

**65-4209. Grounds for disciplinary actions; proceedings; witnesses; costs; professional incompetency defined; criminal history record information.**

(a) The board may deny, revoke, limit or suspend any license to practice as a mental health technician issued or applied for in accordance with the provisions of this act, may publicly or privately censure a licensee or may otherwise discipline a licensee upon proof that the licensee:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice mental health technology;
  - (2) is unable to practice with reasonable skill and safety due to current abuse of drugs or alcohol;
  - (3) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;
  - (4) is incompetent or grossly negligent in carrying out the functions of a mental health technician;
  - (5) has committed unprofessional conduct as defined by rules and regulations of the board;
  - (6) has been convicted of a felony or has been convicted of a misdemeanor involving an illegal drug offense, unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120, and amendments thereto, no license, certificate of qualification or authorization to practice as a licensed mental health technician shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;
  - (7) has committed an act of professional incompetency as defined in subsection (e);
  - (8) to have willfully or repeatedly violated the provisions of the mental health technician's licensure act or rules and regulations adopted under that act and amendments thereto; or
  - (9) to have a license to practice mental health technology denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (9).
- (b) Upon filing a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds to believe the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the Kansas administrative procedure act.
- (c) No person shall be excused from testifying in any proceedings before the board under the mental health technician's licensure act or in any civil proceedings under such act before a court of competent jurisdiction on the ground that the testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 2014 Supp. 21-5903, and amendments thereto.
- (d) If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.
- (e) As used in this section, "professional incompetency" means:
- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;
  - (2) repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board; or
  - (3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice mental health technology.
- (f) The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.
- (g) All proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

**History:** L. 1973, ch. 308, § 9; L. 1983, ch. 207, § 8; L. 1984, ch. 313, § 129; L. 1987, ch. 247, § 2; L. 1993, ch. 194, § 5; L. 1995, ch. 97, § 6; L. 1997, ch. 158, § 10; L. 2011, ch. 30, § 245; July 1.