

Kansas State Board of Healing Arts	
Policy Title: Process for handling complaints and investigations alleging a violation of the Healing Arts Act or applicable practice act involving current and former Board members and those serving on a Review Committee or Council	Policy Number: #11-02
Author: General Counsel	Effective Date: June 17, 2011
Date Authored: June 7, 2011	Last Modified: November 30, 2021
Responsible for Updates: Disciplinary Counsel and General Counsel	Executive Director Approval: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PURPOSE:

The purpose of this policy is to establish a procedure for the investigative and disciplinary process for complaints against licensees who are: (1) current Board members; (2) former Board members that have served within the past two years; or (3) licensees who currently serve on one of the Board’s Review Committees or Councils. This policy will ensure the complaint and/or investigation will be processed in a manner that maintains the integrity of the investigatory and disciplinary function of the agency and prevents any appearance of bias or preferential treatment while providing full due process to all licensees. This policy is intended to be a guidance document pursuant to K.S.A. 77-438.

AUTHORITY:

K.S.A. 65-2812; K.S.A. 65-2813; K.S.A. 65-2817; K.S.A. 65-2840a; K.S.A. 65-2836 – K.S.A. 65-2844; K.S.A. 65-2878(e); K.S.A. 65-2878a; K.S.A. 65-6912; K.S.A. 65-6911; K.S.A. 65-7613; K.S.A. 65-7616; K.S.A. 65-7214; K.S.A. 65-7208; K.S.A. 65-5404; K.S.A. 65-5410; K.S.A. 65-2903; K.S.A. 65-2912; K.S.A. 65-28a11; K.S.A. 65-28a05; K.S.A. 65-2016; K.S.A. 65-2006; K.S.A. 65-7310; K.S.A. 65-7313; K.S.A. 65-5504; K.S.A. 65-5510; K.S.A. 77-438.

POLICY:

It is the policy of the Kansas State Board of Healing Arts (“KSBHA”) that any complaint alleging a violation of the Healing Arts Act or other applicable practice act received by the Board against a licensee who is (1) current Board members; (2) a former Board member that has served within the past two years; or (3) licensees who currently serve on one of the Board’s Review Committees or Councils will be handled in a manner that:

- maintains the reliability of the Board’s functions and processes;
- prevents an actual conflict or appearance of a conflict of interest of agency staff;

- is within the Board's standard disciplinary procedures set forth for a complaint filed against a licensee who is not so situated; and
- ensures the Licensee is provided with appropriate due process.

PROCEDURE:

When a complaint alleges a violation of the Kansas Healing Arts Act or applicable practice act by a licensee who is (1) a current Board member; (2) a former Board member who has served within the past two years; or (3) a licensee who currently serves on one of the Board's Review Committees or Councils, the complaint will be reviewed by the Disciplinary Counsel and assigned for investigation if the act(s) alleged constitute a violation of the applicable practice act. Once assigned, the matter shall be investigated by a Board investigator. Upon completion of the investigation, if the matter involves a standard of care issue, the Disciplinary Counsel may refer the investigation either to a Review Committee, the Medical Director, an independent expert, and/or to the Disciplinary Panel for consideration. If the matter involves a conduct issue, the Disciplinary Counsel shall refer the investigation directly to the Disciplinary Panel. In accordance with the Board's standard disciplinary procedures, if at any point in the process it becomes evident that the evidence clearly fails to support a prima facie indication of a violation of the relevant practice act, the investigation may be closed.

The Litigation Counsel shall perform a conflict assessment of the Board's attorneys to determine if there is an attorney who is not conflicted and may appropriately handle the case. The Litigation Counsel may seek guidance from the Executive Director that may include a request to appoint an Assistant Attorney General from the Kansas Attorney General's Office, or other approved outside counsel, to be assigned to represent the Disciplinary Panel in its review and consideration of the matter. The Assistant Attorney General, or other approved outside counsel, may provide representation at all subsequent stages regarding the complaint, including any proceedings before the Board and any actions under the Kansas Administrative Procedure Act and/or Kansas Judicial Review Act.

All other standard disciplinary procedures for handling a complaint by the agency will apply.

If disciplinary action is initiated against a current Board member, Review Committee member or Council member, the Executive Director may ask the member to recuse him or herself from participation in all Board activities, including meetings and hearings, until the matter is resolved.

If disciplinary action against a Board member, Review Committee member, or Council member is heard by the Board or a Presiding Officer, an Assistant Attorney General or other approved outside counsel may be assigned to advise the Board in any hearing proceedings and any other consideration of the matter in place of KSBHA General Counsel.

Approved by the Kansas State Board of Healing Arts this 10th day of December, 2021.

KANSAS STATE BOARD OF HEALING ARTS

Susan Gile

Susan Gile, Interim Executive Director