



KANSAS STATE BOARD OF HEALING ARTS

Who We Are,
What We Do,
How It's Done ...

Statutes referring to the Board and the professions it regulates begin on K.S.A. 65-2801.

Each practice act has their own statutes and regulations.

Who we are...

What we do...

How it's done...



WHO / WHAT / HOW

- Board
 - Board members appointed by Governor
 - 12 Licensees: 5 MDs, 3 DOs, 3 DCs, 1 DPM
 - 3 Public members
 - Staff: 5 departments served by full-time staff

Who we are...

What we do...

How it's done...



WHO / WHAT / HOW

KANSAS STATE BOARD OF HEALING ARTS

15-Member Board

Executive Director

General Counsel



Who we are...

What we do...

How it's done...

Why we do it...



WHO / WHAT / HOW

- Who is regulated: Approximately 28,000 licensees in 17 professions or certificate holder categories:
 - MD, DO, DC, DPM, PA, RT, PT, PTA, OT, OTA, AT, ND, LRT, L.Ac., CNM-I, contact lens distributors, and corporate medical practice certificate holders

Who we are...

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WHO / WHAT / HOW

- General rule:

KSBHA regulates all healthcare providers except dentists, nurses, optometrists, social workers, and counselors

Who we are...

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WHO / WHAT / HOW

- *Misnomer: “Medical Board”.*
- *Kansas was ahead of the curve in creating multi-profession board in 1957.*
- *Old structure: single profession board, i.e., “Board of Medicine”*
- *Modern trend: multi-profession healthcare profession boards like the KSBHA.*



Who we are...

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WHO / WHAT / HOW

Healing Arts Act

MD, DO, DC

- K.S.A. 65-2801

Podiatry Act

DPM

- K.S.A. 65-2001

Physician Assistant Act

PA

- K.S.A. 65-28a01

Physical Therapy Act

PT & PTA

- K.S.A. 65-2901

Contact Lens Distributors

- K.S.A. 65-4965

Occupational Therapy Act

OT & OTA

- K.S.A. 65-5401

Respiratory Therapy Act

RT

- K.S.A. 65-5501

Athletic Trainer Act

AT

- K.S.A. 65-6901

Naturopathic Doctor Act

ND

- K.S.A. 65-7201

Radiologic Technologists Act

LRT

- K.S.A. 65-7301

Acupuncture

L.Ac.

- K.S.A. 65-7601

Who we are...

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WHO / WHAT / HOW

PROFESSIONAL COUNCILS

- “Review Committees”/“Professional Councils” = Subcommittees of the Board that focus on their specific profession.
- Provide initial review of alleged violations of standards of care. Chiropractors review chiropractic cases, Physical Therapists review physical therapy cases, etc.
- Take lead in formulation of regulations for their profession.

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WHO / WHAT / HOW

K.S.A. 65-2801 describes the overall purpose of KSBHA:

“Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety, and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulations to the end that the public shall be properly protected against unprofessional conduct by persons licensed to practice under this act.”

Who we are...

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WHO / WHAT / HOW

Two core functions:

- (1) License those applying for a license to practice in Kansas in a manner that protects patient safety and access to well qualified care providers;
- (2) Regulate licensed healthcare providers in a manner that protects patient safety and access to well qualified care providers.

Who we are...

What we do...

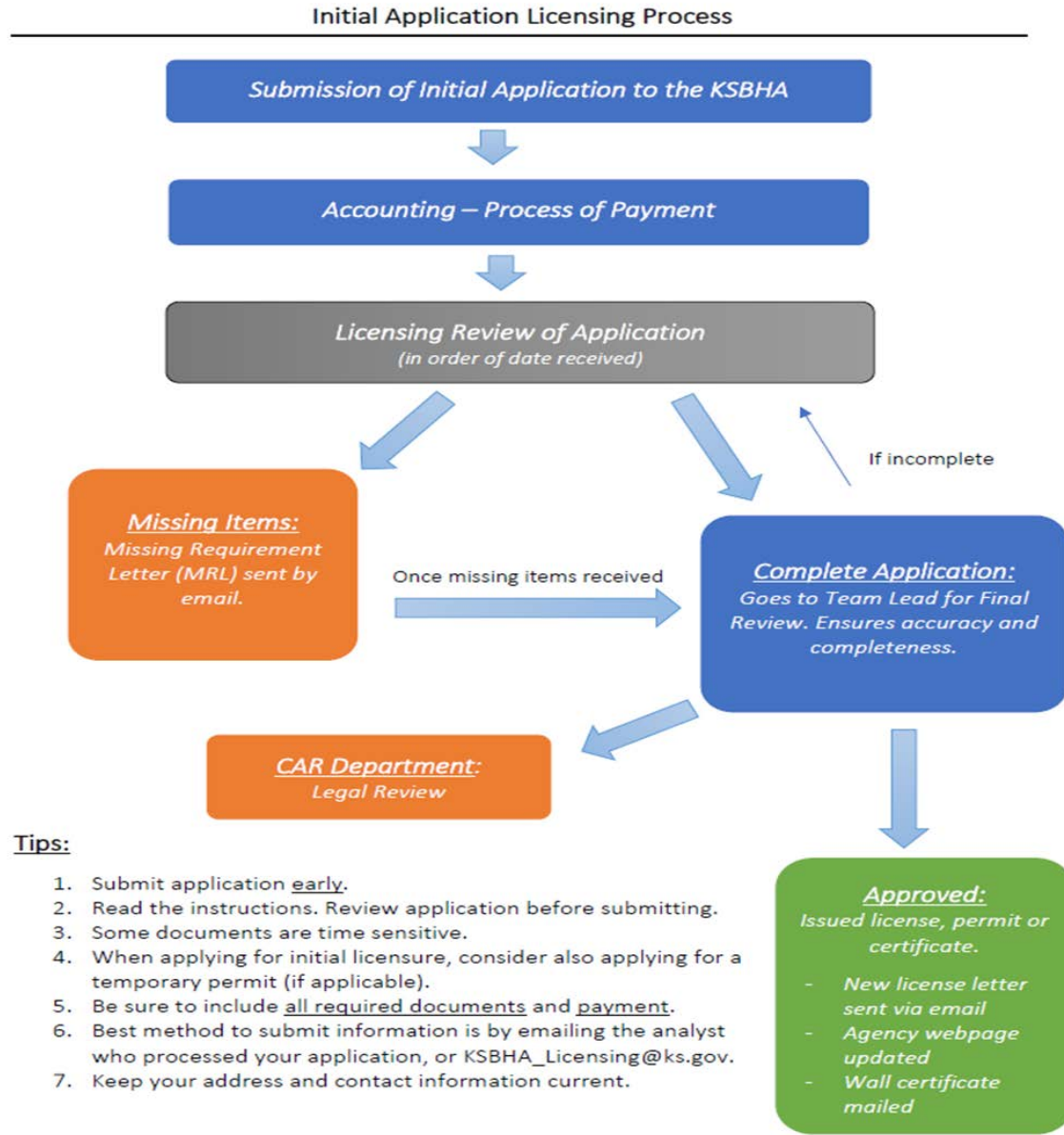
How it's done...



GENERAL ASPECTS OF LICENSING FUNCTION



BASICS OF LICENSE APPLICATION PROCESS



WHO / WHAT / HOW

Regulate: Disciplinary process.

- Complaints received from every imaginable source.
- Anonymous complaints accepted, but ultimately facts alleged must be verified via evidence and due process.
- Complaint > Investigation > Resolution

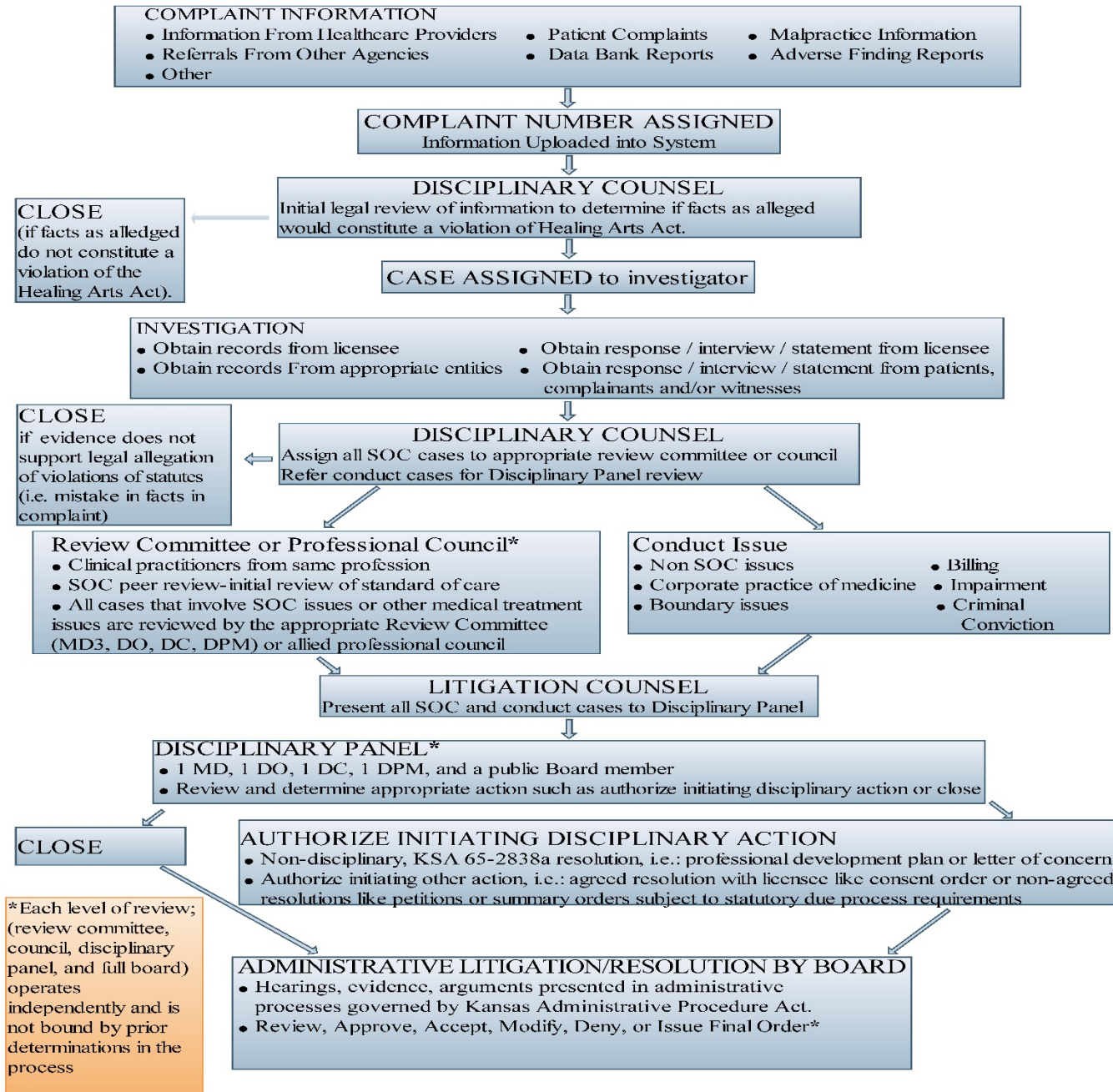
Who we are...

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KSBHA Complaint / Investigative Flow Chart



WHO / WHAT / HOW

Overview of Investigation Process:

- Obtain relevant information
 - Letter to Licensee asking for their response and info
 - Obtain relevant information
- Review by Review Committee (RC) or Professional Council
 - Non-board members
 - Same profession [3 MD committees] [1 DO Committee]
- Then, review by Disciplinary Panel (DP)
 - Subcommittee of 4 Board members
 - Decision making authority: resolve, seek discipline, other

Who we are...

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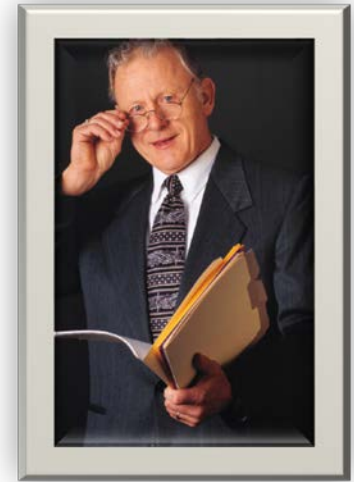
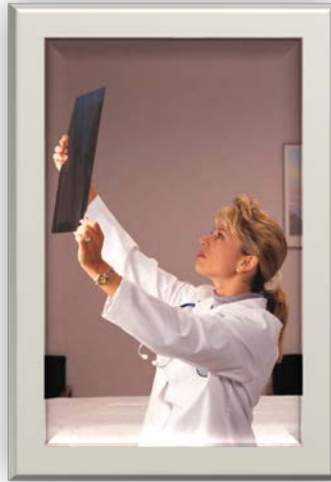
Investigations are assigned to an investigator

- **K.S.A. 65-2839a**
 - Access to evidence, subpoenas, peer review, other evidence.
- **K.S.A. 65-2898a**
 - Complaints & Investigations are confidential



A Review Committee or Council reviews the allegations, evidence, and findings of the investigation.

- Committee determines whether or not the standard-of-care was met.
- Forward to Litigation Counsel to present the case to a Disciplinary Panel for review.



DP's are comprised of at least four current Board members ~ 1 MD, 1 DO, 1 DC, and 1 Public Member.

- New DPs are rotated amongst Board members every May.
- DP review all investigations & makes a recommendation
 - To close the investigation (if evidence does NOT support allegations or merit action),
 - Pursue informal action, or proceed with formal actions.

WHO / WHAT / HOW

Overview of Disciplinary Panel (DP) authority:

DP is the second stage where all information is reviewed

Disciplinary Panel Questions:

- A violation of the Healing Arts Act (does) / (not exist), **or**
- Competent, admissible evidence (does) / (does not) support a violation, **or**
- Action (is) / (is not) necessary to protect the public, **THEN:**
- Take action or Close Investigation.

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If the DP makes a recommendation to pursue further action, the case is handled by one of KSBHA's administrative litigation attorneys.



**DISCIPLINARY PANEL
DECISIONS**

DP provides directives to KSBHA administrative litigation attorneys for cases:

- File motions, petitions, consent orders
- Contested cases result in trials
- Consent Orders are available when there is mutually agreed resolution

The presiding officer can be either a KSBHA Board member, or a presiding officer from the Office of Administrative Hearings (OAH).



LITIGATION PROCEEDINGS

BOARD ACTIONS

NON PUBLIC

- Letter of Concern (LOC)
- Professional Development Plan (PDP)
- Non, Non, Non: Reportable, Public, Disciplinary

PUBLIC ACTIONS

- Denial of Licensure
- Summary Orders
- Consent Orders
- Require supplemental education or clinical competency
- Censure
- Fine
- Probation
- Limitation
- Suspension
- Revocation

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APPEALS OF BOARD ORDERS

- The Kansas Judicial Review Act allows for direct appeals to the district court, then to court of appeals and supreme court.
- Appeals of Board orders are now very common.
 - Increasingly, liability insurance providers provide coverage for appealing licensing/disciplinary orders.

LITIGATION OUTSIDE OF APPEALS OF BOARD ORDERS

- **Unlicensed practice cases:** prosecuted in civil court by injunctive lawsuit by Board's General Counsel.
 - Example: *Kansas State Board of Healing Arts vs. Shawn Parcells* (Shawnee County District Court, No. 19CV000266)
 - Allege Defendant misrepresented himself to families and illegally performed autopsies without license or lawful qualifications. Attorney General also pursuing consumer protection act violations.
- **Lawsuits against Board:**
 - Example: *Trust Women vs. Schmidt, Lippert, Durrett, et al* (KS Court of Appeals, No. 19-121693).
 - Offshoot of *Hodes v. Nauser* litigation. Plaintiffs challenging constitutionality of K.S.A. 65-4a10 (medication in person statutory requirement for pharmaceutical abortions).



BOARD ACTIONS

WHO / WHAT / HOW

Regulate: Regulation promulgation process.

- Current promulgation process includes, for each regulation, at least the following:
 - 1) Work with professional councils, stakeholders, and/or subject matter experts to develop/revise the regulation;
 - 2) Developing draft regulation for Board approval at open meeting;
 - 3) Draft economic impact statement (EIS);



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Regulate: Regulation promulgation process (continued).

- 4) Start formal promulgation process for draft regulation and EIS by submitting to the Division of Budget;
- 5) After approval from DOB, approval process by the Department of Administration;
 - If DOA requests any revisions, entire process must start again, with re-review and re-approval by the Division of Budget of draft regulation (with requested revisions) and EIS;
- 6) After approval from both DOB and DOA, then approval process by Attorney General.
 - If AG requests any revisions entire process must start again, with re-review and re-approval by both the DOB and DOA of revised regulation and EIS.

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Regulate: Regulation promulgation process (continued).

- 7) If all three agencies (DOB, DOA, AG) approve and stamp proposed regulation, then KSBHA must issue notice of public hearing (also published in Register by SOS);
- 8) At least 60 days notice and comment period must pass prior to date of public hearing on proposed regulation;
- 9) During this period of time, KSBHA must schedule separate hearing before the legislature's Joint Committee on and Rules and Regulations (JCARR);



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Regulate: Regulation promulgation process (continued).

- 10) Agency representative appears at JCARR hearing;
- 11) JCARR then submits written comments/questions to agency;
- 12) Agency submits written response to JCARR comments/questions;
- 13) Agency holds public hearing;
 - KSBHA includes all public comments (emails, etc) received from any source during public comment period (or during hearing) in public hearing record.
 - JCARR written comments and agency responses included in public hearing record.



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Regulate: Regulation promulgation process (continued).

- **14)** Following public hearing, Board convenes open meeting to consider formal adoption of regulation – roll call vote of full Board if motion for adoption made;
- **15)** Adopted regulation published by Secretary of State in Register and becomes effective.

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QUESTIONS?

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