictment, Treadway said. Greeno pointed out that Schneider is presumed innocent until he's proven guilty in court.

Treadway said that if Schneider gave up his license voluntarily, the government would agree to his release.

"You might," Bostwick said. "I might not."

The Board of Healing Arts has the authority to restrict, suspend or revoke a doctor's license.

A petition filed Nov. 13 by the board claims 14 cases in which Schneider showed negligence and incompetence or unprofessional behavior.

Those include:

- Patients receiving prescription painkillers when drug screens showed evidence of illicit drugs, such as marijuana.
- Patients receiving prescriptions under Schneider's watch, even when they had a history of drug abuse and were not closely monitored.
- People receiving prescriptions from Schneider or his assistants when drug screens showed an absence of the medications — indicating that they were not using the pills, but selling them.

Stevens said the board could act as early as Wednesday.

Possible flight risk

Some patients, however, have wondered why it took so long for the board to act.

The board's petition covers patients seen at the Haysville clinic from 2001 through 2006. The federal criminal indictment cites Schneider clinic patients dying of prescription drug overdoses through this year.

Stevens said one complicating aspect of the case was the number of medical providers working in the Schneider clinic.

The clinic apparently had a quick turnover of employees, including other physicians and physicians assistants, she said.

Often, patients would see different providers during repeat visits, Stevens said.

"Determining which physician is responsible for which patient has been difficult," she said.

Bostwick didn't find Linda Schneider, 49, a danger for release, especially with her husband behind bars.

But the judge noted the couple owned homes in Oklahoma and Mexico.

John Rapp, Linda Schneider's lawyer, said if she hadn't fled the country during two years of investigation, she wouldn't leave now. Rapp also said she wouldn't leave her two teenage daughters.

"Her whole family is here, her husband is detained here, where's she going to go?" Rapp said.

Mexico, argued Treadway.

"She is known to have bags packed for Oklahoma and Mexico that she keeps by the door," Treadway said.

'Elusive' activities

Linda Schneider also is on probation in another federal case involving giving false information so a man who wasn't a U.S. citizen could get a Social Security card. She pleaded guilty last January.

That man, Eric Taylor, originally was identified as the Schneiders' son.

Linda Schneider's sister said Taylor, who now lives in Mexico, is a family friend.

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Legislative Administrative Services

Date: Sat 12-22-07

( ) Topeka Capital Journal
(X) Wichita Eagle
( ) Kansas City Star
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( ) Garden City Telegram
( ) Hays Daily News
( ) Hutchinson News
( ) Iola Register
( ) Johnson County Sun
( ) Junction City Daily Union
( ) Kansas City Kansan
( ) Lawrence Journal World
( ) Leavenworth Times
( ) Manhattan Mercury
( ) Olathe Daily News
( ) Pittsburg Morning Sun
( ) Salina Journal
( ) Winfield Daily Courier

Cont. pg 2

Regardless of the relationship, Treadway said Taylor returned the favor and helped Linda Schneider get a Mexican ID card.

Treadway also characterized the Schneiders' activities before their arrest as "elusive" toward federal agents, making them think the couple planned to flee the country Wednesday night.

Linda Schneider's sister said the two of them simply went shopping and ran errands, which is why they were driving around town, going in and out of buildings.

"I still have my receipts," Pat Hatcher said. "The government has seized their vehicles. If she wanted to go somewhere, she had to call someone. She just wanted to spend time with me and hang out."

Bostwick said he remained open to motions for the couple's future release, as long as they effectively address his concerns about public safety and their risk of leaving Wichita.

Contributing: Jeannine Koranda of The Eagle

Reach Ron Sylvester at 316-268-6514 or rsylvester@wichitaeagle.com.

THE CHARGES

Federal crimes charged against Stephen J. Schneider, 54, and his wife Linda K. Schneider, 49:

- One count of conspiracy
- Five counts of unlawful distribution of a controlled substance resulting in serious bodily injury and death
- Eleven counts of health care fraud
- Thirteen counts of making illegal monetary transactions
- Four counts of money laundering

AT KANSAS.COM:

- The 68-page indictment
- The Board of Healing Arts complaint
- Previous coverage

..islative Administrative Services
Date: Sun. 12-23-07
( ) Topeka Capital Journal ( ) Hays Daily News ( ) Leavenworth Times
( ) Wichita Eagle ( ) Hutchinson News ( ) Manhattan Mercury
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field Daily Courier

Doctor draws notice of lawmakers

■ State legislators are asking why the Board of Healing Arts hadn't acted on complaints against Stephen Schneider.

BY JEANNINE KORANDA
The Wichita Eagle

Some legislators are calling for answers into why Haysville osteopath Stephen Schneider was allowed to continue prescribing pain medications even though he had been under federal investigation for four years on allegations of illegally dispensing medicine.

They also want to know why the Kansas Board of Healing Arts didn't do something sooner even though the board was aware of complaints against Schneider.

A 68-page federal indictment released Thursday says that 56 patients from Schneider's Haysville clinic died from accidental overdoses and that he continued to unlawfully prescribe pain medication.

The Schneiders entered a plea of not guilty in federal court on Friday.

"It seems like the system failed 56 families and 56 individuals," said state Sen. Susan Wagle, R-Wichita, chairwoman of the senate Health Care Strategies Committee and who also sits on the joint Health Policy Oversight Committee.

Schneider, 54, and his wife, Linda, 49, face 34 federal charges centered on the practice of writing painkiller prescriptions at the Schneider Clinic.

Wagle said she was surprised to learn the board — which oversees licensing for Kansas doctors and other health professionals — had not taken any action against Schneider although he was under federal scrutiny and was facing several civil lawsuits in court.

"This is the kind of news that disappoints the public and makes them lose confidence in the system," she said.

While Schneider is being held in jail without bail, Wagle worried that he still had his license.

"If that is true, the Legislature needs to get involved and ask some tough questions," she said.

State Rep. Brenda Landwehr, R-Wichita, chairwoman of the house Health and Human Services Committee, wondered how Schneider operated so long despite several warning flags.

"If you have two, three or four flags on one physician, you need to make it a priority," she said.

She thought there likely would be questions raised in the Legislature.

Lawmakers also will be discussing a system to track prescriptions electronically called e-prescribe, Landwehr said.

The system is more focused on flagging patients who might be getting prescriptions from several physicians. But it could have been a warning signal in this case, showing the amount of drugs Schneider was prescribing to patients, she said.

Disciplinary role

The 15-member board, appointed to four-year terms by Democratic Gov. Kathleen Sebelius includes three members of the general public and 12 medical professionals, said Larry Buening, the board's executive director. Board members receive $35 for each day they meet. They generally meet for one day every other month.

Four to five members of the board sit on the disciplinary panel and review cases then recommend whether disciplinary action should be taken, he said. Disciplinary actions can range from fines to license suspension or revocation.

In 2007, the board recommended disciplinary action 67 times for a variety of medical professionals.

In 2006, the board recommended serious disciplinary action against 16 doctors. Over a three-year period the board recommended serious disciplinary action at a rate of about two to three doctors per 1,000, said Sidney Wolfe, director of the health research group at Public Citizen, a nonprofit consumer advocacy organization.

In a report by Wolfe's group examining how frequently state boards discipline doctors, Kansas came in 36th.

The state also doesn't post details such as information on malpractice suits doctors might be facing, or hospital or federal disciplinary action on the Internet.

Kansas isn't doing a good job at disciplining doctors or putting up information so patients can learn more about their doctors, Wolfe said.

Patients should have a way to learn if a doctor like Schneider is facing several lawsuits, he said.

States handing down serious disciplinary actions to doctors are doing a better job protecting the people living there, he said.

Cases take time

The Board of Healing Arts started hearing complaints about Schneider in late 2004, said Kelli Stevens, who has been handling the case as litigation council for the board.

On May 30, 2006, she filed a six-page petition saying that from 2000 to 2005, Schneider excessively prescribed potentially addictive medicines. It also said he continued the prescriptions even when patients showed signs of addiction and kept incomplete and inadequate patient records.

The petition asked that the board consider disciplinary action against Schneider.

The petition is still winding its way though the system, was amended in November and has grown to 57 pages documenting several cases where patients died of apparent overdoses from drugs Schneider prescribed.

The petition claims 14 cases in which Schneider showed negligence and incompetence or unprofessional behavior.

Those include:

■ Patients receiving prescription painkillers when drug screens showed evidence of illicit drugs, such as marijuana.

■ Patients receiving prescriptions under Schneider's watch, even when they had a history of drug abuse and were not closely monitored.

Pg. 1 of 2

Cont.

■ People receiving prescriptions from Schneider or his assistants when drug screens showed an absence of the medications — indicating that they were not using the pills, but selling them.

It takes a while to build a case, Stevens said. Then the petition has to go through a review and discovery process.

The petition against Schneider was further delayed as the state added extra patients to the case, then federal investigators asked the board to delay the case so federal prosecutors could proceed with theirs, she said.

There are 10 patients involved in the state's case, although the board received many more complaints about Schneider, she said.

Each patient added to the case meant more records to gather and people to interview, she said.

To build a neglect case, the board must show a pattern of practice, Buening said.

Prior to this case, Schneider, who received his license from Kansas in 1988, had not faced disciplinary action by the Board of Healing Arts, Stevens said.

The board has discussed taking away Schneider's license in an expedited process, but they haven't taken action, Buening said.

And with Schneider in jail, he does not present an immediate threat to people.

But Stevens said on Friday that the board could take action this week.

A federal judge on Friday found that Stephen Schneider posed a danger to the community. The judge ordered that Schneider continue to be held in jail because he couldn't ensure that the doctor would not continue seeing patients or authorizing prescriptions.

That order may give the Board of Healing Arts the authority it needs to take emergency action, she said.

Reach Jeannine Koranda at 785-296-3006 or jkoranda@wichitaeagle.com.

Legislative Administrative Services

Date: Fri 12·28-07

( ) Topeka Capital Journal
(X) Wichita Eagle
( ) Kansas City Star
( ) Chanute Tribune
( ) Dodge City Daily Globe
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( ) Garden City Telegram
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( ) Hutchinson News
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( ) Johnson County Sun
( ) Junction City Daily Union
( ) Kansas City Kansan
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( ) Manhattan Mercury
( ) Olathe Daily News
( ) Pittsburg Morning Sun
( ) Salina Journal
( ) Winfield Daily Courier

INDICTED HAYSVILLE PHYSICIAN

Board seeks to suspend doctor's license

BY JEANNINE KORANDA
The Wichita Eagle

TOPEKA — The Kansas Board of Healing Arts filed an emergency order Thursday asking a judge to suspend Haysville physician Stephen Schneider's medical license, arguing that his "continuation in practice constitutes an imminent danger to the public health and safety."

The case will go before an administrative law judge for a hearing, although there is no timeline for when that will happen, said Kelli Stevens, litigation counsel for the board.

If the motion is approved, Schneider's medical license would be suspended until the board's full case against him was resolved, Stevens said.

The petition, filed with the Office of Administrative Hearings, was spurred in part by a 68-page federal indictmer released last week. It said that 56 patients from Schneider's Haysville clinic died from accidental overdoses and that he continued to unlawfully prescribe pain medication, said board executive director Larry Buening.

"The information available to the grand jury was not brought to light until the indictment was filed," he said.

In the meantime, Schneider — who is being held in jail without bond — still has an active medical license, Stevens said.

Suspending his medical license would also mean his Haysville clinic could no longer operate, Buening said.

The board's petition noted that even though Schneider is in jail, his clinic could continue to provide medical care because he still has an active license.

The board noted the "shockingly high number of patient deaths from accidental overdose" listed in the federal indictment. Some of those cases were included in the board's request for disciplinary action filed against Schneider starting in May 2006 and updated in November.

Rebecca Doan, who runs Doan Center for Counseling in El Dorado with her husband, called the move "appropriate and probably past due."

The couple opened the drug counseling center five years ago, and she said several of their clients knew the Schneider Clinic as a place they could go to get pain medications.

Schneider, 54, and his wife, Linda, 49, face 34 federal charges centered on writing painkiller prescriptions at the clinic.

Tracy Diel, director for the Office of Administrative Hearings, said he did not know when the judge might hear the board's request. It depended on the schedules of everyone involved.

Reach Jeannine Koranda at 785-296-3006 or jkoranda@wichitaeagle.com.

Board wants Haysville doctor's license suspended

The Associated Press

Published Saturday, December 29, 2007

WICHITA — The Kansas State Board of Healing Arts is seeking to suspend the medical license of a Haysville physician charged with illegally prescribing drugs in a scheme prosecutors allege caused the deaths of at least four patients.

The emergency order seeking the suspension of Dr. Stephen Schneider's license was filed Thursday with the Office of Administrative Hearings.

Schneider, 54, and his wife, Linda, 49, face 34 federal charges centered on writing prescriptions for painkillers and other narcotic drugs.

It wasn't known when the case would go before an administrative law judge for a hearing, Kelli Stevens, litigation counsel for the board.

Stevens said Friday that she expected to know more details next week.

Approval of the motion would result in the suspension of Stephen Schneider's medical license until the board's full case against him was resolved, Stevens said.

The petition was prompted in part by a 68-page federal indictment released last week. According to the indictment, 56 of Schneider's patients have died from accidental prescription drug overdoses in the last five years.

However, the indictment alleges that only four deaths were directly caused by drugs Schneider's clinic prescribed and that the drugs were a contributing factor in 11 other deaths.

"The information available to the grand jury was not brought to light until the indictment was filed," said board executive director Larry Buening.

Schneider's court-appointed attorney, Jay Greeno, didn't immediately return a phone call seeking comment Friday.

At hearing last week, U.S. Magistrate Judge Donald Bostwick ordered that Schneider and his nurse wife remain in jail pending trial.

During the hearing, Greeno told the judge that Steven Schneider "still has patients out there that still need him." Greeno also said his client didn't want to surrender his license as prosecutors had requested as a condition of release because he has patients with "real health issues" that need his care.

Although Schneider is jailed without bond, the board's petition noted that his clinic could continue to provide medical care because he still has an active license. Suspension of his license would mean the clinic could no longer operate.

In the petition, the board noted the "shockingly high number of patient deaths from accidental overdose" listed in the federal indictment. Some of those cases were included in the board's request for disciplinary action filed against Schneider starting in May 2006 and updated in November.

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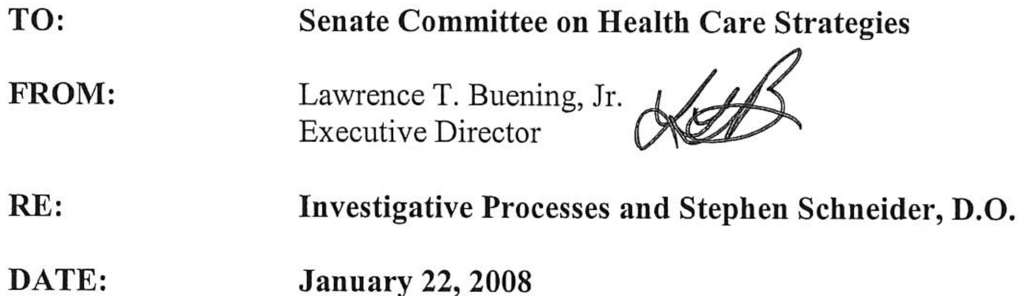
KATHLEEN SEBELIUS
GOVERNOR

STATE BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

MEMORANDUM



TO: **Senate Committee on Health Care Strategies**

FROM: Lawrence T. Buening, Jr.
Executive Director

RE: **Investigative Processes and Stephen Schneider, D.O.**

DATE: **January 22, 2008**

Good afternoon. I am the Executive Director of the Kansas State Board of Healing Arts and am providing this information on behalf of the Board.

To briefly provide some information on the Board, it was created in 1957 by combining the existing boards that regulated medical doctors, osteopathic doctors, and chiropractors. Currently, the Board is comprised of 15 members, each appointed by the Governor for four-year terms. Five members are medical doctors, three are osteopathic doctors, three are chiropractors, one is a podiatrist and three are appointed from the general public. The Board regulates the practice for approximately 21,500 persons engaged in 13 health care professions.

The Board performs its regulatory functions pursuant to statutes enacted by the Legislature and rules and regulations adopted by the Board to implement those statutes. The Healing Arts Act (K.S.A. 65-2801 *et seq.*) was enacted in 1957 to regulate the professions of medicine and surgery, osteopathic medicine and surgery and chiropractic. K.S.A. 65-2801 has remained unchanged since 1957 and provides that the regulation of the healing arts is required so that "the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice...".

To meet its statutory responsibilities in the regulation of the healing arts, the Board has three programs: (1) Licensing and Renewal; (2) Investigation and Disciplinary; and (3) Enforcement and Litigation. The Licensing and Renewal Program goal is to ensure that only those meeting the required qualifications are issued licenses and are allowed to renew those licenses. The goal of the Investigation and Disciplinary Program is to promptly, aggressively and thoroughly investigate matters alleging incompetence,

Senate Health Care Strategies Committee
Date: January 22, 2008
Attachment 2

BOARD MEMBERS: BETTY McBRIDE, Public Member, PRESIDENT, Columbus - VINTON K. ARNETT, D.C., VICE PRESIDENT, Hays - MICHAEL J. BEEZLEY, M.D., Lenexa
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 - CAROL SADER, Public Member, Prairie Village
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
Voice: 785-296-7413 Toll Free: 888-886-7205 Fax: 785-296-0852 Website: www.ksbha.org

unprofessional conduct and other statutorily proscribed conduct and to submit completed investigations to review committees for fair and consistent recommendations. The Enforcement and Litigation Program is involved in restricting or otherwise affecting the license of those individuals who lack professional competence or have committed other violations of the Healing Arts Act.

I have been requested to provide information on the Board's investigative processes. During the summer of 2006, Legislative Division of Post Audit conducted a performance audit of the Board of Healing Arts, that included reviewing issues related to complaint investigations. Attachment 1 constitutes pages 3 through 7 of the Performance Audit Report issued October 2006. The process for reviewing complaints, investigating them, and ordering corrective action is set forth in Figure OV-2 on page 5 of the Report.

Attachment 2 is the Disciplinary Procedure that can be accessed from our website at www.ksbha.org.

Chairperson Wagle has also requested that I provide information to the Committee on a case that has received substantial coverage in Sedgwick County. This press and media coverage began when a Grand Jury indictment was filed in United States District Court on December 20, 2007 against Stephen J. Schneider and Linda K. Schneider, case no. 07-10234-WEB. The Indictment contains 34 counts alleging conspiracy, unlawful distribution and dispensing of controlled substances, health care fraud, illegal monetary transactions, and money laundering. Since the filing of the indictment, a plaintiff's attorney has been quoted on more than one occasion, an editorial appeared in the December 22, 2007 edition of The Wichita Eagle, and two legislators were cited in an article that appeared December 23, 2007. As a result, I have reviewed the information in the Board's possession regarding what information was provided to the Board and when it was provided.

In calendar year 2003, the Board received a police report concerning medication bottles found in the home of a decedent. An investigative case was opened six days following receipt of the report. The investigation revealed that bottles of pills from four practitioners were found in the decedent's home. The autopsy determined that death was due to toxic effects of cocaine. The osteopathic review committee determined that Dr. Schneider did not violate the healing arts act and the matter was closed.

In calendar year 2004, the Board office received three pieces of information. On February 11, 2004, a complaint was received and opened for investigation six days later. Following the conclusion of the investigation, a determination was made that there had been no deviation from the standard of care. A letter was received on March 23, 2004, and an investigation commenced. It was subsequently determined that the standard of care had been met. On November 11, 2004, a complaint was filed. Investigation revealed that the standard of care had not been met. This was the first finding that standard of care had not been met. Pursuant to K.S.A. 65-2837(a)(2), repeated instances of ordinary neglect are required for a violation of the healing arts act to have occurred.

The treatment provided to the patient relating to this complaint has been included in the disciplinary action now pending before the Board.

During the first nine months of 2005, six additional matters came to the Board's attention. Complaints received on March 17, March 25 and April 15, 2005 have all been determined to be within the standard of care. On February 4, 2005, a complaint was received and an investigation opened March 1, 2005. Licensee's conduct in the treatment of this patient was subsequently determined to have been below the standard of care and this matter has been included in the disciplinary action that was originally filed May 30, 2006. Treatment of the patient that was described in the complaint received August 2, 2005, was also determined to be negligence and is included as one of the counts in the matter currently pending before the Board.

The sixth matter received during the first nine months of 2005 was a letter from SRS on May 25, 2005 advising that licensee had been terminated from participation in the Kansas Medicaid program. On July 1, 2005, an appeal was initiated by the licensee in Sedgwick County District Court, case no. 05-CV-2566. As a result, a hearing was conducted July 6, 2005, in which a District Court Judge in Sedgwick County found that there was substantial likelihood of success on the part of the licensee on the appeal. Specifically, the Honorable Karl W. Friedel stated as follows: "From the standpoint of irreparable injury, I find that if this action is not stayed – the action on the part of the State is not stayed there will be irreparable injury not only to the doctor and the clinic, the staff of the clinic, but also to the patients by way of an interference with the doctor/patient relationship. And given the evidence that's provided of the compliance by the clinic with regard to the FirstGuard requirements of remedial action, I find no threat to the public health, no undue harm to the public or the prospect of harm." (Transcript of proceedings, Page 3, Lines 2-12). The Court ordered that the Kansas Division of Health Policy and Finance permit the licensee to continue to participate in the Kansas Medicaid program.

In September 2005, it became a matter of public knowledge that Federal authorities were conducting an investigation and had executed a search warrant on the Schneider clinic. From October 6, 2005 through the end of the year, the Board received one complaint and four initial reports from the Health Care Plan that malpractice suits had been filed---two of these pertained to Stephen Schneider, D.O. and two related to Schneider Medical Clinic, LLC. It should be noted that malpractice petitions are not generally investigated as statistics have shown that only about one in four result in payments or a determination that negligence had occurred by a practitioner.

During the first three months of 2006, the Board received reports from the Plan that four more suits had been filed or a written claim made against the licensee. Also, in addition to copies of Petitions or claims received from both the Fund and Plaintiff attorneys, the Board received two complaints on February 7 and February 17.

On May 31, 2006, the Board initiated a disciplinary proceeding. The treatment relating to six of the patients that were brought to the Board's attention during the first three months of 2006 are currently included in the disciplinary proceeding. In addition, the

disciplinary proceedings involve the treatment provided to patients relating to the complaints received on November 11, 2004 and February 4, 2005.

There may be questions about the length of time it has taken for the Board's disciplinary proceeding to come to a hearing. Since the filing of the disciplinary proceeding, the Board has continued to receive additional complaints and information on malpractice suits filed. Investigations are still ongoing and peer review is being conducted. A Board member was appointed as the Presiding Officer in June 2006. A prehearing conference was then scheduled for July 31, 2006. In August 2006, a substitute Presiding Officer from the Office of Administrative Hearings was designated to hear the case. The Board's attorney filed a 44-page First Amended Petition on September 1, 2006. A second prehearing conference was scheduled for September 25, 2006, resulting in a prehearing order scheduling the matter for hearing on March 26, 2007. On January 26, 2007, an Agreed Order of Stay was entered. This was agreed to as a result of repeated discussions with Federal authorities indicating a Federal indictment would be forthcoming and there was a possibility of a resolution involving both the Federal investigation and the licensee's license to practice in Kansas. A third prehearing conference was scheduled for November 13, 2007, on which date a 56-page Second Amended Petition was filed. On December 27, 2007, a Motion for Emergency Suspension was filed which was heard by the Presiding Officer on January 15, 2008. The Presiding Officer has taken the Motion under advisement and he informed the parties that he would rule as soon as possible.

The Board was aware of an investigation being conducted by Federal authorities prior to the service of the first search warrant in September 2005. Contact with Federal authorities has been continuous. However, it was not until December 2006 and January 2007, that discussions with Federal authorities revealed just how extensive the Federal investigation was. According to the December 21, 2007 issue of The Wichita Eagle the indictment filed December 20, 2007, followed four years of investigation. An Associated Press story appearing January 17, 2008, cites one of the defense attorneys as saying the government has 200 boxes of evidence. A Kansas City Star article posted December 20, 2007, cited United States Attorney Eric Melgren as follows: "Melgren called the case one of the most complicated investigations his office has ever done, and his office worked as quickly as possible, given the circumstances." The full extent of the Federal case was not totally made aware to the Board until the filing of the indictment.

The Board itself is very aware of the concerns of practitioners who are involved in pain management. The abuse and addiction potential of narcotic painkillers and fears of federal and state scrutiny and prosecution discourage many primary-care doctors from treating chronic pain patients. Patients with pain are difficult patients for any doctor to treat.

One past case is of particular note. In July 1994, a licensee was arrested on murder and attempted murder charges. A settlement proposal was provided to the licensee's attorney February 7, 1995, signed by the licensee on February 18, 1995, and accepted by the Board at its meeting April 29, 1995. The settlement resulted in the licensee surrendering his license to practice in Kansas. Eight months later the licensee was convicted of

murder and attempted murder. Subsequently, the appellate courts set aside the convictions. The doctor's license was then reinstated on October 17, 1998. However, the 2000 Legislature determined that the healing arts fee fund, the Attorney General's fund and the State General Fund should each pay the doctor $66,666.

In October 1998, the Board adopted Guidelines for the Use of Controlled Substances for the Treatment of Pain. This was followed in June 2002 by the adoption of a Joint Policy with the Nursing and Pharmacy Boards. Copies of these policies are included as Attachments 3 and 4. Excerpts from the Joint Guidelines include:

> "Inappropriate treatment of pain is a serious problem in the United States. Inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and ineffective treatment."
>
> "Prior to the filing of any allegations, the results of the investigation will be Evaluated by the health care provider's peers who are familiar with the policy statement. Health care providers who competently treat pain should not fear disciplinary action from their licensing board."

In 2006, the Legislature amended the healing arts act as follows:

> "(23) Prescribing, dispensing, administering~~,~~ *or* distributing a prescription drug or substance, including a controlled substance, in an ~~excessive,~~ improper or inappropriate manner ~~or quantity~~, *or for other than a valid medical purpose*, or not in the course of the licensee's professional practice."

This amendment was included with the bill that adopted the Pain Patient's Quality of Care Act. (2006 Senate Substitute for House Bill No. 2649) and, in combination, resulted in the state of Kansas receiving the highest grade for balanced pain policies in the nation by the Pain & Policy Studies Group of the University of Wisconsin Comprehensive Cancer Center. (See Attachment 5).

Cases involving potential overprescribing are extremely difficult and time consuming. Not only must the patient prescription records be obtained, but the investigation must be reviewed by a committee of the practitioner's peers, the Board's Disciplinary Panel and, if proceedings are authorized, an expert who will testify at the hearing. This case was further complicated by a number of factors: patients received prescriptions from a number of prescribers, many of the patients had obtained illegal drugs, and there are more than 40 pharmacies in the vicinity surrounding the Schneider Clinic that could reasonably be used by patients to fill prescriptions. Subpoenas for pharmacy records produce results in different formats. For instance, some pharmacies may provide prescription information based on the date the prescriptions were filled; others may provide information based on the drug prescribed, etc.

A centralized database of prescriptions that could produce results in a standard format would be extremely beneficial. The 2007 Legislature enacted S.B. No. 302 and thereby

created a controlled substances monitoring task force. The report of the controlled substance monitoring task force was presented to the President of the Senate and Speaker of the House on January 16, 2008. The Board would urge adoption of the draft bill enacting the prescription monitoring program act that has been recommended by the task force.

Thank you for your time and I would be happy to respond to any questions.

ATTACHMENT 1

PERFORMANCE AUDIT REPORT

Board of Healing Arts: Reviewing Issues Related to Complaint Investigations, Background Investigations, and Composition of the Board

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
October 2006

06PA10

The Board's mission is to protect the public by ensuring that practitioners in the 14 health care professions it regulates meet and maintain certain qualifications. The Board tries to protect the public from incompetent practice, unprofessional conduct, and other proscribed behavior by these individuals.

The 15-Member Board Licenses 14 Health Care Professions

The Board has regulated some of these professions for years, but others are newer. For example, radiologic technologists weren't required to be regulated until July 1, 2005. ***Figure OV-1*** shows the professions the Board regulates and the number of licensees in each. The Board has no oversight or regulatory authority over clinics, hospitals, or other health-care facilities, although it has standards for offices at which surgical procedures are performed.

Figure OV-1
Professions Regulated by the Board of Healing Arts, and Number of Licensees, Fiscal Year 2006

Profession	Number of Licensees	Profession	Number of Licensees
Medical Doctor	9,424	Osteopathic Doctor	899
Radiologic Technologist	2,559	Physician Assistant	683
Physical Therapist	1,798	Occupational Therapist Assistant	308
Respiratory Therapist	1,510	Athletic Trainer	286
Occupational Therapist	1,150	Podiatric Doctor	134
Chiropractic Doctor	1,041	Naturopathic Doctor	17
Physical Therapist Assistant	1,012	Contact Lens Distributors	4
Total			**20,825**

Source: Board of Healing Arts

The Board's members are appointed by the Governor, and include three public members and 12 doctors—5 medical, 3 osteopathic, 3 chiropractic, and 1 podiatric. The Board was created in 1957 when the Healing Arts Act was passed, and its composition has changed gradually, with the latest change in 1986. Advisory councils represent the professions that don't have a Board seat, and advise the Board on topics relevant to their areas.

Board Staff Are Responsible for Licensing Professionals And Responding to Complaints

The agency is divided into four sections: administration, licensure, legal, and information technology. Nearly all the agency's 32 staff are assigned to either the licensure or legal sections.

- Licensure. Seven analysts and three administrative staff issue new and renewal licenses to applicants who meet requirements. Licenses are valid for one year.

- Legal. The 18 staff in this section includes eight investigators (representing 7.5 FTE), a complaint coordinator, five attorneys, two legal assistants, and other administrative staff. Among other things, they handle all complaint investigations, present options for Board action against practitioners who have violated the Act (which can range from fines to a license revocation), and handle all legal prosecutions.

  Board staff indicated that investigators' caseloads range from 33 to 84 open cases. Each investigator was assigned an average of 43 new

cases last year. Five investigators live in the Topeka area, while the other three live and work from their homes to cover the Kansas City area, the Emporia/Wichita area, and southeast Kansas. All but one of the investigators have a law enforcement background.

- Administration and Information Technology. The agency has five administrative positions and two information technology positions.

More information about the Board can be found in the At-A-Glance box on page eight.

The Board Has Established a Complaint-Handling System With Multiple Levels of Review

The Board's complaint-handling process is shown in ***Figure OV-2*** at right, and is described briefly below.

The Board of Healing Arts considers all "adverse information" it receives about a licensed professional to be a complaint. During fiscal year 2006, the agency received nearly 2,600 pieces of information that it labeled as complaints. ***Figure OV-3*** shows the sources of these complaints, and numbers of each:

Figure OV-3
Sources and Number of Complaints Received
Fiscal Year 2006

Complaint Source	# of Complaints Received
Malpractice petitions received from Health Care Stabilization Fund	668
General public/patients filing a complaint form, calling or e-mailing	580
National reports from organizations that track disciplinary actions	300
Hospitals submitting an adverse findings report	79
Other, such as information self-reported by a doctor on the license application	960
Total	**2,587**

Source: Kansas Board of Healing Arts complaint database.

Agency policy is for staff to review complaints within two weeks of receipt to assess whether the Board has jurisdiction, and whether an investigation should occur.

The Board has established guidelines regarding which complaints will be investigated. The standard is, "If everything the complaint alleges is assumed to be true, when considering the licensees' entire history with the Board, are there grounds for discipline?" Typical allegations that will be assigned for investigation include:

- self-reported issues on an application for licensure (these are sent to the legal department for investigation and review) See ***Appendix C*** for more information

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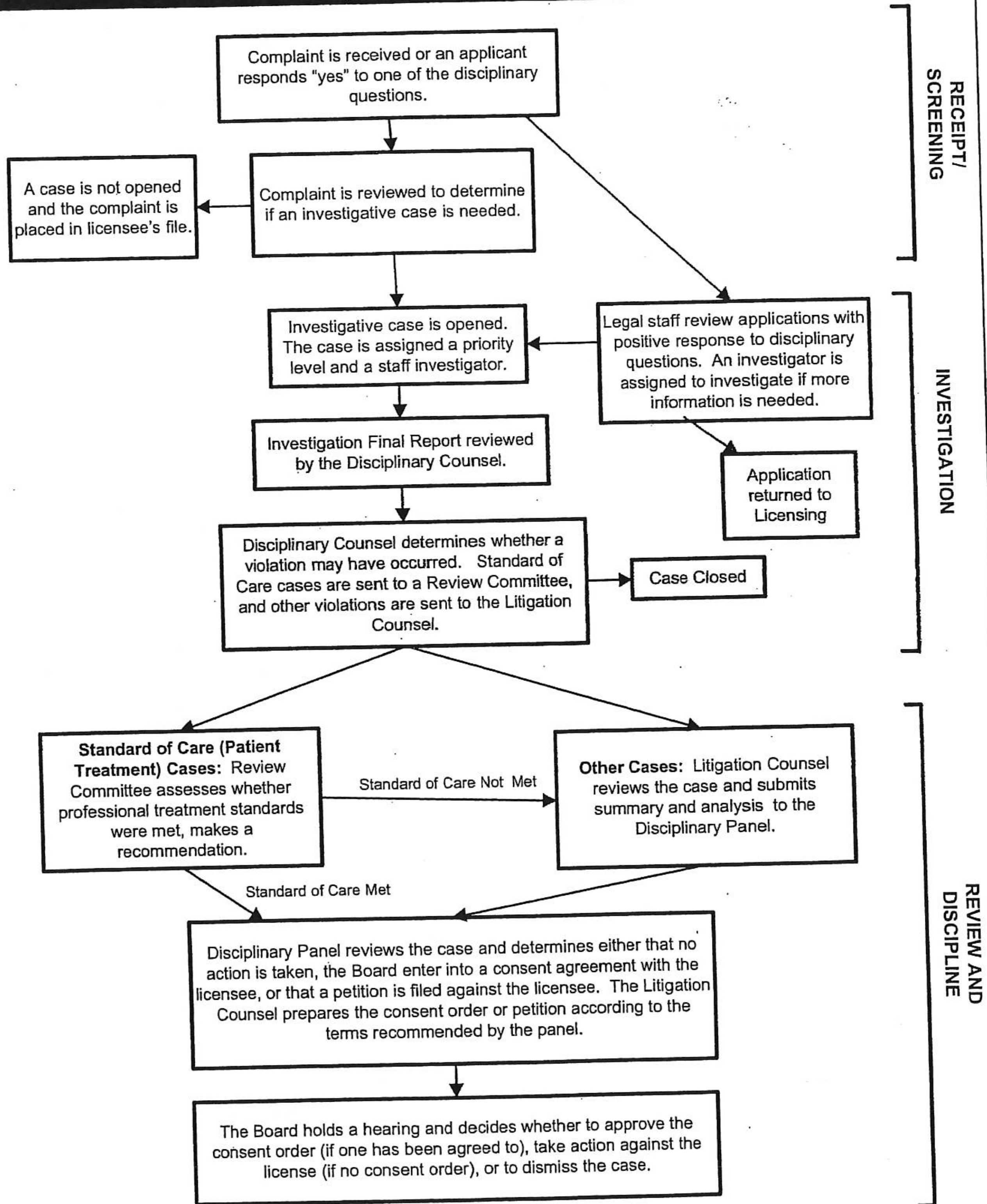
Figure OV-2
Board of Healing Arts' Process for Reviewing Complaints, Investigating Them, and Ordering Corrective Action



Source: LPA analysis of Board process.

- a complaint that is the third allegation of substandard patient care, which constitutes a "pattern" of misconduct as defined by the Board
- any allegation of gross negligence, which is defined as wanton or willful misconduct
- a single allegation of unprofessional conduct, such as sexual misconduct with a patient, chemical impairment, surrender of license in another state, or felony conviction

An administrative assistant reads all incoming complaints. If any are "emergencies," they are flagged and priority review. The rest are passed to the attorney responsible for reviewing and screening complaints and assigning them to investigators, as needed.

In fiscal year 2006, about 350 new cases were assigned to investigators for further review and potential disciplinary action.

Complaints that are assigned for investigation are given a priority level. The Board has four priority levels as defined in ***Figure OV-4*** below:

Figure OV-4
Priority Level Descriptions

Level	Description
4	**Emergency:** likelihood of posing an imminent threat of harm to the patient or other person if the behavior continues, and is a violation of law; practicing without a license; felony or misdemeanor that requires immediate investigation to preserve evidence
3	**Priority:** serious violation of the Healing Arts Act that is likely to result in harm to a patient or other person; felony or misdemeanor that requires timely investigation
2	**Important:** a violation of the Healing Arts Act that could result in harm to a patient or other person; violation of a registration requirement or other law; adverse action has been taken by another authority
1	**Other:** Other cases

Source: Kansas Board of Healing Arts

Complaints that don't lead to an investigation are maintained in the licensees' file for possible consideration in the future. Future complaints may be combined with the current complaint to establish a pattern of misconduct that would be the basis for opening an investigation.

The Board has set guidelines for how long different segments of a case should take. We reviewed these guidelines and estimate the Board's total time line for resolving complaints to be about 20 months from the time the complaint was received to the time the case was closed by Board or staff action. ***Figure OV-5*** shows a case progression time line for non-emergency complaints.

The Board has a multi-step process for cases needing disciplinary action. These are described on the next page.

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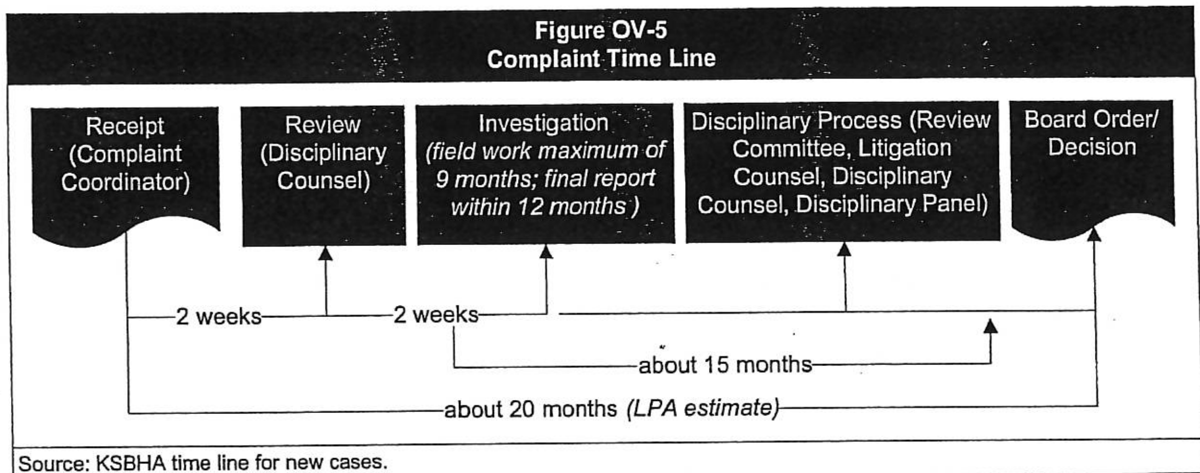
- **Review Committee**: The Board has separate peer review committees for each licensed profession. Committee members are volunteers, not Board members. These committees review the entire investigation file for cases involving improper care or treatment of a patient, and determine if an acceptable level of patient care was met.

- **Disciplinary Panel**: This panel, made up of 4-5 Board members, reviews patient care cases and all other cases. The Disciplinary Panel can either recommend the case be closed without further action, or recommend disciplinary action.

Figure OV-5
Complaint Time Line

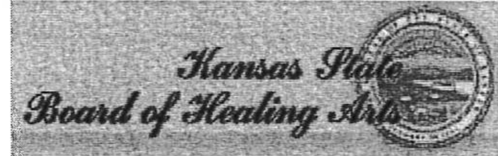


Source: KSBHA time line for new cases.

Board actions include suspending, limiting or revoking a license, requiring licensees to be supervised, requiring licensees to enter counseling or treatment programs and be monitored for 1-5 years, or publicly censuring or fining a licensee.

Board staff track and monitor the results of disciplinary orders, and rely on third party oversight as well. Staff have set up a system to track who was under monitoring status, fines assessed and payments received, and the like. Staff also rely on hospitals to report on doctors who practice in their facilities, and other doctors to report on their peers.

DISCIPLINARY PROCEDURE



Complaint Form

The Kansas State Board of Healing Arts is comprised of 15 members appointed by the Governor, 12 licensees, and three members from the general public. The Board licenses or registers 13 health care professions and out-of-state contact lens distributors. The mission of the Board is to protect the public by requiring those professionals to meet and maintain certain qualifications and standards of conduct.

Who does the Board regulate?

- Medical Doctors
- Osteopathic Doctors
- Chiropractic Doctors
- Podiatric Doctors
- Physicians' Assistants
- Physical Therapists
- Physical Therapist Assistants
- Occupational Therapists
- Occupational Therapy Assistants
- Respiratory Therapists
- Athletic Trainers
- Naturopathic Doctors
- Contact Lens Distributors
- Radiologic Technologists (effective July 1, 2005)

The Board does not have disciplinary jurisdiction over other health care professions, hospitals, and other health care facilities. When a complaint is received by the Kansas State Board of Healing Arts, staff for the Board makes an initial determination: the complaint must pertain to the practice of the healing arts, and must allege facts constituting a violation of the laws administered by the Board. These two requirements are necessary to open a case for investigation. Sometimes the complaint contains insufficient information and more information may be requested of the complainant.

Examples of Prohibited Conduct

- Commission of acts of gross negligence or multiple acts of ordinary negligence.
- Conviction of a felony or Class A misdemeanor.
- Fraudulent or false advertisements.
- Fraudulent billing.
- Prescribing or distributing drugs for other than lawful purposes.
- The inability to practice the healing arts with reasonable skill and safety to patients by reason of illness, alcoholism, excessive use of drugs, or any mental or physical condition.
- Sexual abuse, misconduct or exploitation related to that person's practice.
- Referring a patient to a health care entity for services, if the licensee/registrant has a significant investment interest in the entity, (10% ownerships or more) unless the person regulated by the Board informs the patient of the interest in writing, and that the patient may obtain such services elsewhere.
- Other acts as proscribed by law .

Once a case is opened, it is investigated by an investigator. This usually involves getting

medical records from the licensee/registrant and any health care facilities that is involved. It may also involve interviewing witnesses, visiting facilities, obtaining drug profiles, and getting information from law enforcement or other regulatory agencies, in this state or elsewhere. Board investigations are time consuming and may take several months, depending on the seriousness and complexity of the allegations.

Board investigations are required by law to be confidential, pursuant to K.S.A. 65-2898a. Therefore, there are limits to what information may be released, even to the person making the complaint. The Board has broad authority to obtain information even though the information may otherwise be confidential as a privileged communication. However, other information may be available only with the patient's specific consent.

Once a complaint is investigated, it undergoes a review process. If the issues involves competency, the case may be reviewed by a panel of peers to determine whether the standard of care has been met.

If the issue involves unprofessional conduct (sexual misconduct, false advertising, etc.), the case is reviewed by a staff attorney to determine whether there is sufficient evidence of a violation of the statues and regulations. If there is evidence of a violation, the case is reviewed by a panel of the Board to determine what action, if any, to take. At that time, a petition may be filed against the licensee/registrant. The purpose of the petition is to seek public disciplinary action against the licensee/registrant.

The petition may be heard by a Hearing Officer who will provide an initial determination to the Board about the case. The licensee/registrant or the Board's attorney may then ask the Board to review the case. Either before or after the hearing, the attorneys representing the Board and the licensee/registrant may negotiate an agreement to resolve the case, for submission to the Board for approval. The Board has legal authority to revoke, suspend, or limit licenses/registrations, impose fines, reprimand, require monitoring, or additional education or other remedial measures.

The Board does not represent individuals, nor obtain compensation on behalf of individuals. Each person is free to seek legal representation if they believe it is necessary.

Board investigations and reviews are not subject to discovery by private litigants.

If you have questions regarding the functions of the Board, call (785) 296-7413.

Kansas State Board of Healing Arts
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Guidelines for the Use of Controlled Substances for the Treatment of Pain

Section I: Preamble

The Kansas State Board of Healing Arts recognizes that principles of quality medical practice dictate that the people of the State of Kansas have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or inappropriately treated pain. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment.

Inadequate pain control may result from physicians' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state and local regulatory agencies may also result in inappropriate or inadequate treatment of chronic pain patients. Accordingly, these guidelines have been developed to clarify the Board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The medical management of pain should be based on current knowledge and research and include the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

The Kansas State Board of Healing Arts is obligated under the laws of the State of Kansas to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.

Physicians should not fear disciplinary action from the Board for prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The Board will consider prescribing, ordering, administering or dispensing controlled substances for pain to be for a legitimate medical purpose if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with these guidelines. If such prescribing meets these criteria, the Board will support physicians whose use of controlled substances has been questioned by another regulatory or enforcement agency.

Allegations of improper prescribing of controlled substances for pain will be evaluated on a case- by-case basis. The board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these guidelines, if good cause is shown for such

deviation. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning and recognizing that some types of pain cannot be completely relieved.

The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors. The following guidelines are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.

Section II: Guidelines

The Board has adopted the following guidelines when evaluating the use of controlled substances for pain control:

1. **Evaluation of the Patient**
   The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

2. **Treatment Plan**
   The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

3. **Informed Consent and Agreement for Treatment**
   The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician may employ the use of a written agreement between physician and patient outlining patient responsibilities, including

   - urine/serum medication levels screening when requested;
   - number and frequency of all prescription refills; and
   - reasons for which drug therapy may be discontinued (i.e., violation of agreement).

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4. **Periodic Review**
   At reasonable intervals based on the individual circumstances of the patient, the physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of progress toward stated treatment objectives, such as improvement in patient's pain intensity and improved physical and/or psychosocial function, i.e., ability to work, need of health care resources, activities of daily living and quality of social life. If treatment goals are not being achieved, despite medication adjustments, the physician should reevaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

5. **Consultation**
   The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a co-morbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

6. **Medical Records**
   The physician should comply with and meet the requirements of K.A.R. 100-24-1 in the maintenance of an adequate record for each patient.

7. **Compliance With Controlled Substances Laws and Regulations**
   To prescribe, dispense or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations.

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:
"Acute pain" is the normal, predicted physiological response to an adverse chemical, thermal or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time-limited and is responsive to opioid therapy, among other therapies.

"Addiction" is a neuro-behavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects and is characterized by compulsive use despite harm. Addiction may also be referred to by terms such as "drug dependence" and "psychological dependence." Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction.

"Analgesic tolerance" is the need to increase the dose of opioid to achieve the same level of analgesia. Analgesic tolerance may or may not be evident during opioid treatment and does not equate with addiction.

"Chronic pain" is a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated. Chronic pain may be associated with a long-term incurable or intractable medical condition or disease.

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"Pain" is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

"Physical dependence" on a controlled substance is a physiologic state of neuro-adaptation which is characterized by the emergence of a withdrawal syndrome if drug use is stopped or decreased abruptly, or if an antagonist is administered. Physical dependence is an expected result of opioid use. Physical dependence, by itself, does not equate with addiction.

"Pseudoaddiction" is a pattern of drug-seeking behavior of pain patients who are receiving inadequate pain management that can be mistaken for addiction.

"Substance abuse" is the use of any substance(s) for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

"Tolerance" is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect, or a reduced effect is observed with a constant dose.

APPROVED by the Kansas State Board of Healing Arts this 17th day of October, 1998.

Lawrence T. Buening, Jr.
Executive Director

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ATTACHMENT 4

Joint Policy Statement of the Boards of Healing Arts, Nursing and Pharmacy on the Use of Controlled Substances for the Treatment of Pain

Section I: Preamble

The Kansas Legislature created the Board of Healing Arts, the Board of Nursing, and the Board of Pharmacy to protect the public health, safety and welfare. Protection of the public necessitates reasonable regulation of health care providers who order, administer, or dispense drugs. The boards adopt this statement to help assure health care providers and patients and their families that it is the policy of this state to encourage competent comprehensive care for the treatment of pain. Guidelines by individual boards are appropriate to address issues related to particular professions.

The appropriate application of current knowledge and treatment modalities improves the quality of life for those patients who suffer from pain, and reduces the morbidity and costs associated with pain that is inappropriately treated. All health care providers who treat patients in pain, whether acute or chronic, and whether as a result of terminal illness or non-life-threatening injury or disease, should become knowledgeable about effective methods of pain treatment. The management of pain should include the use of both pharmacologic and non-pharmacologic modalities.

Inappropriate treatment of pain is a serious problem in the United States. Inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and ineffective treatment. All persons who are experiencing pain should expect the appropriate assessment and management of pain while retaining the right to refuse treatment. A person's report of pain is the optimal standard upon which all pain management interventions are based. The goal of pain management is to reduce the individual's pain to the lowest level possible, while simultaneously increasing the individual's level of functioning to the greatest extent possible. The exact nature of these goals is determined jointly by the patient and the health care provider.

Prescribing, administering or dispensing controlled substances, including opioid analgesics, to treat pain is considered a legitimate medical purpose if based upon sound clinical grounds. Health care providers authorized by law to prescribe, administer or dispense drugs, including controlled substances, should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

A board is under a duty to make an inquiry when it receives information contending that a health care provider treated pain inappropriately. Proper investigation is necessary in order to obtain relevant information. A health care provider should not construe any request for information as a presumption of misconduct. Prior to the filing of any allegations, the results of the investigation will be evaluated by the health care provider's peers who are familiar with this policy statement. Health care providers who competently treat pain should not fear disciplinary action from their licensing board.

The following guidelines are not intended to define complete or best practice, but rather to communicate what the boards consider to be within the boundaries of professional practice. This policy statement is not intended to interfere with any healthcare provider's professional duty to exercise that degree of learning and skill ordinarily possessed by competent members of the healthcare provider's profession.

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Section II: Principles

The boards approve the following principles when evaluating the use of controlled substances for pain control:

1. **Assessment of the Patient**
Pain should be assessed and reassessed as clinically indicated. Interdisciplinary communications regarding a patient's report of pain should include adoption of a standardized scale for assessing pain.

2. **Treatment Plan**
The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the drug therapy plan should be adjusted to the individual medical needs of each patient. The nurse's skill is best utilized when an order for drug administration uses dosage and frequency parameters that allow the nurse to adjust (titrate) medication dosage. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. If, in a healthcare provider's sound professional judgement, pain should not be treated as requested by the patient, the healthcare provider should inform the patient of the basis for the treatment decisions and document the substance of this communication.

3. **Informed Consent**
The physician retains the ultimate responsibility for obtaining informed consent to treatment from the patient. All health care providers share the role of effectively communicating with the patient so that the patient is apprised of the risks and benefits of using controlled substances to treat pain.

4. **Agreement for Treatment of High-Risk Patients**
If the patient is determined to be at high risk for medication abuse or to have a history of substance abuse, the health care provider should consider requiring a written agreement by the patient outlining patient responsibilities, including:

    - Submitting to screening of urine/serum medication levels when requested;
    - Limiting prescription refills only to a specified number and frequency;
    - Requesting or receiving prescription orders from only one health care provider;
    - Using only one pharmacy for filling prescriptions; and
    - Acknowledging reasons for which the drug therapy may be discontinued (i.e., violation of agreement).

5. **Periodic Review**
At reasonable intervals based on the individual circumstances of the patient, the course of treatment and any new information about the etiology of the pain should be evaluated. Communication among health care providers is essential to review of the

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medical plan of care. The health care providers involved with the management of pain should evaluate progress toward meeting treatment objectives in light of improvement in patient's pain intensity and improved physical or psychosocial function, i.e., ability to work, need of health care resources, activities of daily living and quality of social life. If treatment goals are not being achieved despite medication adjustments, the health care provider's should reevaluate the appropriateness of continued treatment.

6. **Consultation**
   The health care provider should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangement poses a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a co-morbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

7. **Medical Records**
   The medical record should document the nature and intensity of the pain and contain pertinent information concerning the patient's health history, including treatment for pain or other underlying or coexisting conditions. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

8. **Compliance With Controlled Substances Laws and Regulations**
   To prescribe, dispense or administer controlled substances within this state, the health care provider must be licensed according to the laws of this state and comply with applicable federal and state laws.

Section III: Definitions

For the purposes of these guidelines, the following terms are defined as follows:

Acute pain is the normal, predicted physiological response to an adverse chemical, thermal or mechanical stimulus and is associated with surgery, trauma and acute illness. It is generally time-limited and is responsive to opioid therapy, among other therapies.

Addiction is a neuro-behavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects and is characterized by compulsive use despite harm. Addiction may also be referred to as "psychological dependence." Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not be considered addiction. Addiction must be distinguished from pseudoaddiciton, which is a pattern of drug-seeking behavior of pain patients who are receiving inadequate pain management that can be mistaken for addiction.

Analgesic tolerance is the need to increase the dose of opioid to achieve the same level of analgesia. Analgesic tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Chronic pain is a pain state which is persistent beyond the usual course of an acute disease or

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a reasonable time for an injury to heal, or that is associated with a chronic pathologic process that causes continuous pain or pain that recurs at intervals for months or years.

Pain is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Physical dependence on a controlled substance is a physiologic state of neuro-adaptation which is characterized by the emergence of a withdrawal syndrome if drug use is stopped or decreased abruptly, or if an antagonist is administered. Physical dependence is an expected result of opioid use. Physical dependence, by itself, does not equate with addiction.

Substance abuse is the use of any substance(s) for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect, or a reduced effect is observed with a constant dose.

APPROVALS

The foregoing Joint Policy Statement was approved, upon a motion duly made, seconded and adopted by a majority of the Kansas Board of Healing Arts, on the 1st day of June, 2002.

Lance E. Malmstrom, D.C.
President

The foregoing Joint Policy Statement was approved, upon a motion duly made, seconded and adopted by a majority of the Kansas Board of Nursing, on the 17th day of July, 2002.

Karen Gilpin, R.N.
President.

The foregoing Joint Policy Statement was approved, upon a motion duly made, seconded and adopted by a majority of the Kansas Board of Pharmacy, on the 10th day of June, 2002.

Max Heidrick, RPh
President

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ATTACHMENT 5

2007 Pain and Policy Report Card and Evaluation Guide
Grade Changes from 2006 to 2007

Arizona
Changed from B to B+ by replacing a previous medical board policy with the Federation of State Medical Board's "Model Guideline for the Use of Controlled Substances for the Treatment of Pain."

California
Changed from C to B by repealing numerous restrictive or ambiguous provisions from laws.

Colorado
Changed from C+ to B by adopting a law that clarifies for practitioners that there is an important distinction between manslaughter and prescribing controlled substances for palliative care; this language identifies a clinical misperception that is pervasive in end-of-life care and attempts to lessen its impact on patient treatment and the professionals who provide it.

Connecticut
Changed from C+ to B by adopting a law that establishes a prescription monitoring program to prevent the improper or illegal use of controlled substances while not interfering with their legitimate medical use; to achieve this objective, the law also establishes a prescription drug monitoring working group that requires that prescription monitoring program information be reviewed by a working group member who is a pain management specialist.

Kansas
Changed from B+ to A by repealing its single remaining restrictive provision from the Medical Practice Act.

Massachusetts
Changed from B to B+ by adopting a law that establishes a palliative care program to ensure that pain and symptom management is an essential part of care for pediatric patients.

New Hampshire
Changed from C+ to B by adopting a law that establishes pain assessment as an essential part of patient care in residential healthcare facilities.

Wisconsin
Changed from B to A by adopting a medical board policy statement based on the Federation of State Medical Board's "Model Policy for the Use of Controlled Substances for the Treatment of Pain."

Report Card Highlights
California and Wisconsin had the greatest grade improvement.

- California's grade improved because of the repeal of numerous restrictions in law.
- Wisconsin's grade improved because the medical board adopted a positive pain management policy.

Kansas and Wisconsin now join Michigan and Virginia as having the most balanced policies in the nation.