

## I. INTRODUCTION

The Following Guidelines for the Imposition of Disciplinary Sanctions are provided to give all stakeholders insight into the considerations that the Kansas State Board of Healing Arts (“Board”) commonly applies to its analysis in determining the appropriate sanctions for a Licensee’s violation of the applicable practice act and/or Board regulations. These guidelines do not have the force and effect of law, and they do not create binding precedent. **The Board’s sanctioning authority is defined and limited exclusively by the applicable statutes, regulations, and Kansas case law.**

## II. GENERAL CATEGORIES OF SANCTIONABLE CONDUCT

The statutes and regulations cited below as examples of sanctionable conduct have been drawn from the Kansas Healing Arts Act (K.S.A. 65-2801 et seq.) The Board’s analysis regarding sanctions for violations of other practice acts is similar to that employed regarding sanctions under the Kansas Healing Arts Act, and such violations may be grouped under similar categories.

### 1. Professional Competence.

The following statutes and regulations are commonly applied where a Licensee has committed an act or acts implicating their professional competence:

- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(a) (Commission of an act of professional incompetency)
- K.S.A. 65-2836(w) (Adverse judgment resulting from medical liability claim)
- K.S.A. 65-2836(bb) (Failure to adequately supervise a physician assistant)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(14) (Aiding and abetting unlicensed or incompetent practice)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(24) (Repeated failure to meet the standard of care).
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(26) (Delegating professional responsibilities to an unqualified or incompetent person)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(30) (Failure to properly supervise)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-25-2, 100-25-3, and 100-25-4 (Failure to abide by office-based surgery regulations)

- K.S.A. 65-2836(b) as further defined by K.A.R. 100-27-1 (Failure to supervise light-based medical treatment)

## **2. General Misconduct.**

The following statutes and regulations are commonly applied where a Licensee has committed an act or acts of general misconduct:

- K.S.A. 65-2836(a) (Fraud or misrepresentation in applying or renewing a license)
- K.S.A. 65-2836(f) (Willful or repeated violations of the Healing Arts Act, Pharmacy Act, and/or Uniform Controlled Substances Act, and associated regulations)
- K.S.A. 65-2836(g) (Unlawful practice of a branch of the healing arts for which Licensee does not hold a license)
- K.S.A. 65-2836(h) (Practice under false or assumed name)
- K.S.A. 65-2836(j) (Disciplinary action by the licensing authority of another jurisdiction)
- K.S.A. 65-2836(k) (Violation of rule, regulation, or Board order)
- K.S.A. 65-2836(l) (Failure to report to the Board known violation of Healing Arts Act)
- K.S.A. 65-2836(n) (Cheating on licensure examination)
- K.S.A. 65-2836(r) (Failure to provide the Board with legally requested information)
- K.S.A. 65-2836(s) (Disciplinary action by peer review group or healthcare facility)
- K.S.A. 65-2836(t) (Failure to disclose to the Board disciplinary action by the licensing authority of another jurisdiction, peer review group, or government agency)
- K.S.A. 65-2836(u) (Surrender of medical license, controlled substances license, or medical privileges while under investigation)
- K.S.A. 65-2836(v) (Failure to disclose to the Board surrender of medical license, controlled substances license, or medical privileges while under investigation)

- K.S.A. 65-2836(x) (Failure to disclose to the Board adverse judgment resulting from medical liability claim)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(3) (Treatment without obtaining consent)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(6) (Willful betrayal of confidential information)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(9) (Wrongful participation in exclusion of licensee from medical staff)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(12) (Conduct likely to deceive, defraud or harm the public)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(15) (Allowing another person to use license)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(27) (Improper experimental treatments)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(31) (Unlawful abortion of viable fetus)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(32) (Violation of help not harm act)
- 65-2836(b) as further defined by K.S.A. 65-2837(b)(35) (Obstructing a Board investigation)

### **3. Criminal Misconduct.**

The following statutes and regulations are commonly applied where a Licensee has committed an act or acts of criminal misconduct:

- K.S.A. 65-2836(c) (Conviction of a felony or Class A misdemeanor)
- K.S.A. 65-2836(cc) (Assisted suicide)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(5) (Performing or procuring a criminal abortion)

#### **4. Sexual Misconduct.**

The following statutes and regulations are commonly applied where a Licensee has committed an act or acts of sexual misconduct:

- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(16) (Commission of an act of sexual abuse, misconduct or other improper sexual contact or exploitation)
- K.S.A. 65-2836(b) (Commission of dishonorable conduct)

#### **5. Billing and Financial Misconduct.**

The following statutes and regulations are commonly applied where a Licensee has committed an act or acts of improper billing and/or other type of financial misconduct:

- K.S.A. 65-2836(aa) (Knowing submission of misleading or fraudulent claim form, bill, or statement)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(18) (Obtaining any fee by fraud, deceit or misrepresentation)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(19) (Giving or receiving any compensation for professional services not actually and personally rendered (“fee splitting”))
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(21) (Performing unnecessary tests, examinations or services that have no legitimate medical purpose)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(22) (Charging an excessive fee)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(29) (Referring patients to entity in which licensee has significant ownership without written disclosure of such interest)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(33) (Billing for anatomic pathology services not personally rendered)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(34) (Conduct that violates patient trust and exploits the licensee-patient relationship for personal gain)

- K.S.A. 65-2836(b) as further defined by K.A.R. 100-22-3 (Improper business transaction with patient)

## **6. Advertising and Public Misrepresentations.**

The following statutes and regulations are commonly applied where a Licensee has committed an act or acts of improper advertising or other public misrepresentations:

- K.S.A. 65-2836(d); K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(1) (Use of fraudulent or false advertisements)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(2) (Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(4) (Falsely representing entitlement to practice branch of healing arts)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(7) (Advertising professional superiority)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(8) (Advertising guarantees)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(13) (Misrepresenting skill of licensee or efficacy of treatment)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(17) (Use of false, fraudulent or deceptive statement on document)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-22-4 (Representation to the public of credentialing by a specialty board without disclosing the name of such specialty board)
- K.S.A. 65-2836(k) as further defined by K.A.R. 100-18a-1 (Free offers)

## **7. Impairment and Fitness to Practice.**

The following statutes and regulations are commonly applied where a Licensee's ability to practice due to impairment is called into question:

- K.S.A. 65-2836(e) (Substance abuse)

- K.S.A. 65-2836(i) (Inability to practice safely due to physical or mental impairment)
- K.S.A. 65-2836(o) (Finding of incompetence due to mental illness or disability)

#### **8. Administrative Requirements.**

The following statutes and regulations are commonly applied where a Licensee has violated specific administrative requirements:

- K.S.A. 65-2836(m) (Failure to make required disclosures regarding breast abnormalities)
- K.S.A. 65-2836(y) (Failure to maintain professional liability insurance)
- K.S.A. 65-2836(z) (Failure to pay required Health Care Stabilization Fund surcharge)
- K.S.A. 65-2836(dd) (Giving a worthless check or stopping payment for moneys due to the Board)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-10a-6; K.S.A. 65-2836(b) as further defined by K.A.R. 100-22-2 (Exempt licensee engaging in professional activities not disclosed to Board)

#### **9. Improper Prescribing.**

The following statutes and regulations are commonly applied where a Licensee has improperly prescribed medications.

- K.S.A. 65-2836(p) (Prescribing or otherwise providing controlled substances for other than a medically accepted or lawful purpose)
- K.S.A. 65-2836(q) (Violation of federal law or regulation relating to controlled substances)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(11); K.S.A. 65-2837a (Unauthorized prescribing or otherwise providing amphetamines)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(23) (Prescribing or otherwise providing prescription drugs excessively, improperly, or outside the course of regular practice)

- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(28) (Prescribing steroids or human growth hormone for other than a valid medical purpose)
- K.S.A. 65-2836(k) as further defined by K.A.R. 100-21-2 (Improper labeling by dispensing physician)
- K.S.A. 65-2836(k) as further defined by K.A.R. 100-21-3 (Improper packaging of oral medications)
- K.S.A. 65-2836(k) as further defined by K.A.R. 100-21-4 (Improper recordkeeping and/or inventory by dispensing physician)
- K.S.A. 65-2836(k) as further defined by K.A.R. 100-21-5 (Improper storage and security by dispensing physician)
- K.S.A. 65-2836(k) as further defined by K.A.R. 100-23-1 (Improper treatment of obesity with controlled substances)

#### **10. Medical Records.**

The following statutes and regulations are commonly applied where a Licensee has failed to follow statutes and regulations regarding medical recordkeeping:

- K.S.A. 65-2836(ee) (Knowingly or negligently abandoning medical records)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(20) (Failure to transfer medical records to another licensee upon patient request)
- K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(25) (Failure to keep adequate medical records)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-22-1 (Failure to provide records to patient upon request)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-22-7 (Prescribing a prescription-only medical device without proper documentation)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-22-8a (Improper injection lipolysis)

- K.S.A. 65-2836(b) as further defined by K.A.R. 100-24-7 (Failure to maintain and store patient records)
- K.S.A. 65-2836(b) as further defined by K.A.R. 100-24-3 (Failure to provide the Board with proper notice of records upon termination of practice)

### III. SANCTIONS.

Following is a brief, general, non-exclusive description of the types of sanctions the Board may impose under Kansas law. These descriptions are not intended to have the force of law. The Board's sanction authority is defined and limited exclusively by the applicable statutes, regulations, and Kansas case law.

1. **Non-disciplinary resolution, including, but not limited to:**
  - a. **Non-disciplinary Letter of Concern**
  - b. **Professional development plan**
2. **Public Censure**
3. **Administrative fines**
4. **Remediation/rehabilitation, including, but not limited to:**
  - a. **Continuing education or training**
  - b. **Professional track and/or skills evaluation**
  - c. **Treatment**
  - d. **Monitoring**
5. **Temporary practice limitations**
6. **Permanent practice limitations**
7. **Suspension**
8. **Revocation**

### IV. NON-BINDING TABLE OF COMMON SANCTIONS

This table does not have the force of law, regulation, or binding policy. It does not constitute the analytical framework that will necessarily guide the Board's sanctioning analysis in every case. By publishing this information, the Board does not limit itself to any form of disciplinary order and it may consider its entire range of authority. The Board may depart from the sanction identified as an "example of common sanction" as it deems appropriate in any case without additional notice. **The Board's sanctioning authority is defined and limited exclusively by the applicable statutes, regulations, and settled Kansas case law.**

Category of Conduct	Description	Common range of sanctions
1	<b>Professional Competence</b>	
1A	Facts indicate lack of skill and judgment that endangers patient safety or gross negligence.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension; revocation.
1B	Facts indicate Licensee is generally safe and competent but has negligently failed to use skill or judgment.	Non-disciplinary resolution, remediation, temporary practice limitations.
2	<b>General Misconduct</b>	
2A	Facts indicate misconduct that endangers patient safety, actually misleads board, or is disruptive to board processes.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension greater than 30 days; revocation.
2B	Facts indicate misconduct not likely to harm patients but discredits profession or has potential to mislead the board or the public .	Non-disciplinary resolution, public censure; remediation; temporary practice limitations; suspension less than 30 days.
2C	Parallel actions by other states or by Facilities.	Parallel other state action.
3	<b>Criminal Misconduct</b>	
3A	Felony conviction.	Revocation, unless 2/3 majority of Board determines, by clear and convincing evidence, that licensee will not pose threat to public and that licensee has been sufficiently rehabilitated to warrant public trust.
3B	Misdemeanor relating to professional practice, crimes of dishonesty against persons or crimes of reflecting adversely on profession.	Public censure; administrative fines up to maximum allowable by law; temporary practice limitations; suspension less than 90 days.
3C	Other misdemeanors.	Non-disciplinary resolution; public censure; administrative fines less than \$2500; temporary practice limitations.
4	<b>Sexual Misconduct</b>	

4A	Sexual misconduct-direct abuse or direct exploitation of a patient.	Revocation.
4B	Sexual misconduct-impropriety involving patient.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension; revocation.
4C	Sexual misconduct-sexual harassment/impropriety associated with professional practice.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension less than 90 days.
5	<b>Billing and Financial Misconduct</b>	
5A	Billing/financial misconduct involving exploitation of patient or fraud.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension; revocation.
5B	Otherwise wrongful billing and financial misconduct.	Non-disciplinary resolution; public censure; administrative fine less than \$2500, remediation; temporary practice limitations; suspension less than 90 days.
6	<b>Advertising and Public Misrepresentation</b>	
6A	Violation of Kansas law regarding professional advertising or public misrepresentation.	Non-disciplinary resolution; public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations.
7	<b>Impairment and Fitness to Practice</b>	
7A	Impairment where Licensee is unwilling or unable to be remediated.	Temporary or permanent practice limitations; suspension; revocation.
7B	Impairment where Licensee appears to be remediable.	Non-disciplinary resolution; remediation/rehabilitation; temporary or permanent practice limitations.
8	<b>Administrative Requirements</b>	
8A	Violation of administrative requirements where such violation is intentional, wanton, or potentially disruptive to regulation of the	Public censure; administrative fine up to maximum allowable by law.

	profession.	
8B	Violation of administrative requirements where such violation is negligent.	Non-disciplinary resolution; public censure; administrative fine less than \$500.
9	<b>Inappropriate Prescribing</b>	
9A	Inappropriate prescribing with no legitimate medical purpose.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension; revocation.
9B	Inappropriate prescribing where Licensee willfully or negligently failed to comply with Kansas law.	Non-disciplinary resolution; public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension; revocation.
10	<b>Medical Records</b>	
10A	Licensee deceptively altered or intentionally failed to create patient records, or willfully or recklessly failed to comply with medical record keeping requirements.	Public censure; administrative fines up to maximum allowable by law; remediation; temporary or permanent practice limitations; suspension.
10B	Inadequate documentation, failure to provide records upon lawful request, or negligently failed to comply with medical record keeping requirements.	Non-disciplinary resolution; public censure; administrative fines less than \$2,500; temporary practice restrictions.

		remediation, revocation \$2500-\$5000 fine