

# Kansas Behavioral Sciences Regulatory Board (BSRB) Training for Board Members and Advisory Committee Members

2023

# BSRB Mission

The mission of the BSRB, in accordance with the intent of the Kansas Legislature, is to protect and serve the consumers of services offered by BSRB licensees, through the issuance of licenses, resolution of complaints and the creation of appropriate regulations, accomplished through efficiency, fairness and respect to all those involved.



# History of the BSRB

The 1980 Kansas Legislature created the Behavioral Sciences Regulatory Board, combining the Board of Psychology Examiners and the Social Work Examiners Board.

# History of the BSRB (cont.)

Over the years the BSRB's jurisdiction was expanded to include the licensure of:

- Professional Counselors
- Masters Level Psychologists
- Marriage and Family Therapists
- Addiction Counselors
- Behavior Analysts



# Composite Board

Rather than have separate boards for psychologists, social workers, professional counselors, marriage and family therapists, addiction counselors, and behavior analysts, there is one Board, composed of professional members and public members. This combination of individuals on one board is called a composite board.

# Benefits of Composite Board

By utilizing a composite board model, the agency saves a significant amount on operational expenses by sharing resources and utilizing licensing and investigative staff for similar subject areas.



# Board or Association?

## A Regulatory Board

- Exists to protect consumers
- Created by the Legislature
- Governed by statute

## An Association

- Exists to enhance the profession
- Created by the profession

# BSRB Agency Staff

The BSRB employees 10 staff members

- Executive Director
- Assistant Director and Licensing Manager
- Licensing specialists
- Investigators
- Clerical employees



# Agency Operations

- BSRB is a fee funded agency
  - The BSRB does not receive funding from the State General Fund, but by statute, contributes 10.0 percent of revenue, up to \$100,000 per year.
  - Agency revenue is from license fees
  - Annual budget is a little over \$1.1 million
  - As a small agency, the BSRB contracts with and has agreements with many agencies.

# The Board

All Board members are appointed by the Governor to serve a four-year term and may be re-appointed for a second term, allowing service on the Board for a maximum of eight consecutive years.



# Board Composition

The Board is composed of the following:

- 2 Psychologists
- 2 Social Workers
- 1 Marriage and Family Therapist
- 1 Professional Counselor
- 1 Addiction Counselor
- 1 Masters Level Psychologist
- 4 Public Members

# Functions of the BSRB

There are two basic functions of the BSRB:

- Licensing
- Investigation of Complaints / Discipline



# Licensees Regulated by BSRB

there are currently 15,155 active permanent licenses

- Licensed Psychologists
- Social Workers
- Masters Level Psychologists
- Behavior Analysts
- Professional Counselors
- Marriage and Family Counselors
- Addiction Counselors

# Permanent Licenses

- LP- 1,034
- LASW- 4
- LBSW- 1,241
- LMSW- 4,087
- LSCSW- 2,900
- LPC- 1,047
- LCPC- 1,169
- LaBA - 19
- LMLP- 335
- LCP- 276
- LMFT- 313
- LCMFT- 794
- LAC- 542
- LMAC - 415
- LCAC- 583
- LBA - 396



# New Licenses

In FY 2023, the BSRB issued:

- 1,586 Permanent licenses
- 433 Temporary licenses
- 66 Out-of-State Temporary Permits

# Original Licenses and Reciprocity

Of the 1,586 permanent licenses issued by the Board:

- 1,124 initial licenses
- 462 reciprocity



# Renewals and Audits

In FY 2022, the BSRB processed 6,214 license renewals.

As part of the license renewal process, 10.0 percent of all applicants are audited to ensure they have met their continuing education requirements. In FY 2022, the BSRB audited 625 individuals.

# Licensing Trends

Since July 2015, the number of permanent licensees has increased by 24.7 percent, from 12,152 to 15,155.

The professions with the largest increases are professional counseling, social work, and behavior analysis.



# Investigation and Discipline

As a public protection agency, the BSRB investigates complaints against practitioners under the authority of the Board.

The agency has administrative authority over practitioners, but this process does not take the place of criminal proceedings or civil proceedings.

# Complaints

In FY 2023, the BSRB received 200 complaints/Reports of Alleged Violation (RAVs) against practitioners.

For comparison, practitioners received 205 complaints in FY 2022, 132 complaints in FY 2021, 199 complaints in FY 2020, and 201 complaints in FY 2019.



# Investigative Process

Complaints are reviewed to determine whether the BSRB has jurisdiction over the issue and whether the matter involves a potential violation of the statutes and regulations for the profession.

Complaints/RAVs are reviewed by a subset of the Board: the Complaint Review Committee

# Common Violations

Examples of common violations include the following:

- Falsifying continuing education requirements – audit violation
- Practicing without a license or expired license
- Dual relationship (conflict of interest)
- Making sexual advances towards or engaging in physical intimacies with any client
- Refusing to report termination or suspension
- Confidentiality violations
- Practice issues – performing services inconsistent with one's education or accepted professional standards



# Outreach

The Executive Director and Assistant Director and Licensing Manager speak to groups of students to provide information on licensing and disciplinary matters to provide a proactive approach to assist individuals before they become licensed.

In FY 2022, 18 presentations were provided

# BSRB YouTube Channel

To provide better public access to meetings of the Board and the Advisory Committees, the BSRB Launched a YouTube channel in January 2021.

- 124 Board Meetings or Advisory Committee Meetings have been streamed live or uploaded. Viewed over 4,300 times.
- <https://www.youtube.com/@kansasbehavioralsciencesre8714/streams>



# BSRB Website

● Ksbsrb.ks.gov

Kansas.gov | Governor Laura Kelly

Search



## Behavioral Sciences Regulatory Board

*Protecting and serving consumers of behavioral science services*

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[Home](#) / [Statutes & Regulations](#) / BSRB Statutes

- BSRB Statutes
- BSRB Regulations
- Proposed Regulations
- Proposed Legislation

### BOARD STATUTES

Repealed statutes not listed on website

#### Board Statutes

<a href="#">74-7501</a>	Behavioral sciences regulatory board created; composition; appointment; terms, organization; compensation and expenses; executive director and other employees.	<a href="#">74-7506</a>	Disposition of moneys received; behavioral sciences regulatory board fee fund established; approval of expenditures.
<a href="#">74-7502</a>	Abolition of state board of examiners of psychologists and board of social work	<a href="#">74-7507</a>	Powers, duties and functions of board.

# BSRB Website

Some of the features on the website are:

- Portal to renew licenses
- Copies of forms and other applicant materials
- Statutes and regulations
- Proposed changes to statutes and regulations
- Complaint/Report of Alleged Violation forms
- Disciplinary orders
- Information on Board and Advisory Committee meetings



# Expectations of Board Members

Formal Expectations of Board Members  
policy posted on BSRB website.

Authority – “Insofar as the Expectations for Board Members conflicts with or limits any federal or state statute or regulation, the statute or regulation controls.”

# Guiding Principles

A. Persons in Kansas shall expect that licensed mental health providers are qualified, competent, and professional.

B. Persons regulated by the BSRB shall expect equitable and fair treatment in relation to licensing activities, disciplinary processes and administrative regulations.



# Guiding Principles

C. The BSRB shall provide all services in a manner that is timely, cost efficient, courteous and competent.

D. The BSRB shall be guided and led by ethical principles, clear policies, progressive thinking and strategic decision making.

E. The BSRB shall respect the dignity and worth of all individuals.

# BSRB Services

- A. Process license applications and license renewals in a timely manner.
- B. Take disciplinary action when appropriate.
- C. Provide timely information to the public
- D. Maintain Rules / Regulations and Statutes



# Code of Conduct

## A. Integrity

1. A Board member of the BSRB should have no criminal or professional misconduct record, nor commit acts that would lead to investigations or complaints.
2. A Board member of the BSRB possesses sound moral principles, e.g. is upright, honest, sincere.

# Code of Conduct

3. A Board member of the BSRB has courage of convictions to withstand pressures to be swayed from the public protection agenda.

4. A Board member of the BSRB should be honest about personal agendas and leaves them outside the boardroom.



# Code of Conduct

5. A Board member of the BSRB should reveal any actual or perceived conflicts of interest and appropriately recuse themselves from decisions or actions in those areas of interest.
6. A Board member of the BSRB should not represent their personal opinion as that of the Board.
7. A Board member of the BSRB should be limited to one unexcused absence a year.

# Conflict of Interest

A Board member of the BSRB should guard against conflict of interests.

## 1. Compliance

Common components of conflicts of interest policies include, but are not limited to, some or all of the following:

- a. A Board member of the BSRB should have no personal financial benefit as a result of service to the BSRB except sustenance and mileage;



# Conflict of Interest

b. A Board member of the BSRB who may have a conflict of interest according to stated criteria should refrain from voting on the matter;

c. A Board member of the BSRB should disclose any relationship with any other agency or individual involved with the BSRB and be excluded from matters involving such a conflict;

# Conflict of Interest

- d. A Board member of the BSRB serving as part of an organization working in any way with the BSRB should inform the Board Chair;
- e. A Board member of the BSRB should not accept any gifts or promotional items received as part of their affiliation with the agency for personal use;
- f. A Board member of the BSRB should not use the agency's name or agency information for personal gain;



# Confidentiality

Board discussion involving any of the following matters shall remain confidential, unless the Board expressly agrees to the contrary:

1. Any discussion that occurs during executive session; and
2. Any discussion concerning actual or potential litigation.

# Board Chair Authority

The Chair of the Board shall:

- a. Preside at all meetings;
- b. Appoint members of the Advisory Committees;
- c. Appoint members of the CRC; and
- d. Appoint members to other ad hoc committees.



# Vice-Chair Authority

The Vice-Chair shall discharge the duties of the Chair in his/her absence, disability, resignation, or death.

# Emergency Succession

In the event that the Executive Director is unable to perform the duties of the office of Executive Director, the BSRB may request an interim Director. If the BSRB is unable to meet immediately, the Board Chair will seek an interim Director until the Board can meet.



# Board – Executive Director Relationship

## Organizational Structure:

1. The Executive Director will communicate any personnel matters that should be addressed by the Board to the Chair of the Board;
2. The Chair of the Board will present these Board related issues to the Board; and
3. The Executive Director will communicate to the staff the Board wishes, intentions, policies, etc.

# Board – Executive Director Relationship

## Delegation to Executive Director:

1. The Executive Director shall be the administrative head of the organization, serving at all times under the Board. The Executive Director will be responsible for implementing and executing the policies and activities approved by the Board. He shall assist in the developing of the over-all program and shall recommend policies and activities for consideration by the Board.



# Board – Executive Director Relationship

Delegation to Executive Director:

2. The Executive Director shall have sole authority to employ, eliminate, and fix the duties and salaries of other employees or independent contractors of the organization, subject to policies, regulations and limitations approved by the State of Kansas.

# Board – Executive Director Relationship

## Executive Expectations:

1. The Executive Director shall keep the Board advised of BSRB activities by issuing a report to the Board at each full Board meeting, which summarizes pertinent information.
2. The Executive Director shall prepare the agenda for Board meetings in consultation with the Board Chair.



# Board – Executive Director Relationship

## Executive Expectations:

3. The Executive Director shall prepare the agenda in consultation with the Board Chair for an annual Board retreat which shall allow for issues before the Board that need in depth consideration.

# Board – Executive Director Relationship

## Monitoring of Executive Director's Performance

1. The Board shall, when necessary, utilize executive session to discuss issues concerning the Executive Director. The Board shall also formally evaluate the performance of the Executive Director each calendar year and on an annual basis thereafter, with emphasis on whether set outcomes are attained.



# Advisory Committees

To assist the work of the Board, the Board utilizes 7 standing Advisory Committees, one for each of the 7 professions regulated by the Board.

The Advisory Committee Policy is posted to the BSRB website.

Currently, 53 individuals volunteer to serve on these Advisory Committees.

# Advisory Committees

## Advisory Committee Purpose

A BSRB Advisory Committee, as a creation of the Board, has the purpose of supporting the Board in carrying out its mission to protect the public. Members serve at the pleasure of the Board. Actions pertaining to informing, licensing, and disciplining of those persons regulated by the Board are the methods for accomplishing the mission.



# Advisory Committees

## Advisory Committee Process

An Advisory Committee fulfills its purpose by addressing issues referred to it by the Board through the Advisory Committee Chair or the Executive Director. A Committee may suggest issues it believes the Board should consider by referring those through the Chair of the Advisory Committee.

# Advisory Committees

## Advisory Committee Process

The Board has three options:

1. Agree the issue needs to be addressed at the Board level.
2. Agree the issue should be addressed and refer the matter to the appropriate person or committee for additional information, review, or analysis, which will then be brought back to the Board.
3. Decide to not address the issue.



# Advisory Committees

## Structure of the Advisory Committee

Chairs of Advisory Committees will be members of the Board. If the profession is represented on the Board, the Chair of the Advisory Committee will be a Board member licensed in the discipline of the committee and appointed by the Governor to represent that discipline on the Board. Any other Board members appointed by the Governor to represent that discipline on the Board will serve as a member of that advisory committee.

# Advisory Committees

## Structure of the Advisory Committee

A public member of the Board will also be a member. There will be a minimum of three and a maximum of ten additional members appointed. The Executive Director will be a non-voting, ex officio member. The Assistant Director or Licensing Manager is encouraged to attend. Legal counsel representing the Board should attend meetings when their attendance is requested.



# Advisory Committees

## Structure of the Committee

Terms for Advisory Committee members will be two years. They will be appointed by the Chair of the BSRB and can serve up to four terms. Appointments to the committee should be staggered to avoid having too many members of the Advisory Committee reach their maximum length of service at the same time.

# Advisory Committees

## Structure of the Committee

***The policies and procedures under which the BSRB Board Members are expected to operate will apply also to the Advisory Committee Members.*** The Chair of the BSRB can remove members.



# Advisory Committees

## Selection of Advisory Committee Members

Members for the Committee may be nominated by anyone, including the public, committee members, members of a professional organization — either the discipline's own or other's — or through self-nomination.

# Advisory Committees

## Selection of Advisory Committee Members

In reviewing nominations, the Committee should work to ensure that there is diverse representation including, but not limited to, geographic setting, gender, culture, and ethnicity. Members should provide representation of the levels of licensing for that discipline and those members should be selected from among public and private practitioners and educators.



# Advisory Committees

## Selection of Advisory Committee Members

The Committee as a whole discusses nominations and reaches recommendations on new members. The nominee's resume, a letter stating the reasons why he or she desires to be appointed, and a copy of the Board's mission and goals to which the nominee has indicated agreement, are reviewed.

# Advisory Committees

## Selection of Advisory Committee Members

The Chair of the Committee will submit the Committee's recommendations for new members to the BSRB Board Chair. The Chair will review the recommendations and may request input before making a decision, which will be announced at a Board meeting.



# Advisory Committees

## Selection of Advisory Committee Members

After the appointment has been approved the Executive Director will inform the Advisory Committee appointee by letter or e-mail. The Executive Director may assist the new member by providing information, which will help orient the member to the Board's, and Advisory Committee's, role and function.

# Guidelines for Attendees

## Guidelines for Attendees of Meetings

Official policy posted to BSRB website:

- Clarifies that public comment is not entitled to individuals, but may be approved
- Outlines the processes that should be followed during comments to the Board or Advisory Committees and topics relevant for public comment to the Board and Advisory Committees.



# Guidelines for Attendees

## Guidelines for Attendees of Meetings

- Clarifies that the Board wants to receive valid complaints against practitioners, and provides information on how those complaints are to be submitted, but informs potential attendees that certain matters concerning specific licensees will be considered in a closed, standardized process, to ensure fairness to members of the public and licensees.

# Training for Licensing Boards

## Professional Licensing Boards

The State of Kansas regulates many professions. Each of these professions is regulated by a licensing board or commission that was created by the Kansas Legislature for the purpose of ensuring that licensed professionals are competent and do not pose a risk to the public.



# Training for Licensing Boards

## Professional Licensing Boards

A professional licensing board is created by enabling legislation, which establishes a board's form, mission, powers, functions, tools of implementation, and enforcement abilities. A board is considered to be a "creature of statute," meaning a board's power is dependent upon its authorizing statutes, and therefore any exercise of authority claimed by a board must come from those statutes, either explicitly or necessarily implied.

# Training for Licensing Boards

## Professional Licensing Boards

A board may administer, implement, and enforce only those statutes. If those statutes are silent on a particular action, the board lacks authority to take such action. Simply put, a board can do only what Kansas statutes say it can do.



# Training for Licensing Boards

## Professional Licensing Boards

Besides statutes specific to a board, a board's authority is limited by Constitutional Equal Protection and Due Process rights - prohibiting a board from acting in a manner which results in disparate or inconsistent treatment of persons similarly situated, from adopting different standards for similar situations or otherwise acting arbitrarily, capriciously or vindictively.

# Training for Licensing Boards

## Professional Licensing Boards

For example, a licensing board may not impose more severe discipline on male licensees solely because of their gender or a licensing board may not revoke a license simply because the board does not like that particular licensee.

Other Constitutional guarantees, such as freedom of speech, rights of privacy, unreasonable search and seizure, and vagueness also establish parameters on a board's authority.



# Training for Licensing Boards

## Legislative Authority over the BSRB

The Kansas Legislature retains control over certain aspects of a licensing board, such as:

- Modifying the enabling legislation, which would change the purpose of the board.
- Limit expenditures in an appropriation bill.
- Enact new legislation to change the makeup, scope, and/or powers of the board.

# Training for Licensing Boards

## Functions and Duties of a Licensing Board

In order to carry out its purpose, a board is granted (delegated) powers and functions that parallel the three branches of government: executive, judicial, and legislative.



# Training for Licensing Boards

## Functions and Duties of a Licensing Board

### Executive Authority

- Board carries out enabling act
- Follows Kansas Open Meetings Act (KOMA)
- Follows Kansas Open Records Act (KORA)

# Training for Licensing Boards

## Functions and Duties of a Licensing Board

### Judicial Authority

- Quasi-judicial hearings in reviewing facts when violation of law has occurred
- Follow Kansas Administrative Procedures Act (KAPA) when appropriate



# Training for Licensing Boards

## Functions and Duties of a Licensing Board

### Legislative Authority (Administrative Authority)

- Adopt regulations to implement or interpret the enabling act with more detailed or specific requirements.
- This process involves holding an open hearing on proposed regulations, allowing feedback, and there is oversight by a legislative committee.

# Training for Licensing Boards

## Statutes, Regulations, and Policies

In order to fulfill its responsibility to protect the public from incompetent, unprofessional, and unauthorized practitioners, a regulatory board implements and enforces statutes and regulations, and at times operates according to internal policies. In order to be effective, board members need to understand the differences between statutes, regulations, and policies.



# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Statutes

- Statutes are laws passed by the Kansas Legislature through authority derived from the Kansas Constitution and subsequently signed by the Governor. Statutes generally become effective on July 1 of that session year, but can become effective if a different date is specified in the legislation. Statutes set the parameters of a board's authority.

# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Statutes

- Statutes control any inconsistent regulation or policy. If a board becomes dissatisfied with the scope of its authority (e.g., a board determines that it needs investigative subpoena authority), the board must seek legislation to obtain its goal.



# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Regulations

- Regulations, on the other hand, are adopted by a board to further implement or carry out the purpose of particular statutes. A board's authority to adopt regulations is derived from statute.

# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Regulations

- In adopting rules and regulations, a board follows the Rules and the Regulations Filing Act to ensure that the process of adopting regulations is open, receptive to public and legislative input; addresses the economic impact of board and those affected; the regulations themselves are consistent in style, organization and grammar; are lawful, and are filed and published.



# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Regulations

- Regulations are promulgated to complete or fill in details of a statutory scheme—implementing statutes—and affect rights or responsibilities of third parties outside of the board.
- When adopted in accordance with the Rules and Regulations Filing Act, regulations have the force and effect of law, i.e., they are legally enforceable.

# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Regulations

- To be valid, a regulation must be within the statutory authority conferred upon the board, implement a specific statute, and otherwise pass the test for "legality." Any regulation that goes beyond the authority granted, violates an enabling statute, or is inconsistent with the statutory power of the board, another statute, or the Constitution will be found void.



# Training for Licensing Boards

## Statutes, Regulations, and Policies

### Policies

- Policies may be adopted by a board only to guide its internal operations, such as prioritizing staff workload or explaining the investigative process.
- Guidance documents are documents that state a board's current approach to, or interpretation of law, or general statements of policy that describe how and when the board will exercise discretionary functions.

# Training for Licensing Boards

## Effectiveness as a Board Member/Advisory Committee Member

- Read the Board's enabling statutes (K.S.A. 74-7501)
- Read the Board's licensing acts (included on BSRB website)
- Read the regulations for each licensing act
- Read BSRB Policies posted to BSRB website



# Training for Licensing Boards

## Effectiveness as a Board Member/Advisory Committee Member

- Be on the alert for agency policies and internal procedures which may be inconsistent with or conflict with the board's statutes and regulations or which affect requirements for applicants or licensees.
- Be willing to initiate action to amend statutes or modify regulations.

# Training for Licensing Boards

## Effectiveness as a Board Member/Advisory Committee Member

- If a statute or regulation seems confusing or vague, it could appear that way to individuals who must comply with them.
- Remember the purpose of imposing discipline against licensees is to encourage compliance with the law and protect the public. Discipline should not be vindictive or disproportionate to the severity of the violations.



# Training for Licensing Boards

## Effectiveness as a Board Member/Advisory Committee Member

- Always be mindful that the role of the board is to protect the public, not the licensees.

# Training for Licensing Boards

## Conflict of Interest

Conflict of interest typically means having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of the board member's duties in the public interest.



# Training for Licensing Boards

## Conflict of Interest

Board members / Advisory Committee members must make public and recuse themselves from any conflict of interest that exists to ensure the integrity of the board and all of its decisions. Disclosure and recusal are important tools to avoid actual or perceived conflict of interest, but board members must not overuse recusal as an excuse to avoid conflict in exercising their full responsibilities.

# Training for Licensing Boards

## Types of Potential Conflicts

Personal conflicts are those actions that may ultimately have a personal consequence that is a direct or indirect effect of a decision or action. No decisions should be made that will advance the personal benefit of the board member(s).



# Training for Licensing Boards

## Types of Potential Conflicts

Examples of personal conflicts:

- Personal gain
- Bias
- Effects on personal relationship

# Training for Licensing Boards

## Confidentiality

At all times, a Board Member / Advisory Committee member must conform to the rules of confidentiality in dealings outside the boardroom. Protected information obtained in the capacity of board member must remain confidential during and after board membership. Termination of board membership does not dissolve the board member from responsibility.



# Training for Licensing Boards

## Confidentiality

The rules that applied during active board membership continue to apply after termination of board membership.

Confidentiality must be maintained on all confidential subjects that the individual was privy to as a board member..

# Training for Licensing Boards

## Confidentiality

Examples of times when confidential information could be discussed:

- Executive sessions during open meetings
- Deliberations after a hearing
  - Kansas Open Meetings Act (KOMA) and the Kansas Administrative Procedures Act (KAPA) allow the Board to deliberate in private in order to reach a decision in a particular pending case.



# Training for Licensing Boards

## Professional Activities

A board member may hold an office in a professional or trade association of the regulated profession, but may not lobby for or cast votes regarding a matter that would impact the professional association or the board member's office in that association. The board member may not use his or her position on the board to further the interests of the professional association or his or her office in that association.

# Training for Licensing Boards

## Professional Activities

Board members may attend professional conferences and social events, but they must be mindful of open meetings rules and conflicts of interest. If a majority of board members are present, do not discuss the “business or affairs” of the board to avoid triggering a “meeting” under the KOMA. Additionally, do not discuss matters related to a particular pending application or disciplinary matter.



# Training for Licensing Boards

## Other Conduct

A board member should not represent himself/herself as a spokesperson for the Board unless authorized by vote of the board to speak on the Board's behalf. If a board member is asked to give the Board's position on an issue and the Board has not authorized that member to do so, the board member must decline to comment or make clear that any opinions expressed are those of him or her alone and NOT the Board.

# Training for Licensing Boards

## Other Conduct

A board member should not ask board staff or board counsel to provide legal advice or preferential treatment to any applicant or licensee.



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq., allows the public to observe governmental entities making decisions.

Meetings shall be open to the public because "a representative government is dependent upon an informed electorate." K.S.A. 75-4317(a). Because the purpose of KOMA is to benefit the public, it is interpreted liberally and exceptions are applied narrowly to carry out its purpose.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The KOMA applies to all legislative and administrative bodies and agencies of the state, and other subordinate groups thereof receiving or expending and supported in whole or in part by public funds. K.S.A. 75-4318. The KOMA does not define the term “subordinate groups,” but if created by a covered entity or the group has become an extension of a covered entity, most likely the subordinate group is subject to the KOMA.



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The KOMA does not apply to an otherwise covered entity when exercising a “quasi-judicial” function, K.S.A. 75-4318(g)(1), or conducting a proceeding or hearing under the Kansas Administrative Procedures Act (KAPA). K.S.A. 77-523(f); K.S.A. 75-4318(g). KOMA also does not apply to the judiciary, private organizations, and staff meetings of a covered entity.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

A “meeting” is defined as:

- Any gathering or assembly in person, through the use of a telephone, or any other medium for interactive communication
- By a majority of the membership of an agency or public body subject to the act
- For the purpose of discussing the business or affairs of the public body or agency



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

Meetings may be conducted by telephone or other electronic medium (e.g., Zoom, Skype) if the board complies with all KOMA requirements. A meeting includes informal discussions before, after the public meeting, or during a recess of a public meeting and all gatherings at all stages of the decision-making process. The name of the gathering is irrelevant; thus, "work sessions" and "retreats" are subject to KOMA.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

A "discussion" does not require binding action or voting. A discussion can occur at social gatherings, retreats and meetings held in private, education conferences/seminars. Thus, when traveling to such meetings, members of the board should avoid discussing business or affairs of the agency.



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The presiding officer has the duty to provide notice of the meeting, but this duty may be delegated. K.S.A. 75-4318(b). The KOMA does not require notice of meetings to be published in a paper or on a website. An individual must request notice of meetings. There are no formalities to requesting notice – it can be verbal or written.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The notice must provide date, time, and location where body will meet to the person requesting notice in a “reasonable time” before meeting. A request is valid for one fiscal year. The Board must notify a requester of expiration before terminating notice to that requester.



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The KOMA does not address meeting procedures; a board is not required to follow Roberts Rules of Order or any similar formal rules of procedure. The KOMA does not require a board to create an agenda, but if one exists, it must be made available to everyone. A person may record the meeting if doing so is not disruptive. The public does not have the right to speak, but only to listen and observe. The board cannot vote by secret ballots.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

A board policy may require minutes to be kept, but the KOMA does not require the board to have minutes unless there is a motion to go into executive session. The motion as made must be included in the minutes. An executive session permits discussion of certain enumerated matters outside of public view.



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

To take an executive session, the Board must first convene an open meeting. The Board cannot take binding actions in an executive session, but a consensus is allowed. If a consensus is achieved, the Board must reconvene the open meeting and take a formal vote in open session.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

Prosecutions under the KOMA are civil, not criminal. Any person, county/district attorney or the attorney general may bring an action in district court. The county/district attorney and attorney general have subpoena power.

Enforcement actions take precedence over all other cases and are assigned for trial at the earliest practicable date.



# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The remedies for a KOMA violation include: voiding any action taken if prosecuted by the attorney general or county/district attorney only; an injunction (stopping the action); a mandamus (forcing action); and a declaratory judgment.

# Training for Licensing Boards

## Kansas Open Meetings Act (KOMA)

The penalties for a KOMA violation include: a fine up to \$500 per board member, not the board, for each violation; ouster from office; recall from office; court costs assessed to the person seeking enforcement of KOMA; court costs assessed against plaintiff if maintained action frivolously, not in good faith, or without reasonable basis in law or fact. K.S.A. 75-4320; K.S.A. 75-4320a.



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

The Kansas Open Records Act (KORA), K.S.A. 45-215 et seq., requires the board to have its records "open for inspection by any person unless otherwise provided;" and KORA "shall be liberally construed and applied to promote such policy." K.S.A. 45-216(a).

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

A public agency includes the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof or any other entity receiving, expending, or supported in whole or in part by public funds appropriated by the state or political/taxing subdivision. The term "instrumentality" is not defined in KORA.



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

Nevertheless, if created by a covered entity or the group has become an extension of a covered entity, it will most likely be covered. A "public agency" does not include private companies, even if they receive public funds in exchange for goods and services, judges and courts, an individual legislator or member of a governing body, private individuals, or state employees.

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

A public record includes any recorded information regardless of form or characteristics which is made, maintained, or kept by or is in the possession of any public agency and written records, photographs, computer data, and e-mail.



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

A public record does not include records that are owned by a private person or entity and are not related to functions, activities, programs, or operations funded by public funds or records not in existence at the time of the request. The Board is not required to create a record in order to fulfill a request. See K.S.A. 45-217.

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

Under the KORA, the Board must:

- Appoint a freedom of information officer to assist with KORA requests;
- Display, distribute, or otherwise make available a brochure describing requester rights, agency responsibilities, and procedures for inspecting or obtaining copies of public records; and



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

Under the KORA, the Board must:

- Include the name/title of a records custodian, fees, and office hours available for anyone to make a request. K.S.A. 45-226 and K.S.A. 45-227.

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

In Kansas, any person may make a request; the person need not be a resident or provide a reason for their request. The Board may require the request to be in writing, state name and address of the requestor, provide proof of identification, and sign a written certification that the requester will not use names and addresses obtained from the records to solicit sales or services.



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

Unless closed by law, the Board cannot deny a person the right to review its public records. For instance, copyrighted materials may not be reproduced without the permission from the copyright holder, but must be available for viewing or listening. If portions of a record are closed, the remainder of the record must be made available to the requestor; this referred to as "redaction."

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

The Board is not required to make copies of a recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations unless shown at a public meeting.



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

The request must be "acted upon" as soon as possible, but not later than the end of third business day following the date the request was received by the board. Three responses are acceptable: (1) the record is provided (in the form requested, if possible); (2) the request is under review and the records if permitted will follow; and (3) the request is denied, with a detailed explanation for the denial.

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

Under the KORA, there is a presumption of openness. As such, the requested public records must be released unless an exemption to disclosure applies. The burden rests on the board to prove the requested records are exempt from disclosure. Exemptions to disclosure may be discretionary or mandatory.



# Training for Licensing Boards

## Kansas Open Records Act (KORA)

The KORA is a civil act, not a criminal act. Any person, a county/district attorney, or the Attorney General may bring a civil prosecution. The county/district attorney and Attorney General have subpoena power. Such actions are assigned a trial date at the earliest practicable date. K.S.A. 45-222(e). The district court may review the requested records in camera.

# Training for Licensing Boards

## Kansas Open Records Act (KORA)

In actions brought by the county/district attorney or Attorney General, fines up to \$500 per violation may be imposed for a knowing violation or an intentional failure to furnish information. Costs and reasonable attorney's fees, including appeals, may be imposed if the board's denial is not made in good faith and without a reasonable basis in fact or law. See K.S.A. 45-222 and K.S.A. 45-223.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

The Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 et seq., creates only procedural rights and imposes only procedural duties. K.S.A. 77-503(b). The KAPA does not provide substantive law; those laws are governed by the Board's enabling act and licensing acts. The KAPA applies only to the extent that other statutes expressly provide that the provisions of the KAPA govern those provisions. K.S.A. 77-503(a).

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

The general rule is that licensing boards, like the BSRB, must do business in an open meeting under the KOMA unless directed by statute to conduct the proceeding or hearing pursuant to the KAPA. Those two Acts are mutually exclusive.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

When a licensing board's statutes provide that the KAPA applies to certain decisions, the Board shall follow the KAPA, not the KOMA, when making those decisions. The KAPA sets out a procedure to follow when the Board is deciding what to do in cases involving **individual licensees**, much like the procedure that is followed in court cases.

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

In those types of cases, the Board is conducting a quasi-judicial function in deciding the outcome of the case. When the KAPA applies, none of the stages in a particular case has to be open to public observation other than a hearing.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

Each of the Board's licensing acts have a KAPA provision. Under the KAPA, neither the public nor an applicant has to be notified when the Board meets to consider an application for licensure. Similarly, under the KAPA, neither the public nor the licensee has to be notified when the Complaint Review Committee (CRC) meets to consider whether probable cause exists in a discipline case or issue a summary proceeding order.

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

Additionally, the Board and the CRC do not need to take a vote in public for decisions made under the KAPA; under the KAPA, decisions are made when the license or an order is issued. The necessary Board staff and the Board's or CRC's attorney can be present during the KAPA discussions to make sure the Board members have the information or legal advice they need to make an informed decision.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

There are some Board activities that are not covered by the KAPA, and these must be acted on in an open meeting under the KOMA. These include:

- Approving Board minutes;
- Discussions and votes to approve or amend regulations or guidance documents;
- Delegating authority to a Board member or to the Executive Director for a particular action;

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- Receiving agency updates regarding the budget, legislation, statistics on complaints and CRC activity, education, and the Executive Director's report;
- Decisions whether to renew contracts or change the way contracted services are provided; and
- Policy decisions affecting the way the Board operates internally.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- Receiving agency updates regarding the budget, legislation, statistics on complaints and CRC activity, education, and the Executive Director's report;
- Decisions whether to renew contracts or change the way contracted services are provided; and
- Policy decisions affecting the way the Board operates internally.

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

### Applications for Licensure

- A person who files an application for licensure has the burden of proof.
- Staff will gather the information submitted by an applicant for the Board's consideration in determining whether an applicant is qualified for licensure or whether a license may be conditioned or restricted.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- If the Board denies, conditions, or restricts a license, an applicant may request a hearing if the applicant did not agree to such action in a consent agreement and order.

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

### Investigations

- The Board has the burden of proof to show a licensee has violated a statute or regulation.
- All licensing boards can investigate complaints or allegations that a licensee has violated its statutes or regulations. The Board's investigator generally gathers information and then presents that information to the CRC.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- The CRC reviews the information and determines whether there is probably cause, or reasonable grounds, to believe that the licensee has violated specific statutes or regulations. "Reasonable grounds" means information that would lead a reasonably prudent person to believe that the licensee violated one of the Board's statutes or regulations.

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- When making the determination, the CRC must make sure the conduct that the licensee is accused of actually violates one of the Board's statutes or regulations. The fact that the licensee did something that made someone angry, violated a professional association's ethical code, or did not follow an employer's policy does not necessarily mean that the licensee violated a statute or regulation.



# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- The licensee can request a hearing on the summary proceeding order within a certain prescribed time period. Once a petition or a request for a hearing is filed, the KAPA guides the proceedings and hearing.

# Training for Licensing Boards

## Kansas Administrative Procedures Act (KAPA)

- If there is an immediate danger to public health, safety or welfare, the CRC may suspend a license without giving the licensee notice and an opportunity for a hearing. A licensee may appeal an emergency order to the district court.



# Training for Licensing Boards

## Kansas Tort Claims Act

The Kansas Tort Claims Act (KTCA) generally governs the liability of the State of Kansas and its agencies and employees. An employee includes a member of a board or committee 'of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation.'" K.S.A. 75-6102(d)(A).

# Training for Licensing Boards

## Kansas Tort Claims Act

The basic rule of the KTCA is vicarious liability for any actionably wrongful act or omissions of government employees within the course and scope of their employment, subject to affirmative grants of immunity that may exist on a case-by-case basis.



# Training for Licensing Boards

## Kansas Tort Claims Act

If you are sued for an act that occurred within the scope of your duties as a Board member, you are entitled to have the state defend you at no cost.

# Training for Licensing Boards

## Kansas Tort Claims Act

To obtain representation by the state, you must (1) submit a written request within 15 days after service of a process (include a copy of the petition and summons) and (2) cooperate in your defense. The State may choose not to defend you if you (1) acted with actual fraud or malice or (2) failed to make a timely request for representation.



# Training for Licensing Boards

## Kansas Tort Claims Act

The general rule is that the State will pay for any judgment rendered against you unless (1) the judgment is for an act or omission that occurred outside the scope of your duties as a board member; (2) you failed to cooperate in your defense; or (3) you acted with actual fraud or malice.