

Disciplinary Process and Guidelines
for the
Kansas Board of Adult Care Home Administrators

Initially developed by the Special Task Force on Licensure Standards and Disciplinary Actions, December 1997

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Disciplinary Process

Background

In 2001 the Kansas Legislature passed a law that authorized the Attorney General's office to provide legal and enforcement services to the Board of Adult Care Home Administrators (Board or BACHA). Pursuant to that law, one Assistant Attorney General serves as the Board's disciplinary or litigation counsel and another Assistant Attorney General serves as the Board's general counsel.

Purpose of the Board and Committee Oversight

It is the intent of the Board to carry out and enforce the Kansas statutes and administrative rules and regulations applicable to licensed adult care home administrators. Of primary concern is the protection of the vulnerable populations served by the licensees.

Therefore, due consideration should be given to the relationship of any reportable incident or complaint and the licensee's actions or failure to act. It is the duty of the Board to develop methods of determining whether individuals meet statutory and regulatory requirements for licensure as well as to process complaints in a thorough, fair and prompt manner to determine whether the licensee has violated a statute or regulation.

Disciplinary Process

The Board's investigative, and any subsequent disciplinary, process may be initiated either by way of a Kansas Department on Aging and Disability Services (KDADS) survey, a Kansas Department of Health and Environment (KDHE) notification or by an individual filing a complaint (including self-reports). All disciplinary proceedings are subject to the Kansas Administrative Procedure Act.

Upon a prima facie showing that a violation of the statutes or administrative rules and regulations governing licensed adult care home administrators has occurred, staff will refer the matter to the Board's Complaint Investigatory Committee (Committee or CIC) for review and evaluation. If a complaint does not make a prima facie showing that a violation of the statutes or administrative rules and regulations governing licensed adult care home administrators has occurred, staff will investigate the allegation as appropriate, for instance by requesting more information from the complainant, the licensee, or other relevant persons.

The CIC is composed of four BACHA members (two administrator representatives, one health care professional, and one consumer representative), assisted by the Assistant Attorney General who serves as litigation counsel.

The CIC should first determine whether there is sufficient evidence to find a violation of K.S.A. 65-3508 or any other statute or rule and regulation enforced by the Board. After review, the CIC may:

1. close the complaint without action
2. send the licensee an educational or cautionary letter
3. issue a public censure or private reprimand
4. request the licensee to submit an assurance of compliance letter
5. propose resolution by a consent agreement and order
6. refer the case for an administrative disciplinary hearing
7. issue a summary proceeding order.

The CIC may examine an administrator's file when considering the appropriate sanction proposed in any disciplinary matter.

Complaints referred for a disciplinary hearing are presented to a hearing panel composed of the three non-CIC Board members (an administrator, a health care professional, and a consumer representative), assisted by the Assistant Attorney General who serves as general counsel for the Board. Alternatively, the Board may refer the disciplinary hearing to the Office of Administrative Hearings (OAH) for hearing before an Administrative Law Judge (ALJ).

When substantial competent evidence at a hearing establishes one or more violations of K.S.A. 65-3508 or any other statute or administrative rule and regulation enforced by the Board to the satisfaction of the hearing panel or ALJ, the panel or ALJ will issue findings of fact, conclusions of law and orders imposing appropriate discipline in either an Initial or Final Order, as appropriate.

Disciplinary Guidelines

The CIC, hearing panel, or ALJ may make, take or recommend the following disciplinary actions:

- 1) Letter of reprimand (not published)
- 2) Letter of censure (published)
- 3) Stayed suspension of license with specified condition(s) (such as requiring a letter of assurance of compliance, additional continuing education, or supervised practice/supervised instruction internship by Board approved supervisor)
- 4) Actual suspension of license for set period of time plus stayed suspension for an additional set period of time with specified conditions
- 5) Actual suspension of license for set period of time, either with or without specified conditions required for suspension to be lifted
- 6) Revocation of license

Consent agreements and orders may include terms or conditions not otherwise available under the Board's statutes or the Kansas Administrative Procedure Act but must be agreed to by all parties.

If the Complaint Investigatory Committee determines that *insufficient* evidence exists to establish a disciplinary violation but wishes to alert, caution or educate the licensee, or that sufficient evidence exists to establish minimal or technical violation(s) the following *non-disciplinary* actions are available:

1. Request an assurance of compliance letter
2. Issue a cautionary letter
3. Issue an education letter

Recommended Disciplinary Guidelines by Category

In determining the appropriate sanction following determination of one or more violations, the CIC, hearing panel or ALJ shall consider and evaluate submitted evidence in mitigation and in aggravation as relevant factors. This list reflects the interpretation of the Board of sound public policy in enforcing the statutes and rules and regulations applicable to licensed adult care home administrators, but is not intended to preclude the exercise of any discretion available under applicable laws.

Failure to comply with the provisions of K.S.A. 65-3505 and amendments thereto and continued to act as an adult care home administrator. K.S.A. 65-3508(a).

The only violation here stems from K.S.A. 65-3505(b) when an administrator does not present a timely application for renewal and continues to practice. This type of situation is handled administratively through assessment of a late renewal fee or through the reinstatement process. Practicing without a valid license would be addressed under K.S.A. 65-3508(h).

Substantially failed to conform with Board standards adopted under K.S.A. 65-3503 which pertain to good character, training or experience. K.S.A. 65-3508(b).

Violations under this section would be applicable primarily to initial applicants for a license. In unusual circumstances lack of "good character" may apply to a licensee. Such circumstances would be fact specific and thus appropriate discipline could range from (1) through (6).

Willful or repeated violations of the provisions of the law or rules and regulations of KDADS under the provisions of the Adult Care Homes Act (Article 9 of Chapter 39 of the Kansas Statutes Annotated). K.S.A. 65-3508(c).

For first violation: (1), (2), (3), (4) or (5).

For second violation: (3), (4), (5) or (6).

Administrator convicted of a crime found by the Board to have a direct bearing on whether such a person should be entrusted to serve the public in the capacity of an adult care home administrator. K.S.A. 65-3508(d).

Misdemeanor conviction (depending upon the level of severity of the offense and the degree of harm caused residents): (2), (3), (4) (5) or (6).

Felony conviction *not* resulting in actual harm to resident(s) or not directly related to administrator's work duties: (3), (4) (5) or (6).

Felony conviction resulting in actual harm (e.g., bodily injury, property damage or theft) to resident(s): (4) (5) or (6).

Felony conviction resulting in serious bodily harm (e.g., rape, homicide) to resident(s): (6).

Failed to assure that nutrition, medications and treatments of residents, including the use of restraints, are in accordance with acceptable medical practices. K.S.A. 65-3508(e).

Incidents not resulting in harm to resident(s):

1st violation: (1), (2) or (3).

2nd violation: (2), (3) or (4).

3rd violation: (3) or (4).

Incidents resulting in harm to resident(s)

1st violation: (3), (4) or (5).

2nd violation: (4) (5) or (6).

3rd violation: (5) or (6).

Incidents resulting in serious bodily harm to resident(s)

1st violation: (3), (4) or (5).

2nd violation: (3), (4), (5) or (6).

3rd violation: (6).

Administrator convictions for violations of federal or state drug or narcotic laws or habitually overindulging in alcohol or habitually misusing controlled substances. K.S.A. 65-3508(f).

1st violation: (1), (2), (3), (4), (5) or (6).

2nd and subsequent violation: (3), (4), (5) or (6).

Administrator habitually overindulging in alcohol or habitually misusing controlled substances. K.S.A. 65-3508(f).

1st violation: (3), (4) or (5).

2nd or subsequent violation: (4), (5) or (6).

Involved in aiding, abetting, sanctioning or condoning any violation of the law or rules and regulations under the Adult Care Homes Act (Article 9 of Chapter 39 of the Kansas Statutes Annotated). K.S.A. 65-3508(g).

1st violation: (1), (2) or (3).

2nd violation: (3), (4) or (5).

3rd violation: (4), (5) or (6).

Engaged in the practice of adult care home administration in violation of K.S.A. 65-3502 (i.e., practicing without a license). K.S.A. 65-3508(h).

This would be applicable if license lapsed more than 30 days, person continued to practice and subsequently applied for reinstatement of license: (1), (2) or (3).

Misrepresented or omitted a material fact on an application for licensure or in any other communication with the Board. K.S.A. 65-3508(i).

Applicable primarily to applicants for initial license. However, may be applicable to applicants for renewal of license: (1), (2) or (3).

If misrepresentation or omission pertains to criminal conviction, follow disciplinary action for criminal conviction.

Had disciplinary action taken against an adult care home administrator's license issued by another state or jurisdiction; or on a professional or occupational health care license, mental health care license or social worker license issued by this state or by another state or jurisdiction. K.S.A. 65-3508(j-k).

Consider taking same action as that taken by other jurisdiction or licensing agency, if appropriate and legally available.

Aggravating and Mitigating Factors

Evaluation of the following aggravating and mitigating factors provide guidance regarding an appropriate sanction within the range of suggested disciplinary guidelines:

- 1) Whether licensee's response to incident was appropriate.
- 2) Whether licensee was active participant in incident, or whether incident was the action of another person (e.g., staff, resident's friend or family member, or another resident).
- 3) Whether licensee established and implemented policies and procedures to assure that nutrition, medications and treatments of residents, including the use of restraints, are in accordance with acceptable medical practices.
- 4) Whether there was a significant failure to conform to the laws, rules and regulations of the facility licensing agency (including failure to report abuse, neglect or exploitation as required by K.S.A. 39-1401, *et seq.*).
- 5) Whether licensee has been previously disciplined; and if so, how many times, the severity or degree of harm caused, the discipline imposed, and whether the current incident or reported issue relates to the previous discipline.
- 6) Whether the licensee aided and abetted, sanctioned, advised, counseled or in any way condoned violating facility licensure laws or rules and regulations.
- 7) Whether the licensee willfully committed a wrongful act or caused harm or injury to a resident.

Additional aggravating factors to consider:

Whether future risk to residents is indicated.
Degree of harm to resident(s), employer and profession.
Vulnerability of resident(s).
Whether conduct was exploitive.
Whether misrepresentation, deceit or fraud was present.
Whether conduct was isolated incident or repeated pattern.
Degree of impairment.
Whether this incident involves multiple violations.
Whether licensee delayed or interfered with investigation or failed to cooperate.

Additional mitigating factors to consider:

Acknowledgment or admission of wrong-doing.
Whether conduct was inadvertent or mistake.
Remorse about conduct.

Awareness of effect on resident(s) and family.
Demonstrated rehabilitation or willingness to rehabilitate.
Probability of successful rehabilitation.
Whether misconduct was self-reported.
Licensee's efforts at repair of damage or making restitution.

Definitions or Clarifications

Assurance of Compliance letter: A letter from the administrator explaining the event or incident, informing the Board how the matter was corrected or will be corrected, and assuring that the facility is or will be in compliance with the appropriate law, rule or regulation.

Willful conduct: Willful means intentional and voluntary, not accidental or involuntary. [Black's Law Dictionary, 1434 (7th Ed.).]

Aider and abettor: "One who assists another in the accomplishment of a common design or purpose; he must be aware of, and consent to such design or purpose. Black's Law Dictionary, 65 (7th Ed.).

Letter of reprimand: A letter of reprimand is a letter from the Board to a licensee that indicates the licensee has violated a statute or rule and regulation and is reprimanded for so doing. While a letter of reprimand will not be published, it is a public document under the Kansas Open Records Act.

Letter of censure: A letter of censure is a letter from the Board to a licensee that indicates the licensee has violated a statute or rule and regulation and is publicly censured for so doing. A letter of censure will be published in any appropriate KDADS public communications and is a public document under the Kansas Open Records Act.