

2021 Kansas Statutes

65-2839a. Investigations and proceedings conducted by board; access to evidence; subpoenas; access to criminal history; confidentiality of information. (a) In connection with any investigation by the board, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained by and in possession of any clinic, office of a practitioner of any profession regulated by the board, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to professional competence, unprofessional conduct or the mental or physical ability of a person to safely practice any profession regulated by the board.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee, registrant, permit holder or certificate holder to safely practice. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence. The board shall have the authority to compel the production of evidence upon noncompliance with an investigative subpoena, if in the opinion of the board or the board's designee, the evidence demanded relates to a practice which may be grounds for disciplinary action, is relevant to the charge which is the subject matter of the investigation and describes with sufficient particularity the physical evidence required to be produced.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or after exhaustion of available administrative remedies by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the board's duly authorized agent to produce evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(c) The board may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information, including arrest and nonconviction data, criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining initial and continuing qualifications of licensees, permit holders, registrants and certificate holders of, and applicants for, licensure and registration by the board. Disclosure or use of any such information received by the board or of any record containing such information, for any

purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license, permit, registration or certificate issued under this act. Unless otherwise specified, nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the board in a hearing held pursuant to the practice act of any profession regulated by the board.

(d) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the investigation procedure outlined in this section shall be confidential and shall not be disclosed.

(e) Nothing in this section or any other provision of law making communications between a licensee, registrant, permit holder or certificate holder and the patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

History: L. 1986, ch. 229, § 39; L. 1992, ch. 253, § 3; L. 2014, ch. 131, § 14; July 1, 2015.