

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Brenda Landwehr at 1:30 p.m. on January 20, 2009, in Room 784 of the Docking State Office Building.

Committee Members: All members were present except: Reps. Ward, Shultz, Finney, and Siegfried, all of whom were excused.

Committee staff present:

Norm Furse, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Janet Grace, Committee Assistant

Conferees appearing before the committee:

Jack Confer, Executive Director, Kansas Board of Healing Arts
Scott Hess, General Council, Kansas Board of Healing Arts

Others attending:

See attached list.

Chairman Landwehr called the meeting to order and requested the committee members submit to Janet Grace the email address they want the committee testimony to be sent.

Jack Confer, Executive Director, Kansas Board of Healing Arts, KBHA, briefed the Committee on the which oversees the licensing and regulation of 14 health professions, which includes about 20,500 licensees and 1,050 registrants. The list of professions licensed and regulated is provided (Attachments 1, 3). The Regulating Statutes include: K.S.A. 65-2839a - Investigations and Procedures; K.S.A. 65-2836-revocation, suspension, limitation or denial of licenses; and K.S.A. 65-2837 - unprofessional conduct definitions.

Mr. Confer said that the Board of Healing Arts has implemented several changes since July 2008. They include staffing changes, complaint investigations, creation of a quarterly agency newsletter, providing press releases when necessary, and greater transparency of information posted on the agency web site (Attachment 2).

Mr. Confer reported the immediate goals for the agency (Attachments 1, 2):

- Change timeframes for investigations of complaints to 180 days by December 2009.
- Complete filing of petition for disciplinary action within 180 days of Board decision to hold an administrative hearing by December 2009.
- Have dynamic/interactive web site with complete physician profiles implemented by July 2009.
- Have legislative and executive approval of legislative issues by July 2009.

2009 Legislative Session Highlights (Attachment 3):

- License Fee Regulations
 - KSBHA will strive to be an agency that exemplifies public service. Funding is essential for KSBHA to continue on this path of transformation. License fee increases will assist us in getting that much-needed funding.
- Medical Records Custodian
 - KSBHA is seeking to introduce legislation that will give the agency authority to appoint a medical records custodian to store patients' medical records after a professional's license has been revoked or the professional becomes incapacitated.
- Allied Professions
 - KSBHA believes the specifications set forth for the healing arts professions in HB 2620 should be applied to all the professions they regulate.

Information with the history and organizational chart was provided (Attachments 4, 5).

CONTINUATION SHEET

Minutes of the House Health And Human Services Committee at 1:30 p.m. on January 20, 2009, in Room 784 of the Docking State Office Building.

Mr. Confer responded to a member's question, saying the Legislature gives a mandate and defines written regulations. There will still be gray areas that can not be defined; but the specialty area determines scope of practice, specialty specifications evolve over time.

To another question Mr. Confer replied that the staff, for example, which dealt with 7995 cases in working to reduce the backlog presently has about 2,600 open cases, with 110 cases awaiting investigation. The Board has established priority/disciplinary guidelines 1-4, with 1 being low and 4 indicating potential harm to the public.

Representative Morrison commended Mr. Confer for the changes implemented. Chairman Landwehr concurred, stating that the committee is there to help, and all that is asked is that the representatives from KSBHA provide accurate information. She commended the agency for working toward a good, accurate data base to provide better information in the future.

The next meeting is scheduled for January 21, 2009.

The meeting was adjourned at 1:50 p.m.

HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 1-20-09

NAME	REPRESENTING
Patrick Vogelberg	Kearney and Assoc.
Matt Carey	GBA
Derck Helm	Health Law Firm
Steve Solomon	TFI Family Services
Cathy Brown	KSBHA
Scott Hoze	KSBHA
Julia Mowers	KSBHA
Kristi Ponkratz	KSBHA
Heidi Peterson	AS DENTAL ASSN
Connie Hubbell	KAMU
Michelle Butler	Cap. Strategics
Katy Belot	SFS
Don Jordan	Secretary SFS
Stephen Young	Rep. Jim Ward
Kelsey Fowler	
Kennie Hepler	Budget
JACK CONFEL	KSBHA
Cathy Harding	KAMU
Bill Sneed	Polsinelli


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HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 1-20-09


NAME	REPRESENTING
Natalie Briggs	KAPA
Doug Bowman	CCECOS
Doug Smith	KAPA

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**Kansas State Board of
Healing Arts**
Jack Confer, Executive Director
Health and Human Services Committee
January 20, 2009

What we do

KSBHA is responsible for the licensing and regulation of 14 health care professions. This includes 20,500 licensees and 1,050 registrants.



Professions licensed and regulated

- Osteopathic Doctors
- Medical 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

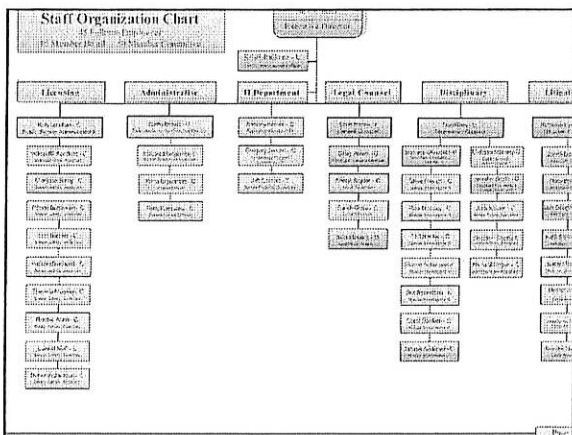
How we operate

The Board and its staff assures the public and those it licenses that there is a balanced, sensible approach to regulation, with the safety, health and welfare of the public being our primary concern.

Board Composition

The Kansas State Board of Healing Arts is comprised of 15 members appointed by the Governor and serve a four-year term.

- 12 licensees
 - 5 M.D.s
 - 3 D.O.s
 - 3 D.C.s
 - 1 D.P.M.
- 3 public members



Board Functions

- Licensing
- Regulation

Licensing and Registration

- Applications available online at <http://www.ksbha.org>
- Must renew license annually

Breakdown of Licensees

- Medical Doctors – 9,391
- Radiologic Technologists – 2,925
- Physical Therapists – 1,794
- Respiratory Therapists – 1,713
- Occupational Therapists – 1,307
- Osteopathic Doctors – 959

Breakdown of Licensees

- Chiropractors - 906
- Physician Assistants – 718
- Occupational Therapy Assistants – 333
- Athletic Trainers – 317
- Podiatrists - 134

Breakdown of Registrants

- Physical Therapist Assistants – 1,030
- Naturopathic Doctors – 19
- Contact Lens Distributors - 5

Regulating Statutes

- K.S.A. 65-2839a – Investigations and Procedures
- K.S.A. 65-2836 - Revocation, suspension, limitation or denial of licenses
- K.S.A. 65-2837 – Unprofessional conduct definitions

Investigative Process

- Intake of complaints
- Review
- Investigation, evidence collection, case report
- Peer Review/Litigation Review
- Disciplinary Panel
- Formal Administrative Hearing
- Final Disposition

Complaints

- We received about 3,030 complaints in 2008.
 - Complaints include:
 - Malpractice forms
 - Application renewals
 - Self-reporting
 - Complaint forms

Status of HB 2620

- Fingerprinting
- Probation
- Transparency

Goals for 2009

- Change timeframes for investigations of complaints to 180 days by December 2009.
- Complete filing of petition for disciplinary action within 180 days of Board decision to hold an administrative hearing by December 2009.
- Have dynamic/interactive website with complete physician profiles implemented by July 2009.

Contact Information

Jack Confer, Acting Executive Director
785-296-8561
jconfer@ksbha.ks.gov

Web site: www.ksbha.org

Toll-Free: 888-886-7205

Kansas State Board of Healing Arts

Changes Implemented since July 2008

- There have been considerable staffing changes over the last six months due to resignations, reassignments and newly created positions.

Positions affected include: Executive Director, General Counsel, Assistant General Counsel, Disciplinary Counsel and Litigation Counsel, two attorneys, one investigator and one complaint coordinator.

Six new temporary positions were approved for the Board to assist in clearing the case backlog and improving transparency, and these positions have all been filled: Legal Assistant; three Attorneys, Legislative Liaison and Public Information Officer.

- Each standard of care complaint is now being investigated immediately rather than waiting until a pattern (of three) has been established.
- Creation of an agency newsletter, to be published quarterly.
- Meetings with legislators and other key players to discuss questions and concerns regarding the Board.
- Press releases are now being issued for all board actions, high profile cases, and changes in policy or regulations.
- Greater transparency of information posted on the agency web site:
 - o Dates/times/locations of all administrative hearings.
 - o All Committee/Counsel meetings.
 - o Summary Orders.
 - o Board Actions for years prior are in the process of being added to the website, along with links to the redacted orders.
 - o A page for licensee background information regarding court actions will be added to the web site.
- Policy for completing fingerprinting and background checks on applicants requesting reinstatement went into effect on January 1, 2009 for the licensees under the Healing Arts Act.
- Guidelines for the Imposition of Disciplinary Sanctions created and posted on web site.

Immediate Goals

- Change timeframes for investigations of complaints to 180 days by December 2009.
- Complete filing of petition for disciplinary action within 180 days of Board decision to hold an administrative hearing by December 2009.
- Have dynamic/interactive web site with complete physician profiles implemented by July 2009.
- Have legislative and executive approval of legislative issues by July 2009.



Kansas State Board of Healing Arts

"Your health and safety is our greatest purpose."

Jack Confer, Acting Executive Director
Scott Hesse, General Counsel

The Kansas State Board of Healing Arts oversees the licensing and regulation of 14 health professions, which include about 20,500 licensees and 1,050 registrants. KSBHA is staffed by nearly 50 people and is overseen by 15 Board members who are appointed by the Governor. The Board and its staff believe that the public's health and safety is the agency's greatest purpose. Professions regulated by KSBHA are:

- Medical Doctor
- Osteopathic Doctor
- Chiropractor
- Podiatrist
- Naturopathic Doctor
- Physician Assistant
- Radiologic Technician
- Physical Therapist
- Physical Therapist Assistant
- Occupational Therapist
- Occupational Therapist Assistant
- Respiratory Therapist
- Athletic Trainer
- Contact Lens Distributor

2009 Legislative Session Highlights

• ***License Fee Regulations***

KSBHA believes it is essential that we not only carry out the wishes of the 2008 Legislature, but that we strive to be an agency that exemplifies public service. Funding is essential for us to continue on this path of transformation. License fee increases will assist us in getting that much-needed funding.

• ***Medical Records Custodian***

KSBHA is seeking to introduce legislation that will give the agency authority to appoint a medical records custodian to store patients' medical records after a professional's license has been revoked or the professional becomes incapacitated. There have been several reports in recent months that after a license has been revoked, the professional either locks the doors to his practice and does not allow the patients to retrieve records, or has thrown the records in the dumpster.

• ***Allied Professions***

KSBHA believes the specifications set forth for the healing arts professions in House Bill 2620 should be applied to the all professions we regulate. And, as such, KSBHA will seek legislation to apply the specifications of HB 2620 to the allied professions we regulate.

If you or your constituents have any questions or concerns with any matters regarding the Board and its services, please contact:

Jack Confer, Executive Director
785-296-8561 • jconfer@ksbha.ks.gov

HEALTH AND HUMAN SERVICES
DATE: 01/20/09
ATTACHMENT: 3

**STATUTORY HISTORY
OF
THE KANSAS STATE BOARD OF HEALING ARTS
1957 to 2008**

On July 1, 2007, the State Board of Healing Arts will celebrate its 50th anniversary. This article is intended to provide a historical perspective of the Board during its 50 years. The regulation of medicine and surgery, osteopathic medicine and surgery and chiropractic did not start with the creation of the State Board of Healing Arts. For an analysis of the credentialing of these three professions prior to 1957 and for the Healing Arts Act as adopted in 1957, please refer to pages 1-11 of the attached Memorandum dated October 20, 1994 to the Special Committee on Public Health and Welfare from Emalene Correll, Research Associate with the Kansas Legislative Research Department. Further, it is acknowledged that extensive information contained in this history through 1976 came from pages 12-14 of Ms. Correll's Memorandum. For information from 1976 through 1994, information has also been taken from a Memorandum dated September 29, 1994 by Norman Furse, Revisor of Statutes.

1957---Effective July 1, 1957, the Kansas Legislature created the State Board of Healing Arts and abolished three separate state agencies: the Board of Medical Registration and Examination (created in 1901), the Board of Osteopathic Examination and Registration (created in 1913) and the Board of Chiropractic Examinations (created in 1913). The composite Board so created was unique in 1957 and remains so today in that the Kansas Board is one of only three boards in the country that have medical doctors, osteopathic doctors, and chiropractic doctors all under the regulation of one board. It is interesting to note that the bill creating the Board had 91 sections, or more than the total of all three acts it replaced. Of the 91 sections, only 18 remain exactly as adopted in 1957. One of the statutes to never be amended contains the Board's purpose which states today as it did in 1957:

“Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not natural right of individuals, it is deemed necessary as a matter of policy in the interest of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end 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 under this act.”

As originally created, the Board was comprised of 11 members – 5 doctors of medicine, 3 doctors of osteopathy and 3 chiropractors. The Board office was located in Kansas City and, as best as can be determined, had a staff of 5 employees from 1957 until 1980. Two of the more interesting provisions of the 1957 legislation were that it recognized two separate classes of osteopathic physicians based upon their training and required U.S. citizenship for all persons receiving a permanent license in any of the three branches of the healing arts. Also in 1957, the Legislature created a separate Board of Basic Science Examiners. Since 1937 an examination in the basic sciences (anatomy, physiology, chemistry, bacteriology and pathology) had been required of persons seeking to practice the healing arts with the exception of those professions that had their own licensing boards. The certificate of proficiency was issued by the State Board of Education. The 1957 legislation deleted all authority of the State Board of Education in examining applicants for a

license in the healing arts, created the Board of Basic Science Examiners, and required passage of the basic science examination by applicants for a license in one of the three branches of the healing arts.

1963---This Legislative Session brought the first major revisions to the Board. In that year, the Legislature adopted statutes creating the registration of physical therapists and physical therapist assistants and placed such professions under the Board's regulation and authority. A Physical Therapy Examining Committee was created which, with the exception of the change of its name to the Physical Therapy Advisory Council, continues substantially the same today as its original composition; that being 3 physical therapists appointed by the Governor, 1 physician licensed to practice medicine and surgery and the Secretary of the Board (subsequently amended to be simply a member of the Board.) The 17 original sections of the law creating physical therapy and physical therapist assistant regulation all exist today but all have been amended at least once since 1963.

1965---The Legislature combined the fee funds of the Board and the Board of Basic Science Examiners. Both of the boards were required to meet in Topeka, both were required to meet jointly at least once a year, and both were authorized to meet jointly on the invitation of either board.

1969---This year brought about the first major revisions to the Healing Arts Act with 10 of the original 1957 statutes being repealed and 18 amended. Also, the Board of Basic Science Examiners was abolished and the requirement for the passage of the basic science examination as a condition of licensure was deleted. The requirement that licenses be registered with the County Clerk of the county in which the licensee was licensed was deleted. Temporary permits were authorized for persons who engaged in full-time residency programs. Other amendments deleted the requirement that Board members be named only from lists of nominees submitted to the Governor by the respective associations; deleted the requirement that licensure examinations be prepared by members of the Board; added professional incompetency to the grounds for which a license could be revoked or suspended; authorized the employment of an executive secretary; added a public member to the Board increasing total Board membership to 12; deleted reference to the two classes of osteopathic physicians; authorized provisional licenses to be issued in medicine and surgery to persons who had met all the requirements for licensure except U.S. citizenship; and created a fellowship license for individuals holding the degree of doctor of medicine and employed by certain state agencies.

1970---An exception to the three-term limit for Board members was made for the Secretary of the Board.

1972---One statute was amended to provide that felony convictions could be considered in determining an applicant's moral fitness for licensure, but that the conviction would not automatically act as a bar to licensure. A conviction of a felon was also made a ground for disciplinary action if the person was not sufficiently rehabilitated to warrant the public trust.

1973--- The Legislature provided for the registry of physicians' assistants. As originally enacted, the bill merely provided that the Board maintain a registry of physicians' assistants. However, substantial changes were made in both 1975 and 1978 which expanded the Board's responsibility in the registration of this profession.

1975---By executive Reorganization Order No. 8 issued by the Governor on February 10, 1975, the State Podiatry Board of Examiners was abolished and the powers, duties and functions transferred to the Board. This brought to seven the number of professions now regulated by the Board. The 1975 Legislature enacted legislation creating an Advisory Committee on Podiatry which was to advise the Board. Also in 1975, the Board was directed to locate its office in Topeka.

1976---Sweeping changes were made to the Healing Arts Act in 1976. Only a few of these will be mentioned as Ms. Correll's Memorandum from the Kansas Legislative Research Department of October 20, 1994, has a fairly comprehensive description of these changes. The Legislature directed that the Board membership be increased to 13 by adding a podiatrist. The Health Care Stabilization Fund was created and all health care providers, as defined in K.S.A. 40-3401, were mandated to maintain professional liability insurance and participate by paying a premium surcharge to the Fund. M.D.s, D.O.s, D.C.s, D.P.M.s, and P.T.s, all of whom are regulated by the Board, were included among those who were required to maintain insurance. As part of the insurance overhaul, K.S.A. 40-3416 directed the Insurance Commissioner to report any suspected health care providers rendering professional services in violation of the insurance law to the Board for investigation. As directed by the Legislature the previous year, the Board office was moved from Kansas City to Topeka. As a result, all five staff members were new and the Board also had to obtain the contractual services of a new attorney because none of the Board employees or the Board's attorney moved from Kansas City. Also in 1976 the Insurance Commissioner was directed to provide to the Board copies of any closed claim reports which were received pertaining to medical malpractice cases. In 1976, the Board licensed 5410 medical doctors and 306 osteopathic doctors.

1978---The Kansas Legislature enacted a Sunset Law and July 1, 1983, was set as the date for the abolition of the Board under that initial statute. The Board licensed 6381 medical doctors and 322 osteopathic doctors this year.

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

1981---In FY1981, 59 investigations were undertaken and 12 disciplinary actions taken.

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

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

1984---During this session, the Legislature made substantial changes to the Healing Arts Act as part of the 1984 Tort Reform Act. The position of Disciplinary Counsel was established. The Disciplinary Counsel was to be an attorney who specialized in disciplinary matters and was not

otherwise utilized by the Board. The Disciplinary Council was given power to investigate "all matters involving professional incompetency, unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license...". In exercising these powers the Disciplinary Council could apply to the appropriate court for subpoenas for the attendance of any person or the production of documents. Subject to approval by the Board, the Disciplinary Council could employ clerical and other staff.

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

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

During 1984, there were 3212 active medical doctors, 196 active osteopathic doctors and 380 active chiropractors in Kansas.

1985----The sections of the 1984 enactment were repealed which provided for the Disciplinary Council to bring disciplinary matters before the review committee, gave the review committee the power to subpoena witnesses and information, and limited the referral of complaints for a hearing to those found by the review committee to have probable cause. The 1984 section which authorized the Board to appoint review committees "as necessary to implement the provisions of this act" was retained.

Fellowship licenses were abolished and two-year institutional licenses were authorized. This modified Board procedure insofar that neither National Boards I and II nor Flex I would hereafter be required for applicants for institutional licenses. Also in 1985 the statute regarding temporary permits for full-time approved postgraduate training programs was amended to require applicants to have the basic science examination-- either National Boards I and II or Flex I-- prior to entering a postgraduate training program. This same year legislation was adopted modifying K.S.A. 65-2873 relating to the requirements for initial licensure particularly as they related to foreign medical graduates and Board approval of foreign medical schools.

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

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

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

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

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

In FY1987, the Board regulated the following individuals:

M.D. 6206
D.O. 423
D.C. 688
DPM 101
PA 118
PT 676
PTA 246

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

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

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

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

1992----The Legislature enacted the Kansas Governmental Operations Accountability Law to (K-GOAL) replace the Sunset Law. The Board, scheduled to expire on July 1, 1992, underwent sunset review. The application of the Sunset Law to the Board was eliminated and K-GOAL was not made applicable to the Board. Therefore, no future date for the abolition or expiration of the Board was established. The Podiatry Advisory Council was abolished and the Board was directed to establish and appoint a review committee of not less than two members for the practice of podiatry. The podiatry review committee members must be licensed podiatrists. Two additional staff members were authorized to be employed. This brought full-time staff to 22.

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

1994----The full-time staff was increased to 24. During FY1994, 267 new investigative cases were opened and 46 disciplinary actions taken.

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

The Legislature also passed a multi-section bill dealing with the Board and the Healing Arts Act. Inactive and federally active license designations were created. Post-graduate permits were limited to 36 months in duration. Authority was given to the Board to limit the number of times an applicant for license could retake the license examination after failure. A limited license category

was also created and persons issued that permit and those with federally active license designations were included among those persons who could qualify as a charitable health care provider and receive coverage for any malpractice from the Kansas Tort Claims Fund. The duty was also placed upon licensees to notify the Board within 30 days of any change in their mailing address. Physical therapists were removed from having to carry professional liability insurance and pay a premium surcharge to the health care stabilization fund. Full-time staff was again increased by two members, bringing the total full-time employees to 26.

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

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

1998----K.S.A. 65-28,127 was enacted by the Legislature and placed certain obligations on licensees under the Healing Arts Act who supervise, direct or delegate functions to non-licensees. In October, the Board adopted Guidelines for the use of controlled substances for the treatment of pain.

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

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

patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment.

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

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

Substantial amendments were also made to the Occupational Therapy Practice Act that became effective April 1, 2003. The new law amended the definition of the "practice of occupational therapy" and changed the credentialing designation from registration to licensure. New certificates were mailed to all occupational therapists that had previously been registered.

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

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

2003----The 2003 Legislative session concluded with several enactments affecting the Board. Substantial changes were made to the Physical Therapy statutes, including changing the credentialing of physical therapists from registration to licensure. These went into effect on April 1, 2004. In addition, the \$128,208 of additional funds from the Board fee funds was directed to be transferred to the State General Fund. Lastly, the Legislature authorized expenditures of \$300,000 in FY04 and \$250,000 in FY05 to enhance the Board's computer operations. As a result, the Board's expenditure limitation exceeded \$2 million in FY2004 for the first time.

Several other bills were enacted by the 2004 Legislature that had significant impact on the Board's

operations and responsibilities. Senate Bill No. 29 allowed physician assistants and occupational therapists to form professional corporations. However, sections 105 and 106 (now K.S.A. 65-28a13 and 65-5421) of Senate Bill No. 29 required the board to adopt rules and regulations limiting the percentage of ownership a licensed physician assistant or licensed occupational therapist may have in a professional corporation formed in combination with other professional services. These rules and regulations have been adopted by the Board.

Senate Bill No. 426 amended the qualifications for issuance and renewal of an institutional license under K.S.A. 65-2895. Senate Bill No. 529 amended K.S.A. 65-2901 to allow a physical therapist to initiate treatment after consultation and approval of a physician assistant or advanced registered nurse practitioner (ARNP) working pursuant to the order or direction of a person licensed to practice medicine and surgery.

2004---The two Bills passed by the 2004 Legislature having the greatest impact on the Board were Substitute for House Bill No. 2698 and House Bill No. 2813. Substitute for House Bill No. 2698 enacted the Radiologic Technologists Practice Act (KSA 65-2301 *et seq.*) and required the Board to license radiologic technologists by July 1, 2005. In 1999, the Technical Committee that reviewed the credentialing application found there were 2,532 radiologic technologists registered by a national organization and estimated that there were an additional 844 non-registered persons performing radiology services in Kansas. As will be explained later, the Board commenced licensing radiologic technologists on July 1, 2005. 2004 House Bill No. 2813 made numerous changes to the statutes administered by the Board. Section 15 (amending K.S.A. 65-2005) created a postgraduate permit and the designations of inactive and federally active licenses for podiatrists. Section 16 (amending K.S.A. 65-2012) established statutory maximums for these and the renewal thereof. Section 12 (amending K.S.A. 65-28a03) created inactive and federally active designations for physician assistant licenses and established statutory maximums for renewal. Section 19 (amending K.S.A. 65-2910) created an inactive designation of physical therapy licenses. Sections 19, 21, and 23 (amending K.S.A. 65-5410, 65-5510 and 65-7208) allowed the Board to assess a civil fine against occupational therapists, respiratory therapists, and naturopaths.

2005---Several actions taken by the 2005 Legislature had dramatic effects on the Board. S.B. No. 225 required a transfer of \$750,000 from the healing arts fee fund to the state general fund. \$500,000 of this amount was transferred immediately upon the bill becoming effective. However, when accounts and reports were advised that the Board would be without adequate funds for the balance of FY2005, \$250,000 was returned to the fee fund. On June 29-30, 2005, the balance of \$500,000 was then transferred. This resulted in the Board's beginning balance for FY2006 being \$650,000 lower than the previous year. The other change in FY2005 was the addition of one FTE position to handle the licensing of radiologic technologists starting July 1, 2005. For FY2006, the Legislature concurred with the Governor and granted the Board two additional FTEs that the Board had requested. This gave the Board 32.0 FTE positions. The Board's requests that the full-time temporary attorney position be made an FTE and that two additional FTEs be allocated for FY2007 were not granted.

2005 H.B. No. 2330 was introduced at the request of the Board to correct some of the problems associated with the bill passed during the previous Legislative Session to commence licensing of radiologic technologists on July 1, 2005. Required licensing of radiologic technologists was changed from July 1, 2005 to October 1, 2005. The Board held a special meeting on July 1, 2005 to adopt temporary rules and regulations. The Board commenced licensing on July 1, 2005 and now licenses

more than 2,700 radiologic technologists. Rules and regulations adopted designated September 30th each year as the expiration date; thus, the licenses for the profession were renewed for the first time in August and September, 2006.

2005 S.B. No. 183 expanded what is allowed to be performed under a federally active license (amending K.S.A. 65-2809) and became effective July 1, 2005. S.B. No. 254, as originally introduced, would have only amended K.S.A. 65-2872 by adding another exception to what constitutes the practice of the healing arts to include orders to be carried out in Kansas that have been issued by a practitioner licensed in another state. The bill called for the Board to adopt rules and regulations that identify those circumstances in which services may be performed in Kansas on the order of an individual duly licensed in a branch of the healing arts in another state who does not maintain an office in Kansas to see patients or take call. Temporary rules and regulations were adopted by the Board at its meeting in August 2005 and the permanent regulations became effective May 17, 2006. During conference committee, two other bills were included in S.B. No. 183. The provisions of H.B. No. 2496 were included that allow occupational therapists to receive orders from physicians assistants or advanced nurse practitioners working pursuant to the order or direction of a person licensed to practice medicine and surgery or a licensed chiropractor (amending K.S.A. 65-5401). A new section was also added to the bill amending K.S.A. 48-3403 to provide that a licensee released from military service is exempt from continuing education requirements until completion of the next full licensure period. The bill became effective on publication in the Kansas Register although the portions relating to occupational therapists did not become effective until July 1, 2005.

2006---During the 2006 Legislative Session, Senate Substitute for H.B. No. 2649 was enacted. This bill created the Pain Patient's Quality of Care Act. Section 5 of the Omnibus Appropriations Bill (Senate Substitute for H.B. No. 2968) allowed the Board to hire an administrative assistant in the unclassified service. The appropriations bill adopted earlier in the session had authorized funds for this position but had not increased the Board's FTE limitation. Since the Board, by K.S.A. 65-2878, could not hire an administration assistant who is not classified, the proviso in Section 5 allowed the Board to hire an Administrative Assistant for FY2007 only and did not increase the Board's FTE limitation. The second proviso in Section 5 allowed the Board to have funds transferred back to the healing arts fee fund should the fee fund balance be insufficient during FY2007 as a result of the transfer of \$750,000 to the state general fund in June 2005. 2006 H.B. No. 2532 amended K.S.A. 17-2710 and allowed physical therapists and occupational therapists to form a professional corporation together.

The Board adopted five rules and regulations (K.A.R. 100-25-1 through 100-25-5) regulating standards for offices maintained for the practice of the healing arts. K.A.R. 100-25-2 established standards for every office in which the healing arts is practiced and set forth criteria for maintaining cleanliness, infection control, waste disposal, maintenance of drugs and medical equipment, and safety of physical facilities. K.A.R. 100-25-3 set forth requirements when office-based surgery and certain special procedures are performed in an office setting. K.A.R. 100-25-4 established further standards for surgeries that are performed in an office setting using general anesthesia or a spinal or epidural block. These became effective March 17, 2006. The Board has initiated a system to conduct an inspection program of all facilities where office-based surgery is performed.

2007---The Legislature established an expenditure limitation for the Board for FY2009 in excess of \$3 million. This will be the first time the Board's budget has exceeded this figure. The appropriations bill also sets the full-time equivalent (FTE) positions of the Board at 39, an increase

of 7.0 FTE positions starting July 1, 2007.

A bill was also enacted that expands the circumstances under which a physical therapist may provide treatment without referral from a physician, podiatrist, chiropractor, etc. Physical therapists are allowed to initiate treatment based upon the order of a healing arts practitioner licensed in another state. Further, treatment is allowed for a limited period of time without any referral if four criteria described in the bill are met. Physical therapy services are also allowed without referral if they relate to workplace injury prevention, general fitness and health promotion or special education students. Subsection (d) allows services to be provided without referral to special education students.

S.B. No. 62 eliminated the requirement that the diagnosis for which an amphetamine or sympathomimetic amine is prescribed be included on the prescription order in the practitioner's "own handwriting". The bill was approved by the Governor and became effective upon publication in the Kansas Register on March 29, 2007.

S.B. No. 63 deleted the exception that some PRN prescriptions can be refilled after one year. The bill prohibits any prescriptions from being refilled after one year from issuance. Substitute for S.B. No. 82 allows the practice of the healing arts by a general corporation if it is a healing arts school approved by the Board, is a non-profit entity, is approved by the State Board of Regents, and as part of its academic requirements provides clinical training to its students under the supervision of persons who are licensed by the Board to practice the healing Arts. This will enable Cleveland Chiropractic College to move to Kansas and continue to provide clinical training to students. S.B. No. 284 simply added the current language of K.S.A. 75-7306(b)(2) to K.S.A. 65-7305(d) and repealed K.S.A. 65-7306. K.S.A. 65-7306 contained the grandfather provisions for licensing individuals who were practicing prior to July 1, 2005. S.B. No. 285 was requested by the Kansas Medical Society and adds an additional definition of "unprofessional conduct" to be charging, etc. for anatomic pathology services unless those services were personally rendered. The bill was approved by the Governor on March 28 and will become effective July 1, 2007.

2008 Legislative Session

Substitute for S.B. #491 became effective July 1, 2008. This bill created a prescription monitoring program for controlled substances and created a methamphetamine precursor scheduling task force to study the possibility and practicality of making methamphetamine precursors schedule III or IV drugs. That task force includes one member appointed by the Board.

Substitute for H.B. #2207 became effective on April 17, 2008. Section 3 of this bill amended K.S.A. 65-4967 and new subsection (d) authorizes the Board to suspend or limit the registration of any person dispensing contact lenses through the mail to Kansas residents in accordance with KAPA if the Board determines that there is cause to believe that the requirements of K.S.A. 65-4967© have been violated and registrant's continued dispensing of contact lenses by mail to Kansas residents would constitute an imminent danger to the public health and safety.

H.B. #2188 became effective July 1, 2008 and changed the process for selecting a medical malpractice screening panel as well as increased the compensation for the members of the panel.

H.B. #2620 became effective July 1, 2008 and was the Board's megabill for the 2008 legislative session. New Section 1 authorized non-disciplinary resolution through either a written

agreement for a professional development plan, written recommendations to a licensee or the issuance of a letter of concern if the Board determines one of four factors: (1) if the licensee seeks to establish continued competency for renewal of a license; (2) if the licensee has been absent from clinical practice for an extended period of time and seeks to resume clinical practice; (3) if the licensee failed to adhere to the applicable standard of care but not to a degree constituting professional incompetence; or (4) if the licensee has engaged in an act or practice that, if continued, would reasonably be expected to result in future violations of the healing arts act. Meetings for the purpose of discussing or adopting a non-disciplinary resolution are not subject to either the Kansas Administrative Procedure Act or the Kansas Open Meetings Act. A non-disciplinary resolution shall not be deemed a disciplinary action and no violation of the Healing Arts Act is to be implied by the adoption of a non-disciplinary resolution. Non-disciplinary resolutions are confidential and not admissible in any civil, criminal or administrative action, except Board disciplinary proceedings. This section only applies to the Healing Arts Act and, therefore, only pertains to medical, osteopathic and chiropractic doctors. New Section 2 authorized fingerprinting and criminal background checks as part of an original application for or reinstatement of a license or in connection with an investigation. Records to be released are adult convictions and non-convictions and adult convictions or adjudications of any state or country. This section is supplemental to the Healing arts Act and only applies to medical, osteopathic and chiropractic doctors. New Section 3 required the Board to adopt a formal list of graduated sanctions for violations of the Healing Arts Act which may be used as a reference in imposing sanctions. This section also applies only to medical, osteopathic, and chiropractic doctors. New Section 4 required the Board to provide six different items in the physician profiles that it publishes on the internet by July 1, 2010. New Section 5 applied to the Board of Nursing. Section 6 amends K.S.A. 65-2836 and added the ability to place probationary conditions on a license. This is a new form of disciplinary resolution that has not been previously available to the Board. Subsection (b) was also amended to enable the Board to take either disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in a single act that "...if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct...". Section 7, subsection (16) amended the definition of sexual abuse and misconduct. Section 8 amends K.S.A. 65-2878 by adding a new section (e) authorizing the Board to contract with licensees under the Healing Arts Act (medical, osteopathic and chiropractic doctors) to provide advice and assistance on licensing matters, investigation and disposition of complaints, clinical and patient care matters, and ethic conduct and professional practice of licensees.

H.B. #2695 became effective July 1, 2008 and relates to athletic trainers. Section 2 deleted subsection (d) of K.S.A. 65-6903. Section 3 amends K.S.A. 65-6906. Section 4 deleted the clinical experience requirement in K.S.A. 65-6907. Section 5 amended K.S.A. 65-6909 by making amendments to the renewal process, doing away with the 30-day grace period following expiration of a license before it is cancelled.

KS Board of Healing Arts Staff Organization Chart

45 Fulltime Employees
15 Member Board - 50 Member Committee

HEALTH AND HUMAN SERVICES
DATE: 01/20/09
ATTACHMENT: 5

