

Agency Mission: To assure the citizens of Kansas safe and competent practice by nurses and mental health technicians.

**Kansas State Board of Nursing
Landon State Office Building, Room 509
Board Meeting Agenda
March 27, 2024**

NOTE: The audience may attend in person or via Zoom. Link to access meeting to follow agenda.

Time: 9:15 a.m. – Until Finished

Board Present: Julianna Rieschick, RN, MSN, NEA-BC, President
Andrea Watson, RN, BSN, OCN, CCRP, Vice President
Michaela Hysten, MSN, BSN, RN, Secretary
Rebecca Sander, MSN, RN
Adri Gouldsmith, LPN
Melissa Oropeza, DNP, APRN-BC, CGRN – absent with prior notice
Lori Owen, LPN
Ruth L.M. Burkhart, DNP, MSN, MA, RN-BC, LPCC
Geovannie Gone, Public Member
Michelle Terry, Public Member
Brenda Sharpe, Public Member

Staff Present: Carol Moreland, MSN, RN, Executive Administrator
Adrian Guerrero, CPM, Director of Operations
Linda Davies, MSN, BSN, RN, Practice Specialist
Janelle Martin, MHSA, RN, Nursing Education Compliance Officer
RaeAnn Byrd, CPM, Licensing Supervisor
Jill Simons, Executive Assistant

- I. Quorum (minimum of 6 members present) – Yes or No
- II. Call to Order
- III. Review of Onsite packet
- IV. Additions/Revisions to Board Agenda
- V. Announcements
- VI. Approval of Minutes – December 13, 2023

Consent Item Agenda

- 1. Written update on CE Broker
- 2. Written update on Licensing Software
- 3. RFP for Impaired Provider

Agency Reports

- 1. Executive Administrator Report
- 2. Staff Reports

- Committee Reports:**
1. Education Committee – Chair, J. Rieschick
Committee Report
Action Items
 2. Investigative Committee – Chair, R. Sander
Committee Report
Action items
 3. CNE/IV Therapy Advisory Committee – Chair, A. Watson
Committee Report
Action Items
 4. APRN Committee – Chair, M. Oropeza
Committee Report
Action Items
 5. Practice Committee – Chair, L. Owen
Committee Report
Action Items
 6. Finance Committee – Chair, J. Rieschick
Committee Report
Action items

Unfinished Business:

1. Board Retreat Report and 2022 – 2025 Strategic Plan Draft
2. KS Nursing Workforce Center Update
3. Board Member Job Description and Code of Conduct Draft
4. KSBN Articles Revision
5. FY24 Strategic Planning Retreat Update

New Business:

1. Annual KORA and KOMA Training – Charles Macheers

Executive session if needed.

(The meeting will proceed as set by the agenda. Open Forum will be held at 1:00 p.m. when a presenter is scheduled.)

VII. Agenda for June 2024 Board Meeting

VIII. Adjourn:

Please Note: Additional items, which have come to the attention of the Board, will be handled as time permits. Agenda is subject to change based upon items to come before the Board.

Handouts or copies of materials brought to the Board or Committees for discussion by committee members or visitors must be submitted to staff 30 calendar days prior to start of the meeting. Any items received after the 30th calendar day may be addressed at the meeting at the discretion of the President of the Board or Chairperson of the Committee.

Any individual with a disability may request accommodation to participate in the board meeting and may request the board packet in an accessible format. Requests for accommodation should be made at least five working days in advance of the board meeting by contacting Jill Simons at (785) 296-5752. Handicapped parking is available at the Landon State Office Building, and the north entrance to the building is accessible to individuals with disabilities.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/88088025478?pwd=QktwV3kzZS9BaWJZZjNlUeItkNExxQT09>

Passcode: KsbnBoard

Or One tap mobile :

+13462487799,,88088025478#,,,*620223876# US (Houston)

+16694449171,,88088025478#,,,*620223876# US

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 346 248 7799 US (Houston)

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+1 689 278 1000 US

+1 301 715 8592 US (Washington DC)

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Here is an update on the system:

- System Automation Licensing System Upgrade.

KSBN received a generous financial grant provided under the federal American Rescue Plan Act of 2021, as recommended by the Strengthening People and Revitalizing Kansas (SPARK) Taskforce and the approved by the State Finance Council for the State Efficiency and Modernization Program. Funding acceptance was approved by the KSBN Board President. This funding will be used as part of the modernization upgrades to the KSBN licensing system.

Project plan paperwork has been approved and signed. KSBN began the modernization project plan discussions with the licensing software vendor, System Automation. This project will be a multiphase project. Phase 1 will include the following deliverables. Project Management Plan, Requirements Documentation, MyLicense Upgrade in Test Deploy Jasper Reports Server, Perform Jasper Reports Training, Configure KSBN Data Model, Deploy Hyland Perceptive Integration, Install and Configure Verification, User Acceptance Testing Go-Live and Operational Support. Total for Phase 1 (High-End Timeline) 5-6 months. Current progress and tentative plans for Phase 1 is as follows:

- October: KSBN Staff from Administration, IT/Operations, Licensing, and Investigative Departments attended the System Automation Users Conference in Baltimore, Maryland at SA's headquarters.
- November: Set up and install all servers, prepare migration scripts, set up Verification.
- December: UAT for test environment (MLO/eGov/Verification), set up Jasper server.
- January-February: Project configuration work and User Acceptance Testing.
- March-April: Security scanning a possible go live for MLO/eGov/Verification

Phase 2 – Implement MyLicense One Online Services and Case Management, MyLicense One Setup Fee, Online Services and Case Management Requirements Documentation, MyLicense One Administrator Training, Online Initial Application Configuration, Online Renewal Configuration, Demographics Update Configuration, Case Management Configuration, User Acceptance Testing of Online Services and Case Management, Perform End User Training for Case Management, Go-Live and Operational Support, Total for Phase 2 (High-End Timeline) 12 months. KSBN has received the quotes and high-level project plan and submitted to the Kansas Information Technology Office (KITO) for project approval. This was approved Feb 29th and the project plan was submitted to System Automation.

KSBN is prepared to commit the needed resources to move forward with the upgrades that are needed to implement the enforcement, mobile and reporting modules. This project will be completed in phases over two fiscal years.

Consent Item #3

Update on RFP for Impaired Provider Program

Discussion has occurred with Procurement about a contract extension or a RFP. We are waiting on the decision.

**Kansas State Board of Nursing
Strategic Plan
July 1, 2022 – June 30, 2025**

Additions from 2023 strategic retreat report

Performance assessment information

~~Deletions from strategic plan based on feedback from 2023 strategic retreat report~~

Agency Mission

The mission of the Board of Nursing is to assure the Citizens of Kansas safe and competent practice by nurses and mental health technicians.

Agency Philosophy

The Board of Nursing will act in accordance with the highest standards of ethics, accountability, efficiency, and openness. The Board subscribes to the idea that safe nursing care is a public trust. We approach our activities with a deep sense of purpose and responsibility. The public and regulated community alike can be assured of a balanced and sensible approach to regulation.

Core Values

We value trustworthiness in each individual, believe we can be depended upon to act with integrity, honesty, sincerity and fairness. We value respect for each person recognizing that we all have an important role to play in achieving our organizational goals. We value continuous learning which enhances individual and organizational growth. We value competence in all staff knowing that quality leadership, support and service require knowledge, skills and accountability. We value open and effective communication through the ongoing interchange of ideas and information. We value collaboration in our work processes and decision making, recognizing when we involve others affected by decisions, we strengthen the decisions.

***Priority #1: Promoting Nursing and Allied Health Standards; safe nursing
through education, licensure, and regulation***

Strategic Objectives

- 1. Enhance collaborative relationships with other nursing and health-related organizations and other state agencies in Kansas**

Outcome Measures:

- ~~a. Network and build upon the professional relationships with other relevant agencies and organizations~~
Strategically identify, strengthen, and prioritize partnerships
- b. Explore the possibility of establishing a Kansas Tri-Regulator Collective, that includes the Board of Nursing, Board of Pharmacy and Board of Healing Arts, to discuss related issues/concerns

- c. Communicate updates and changes from KSBN to other nursing and health-related organizations and other state agencies in Kansas
- d. Establish links on the agency website to the KSBN newsletter, updates, proposed changes to regulations and Nurse Licensure Compact (NLC) information
- e. Develop methods and metrics in which information about the agency could be marketed to consumers. This will increase stakeholder knowledge of the Board's work and positive impact on the citizens of Kansas.
- f. Provide outreach education to the Kansas Hospital Association and their members regarding licensure, discipline and other nursing related regulatory topics requested
- g. Expand engagement efforts – legislative, public/private, key systems, and the Administration
- h. Communication and education re: e-Notify

Performance Assessment

- a. IHPEC – Impaired Healthcare provider Education Committee formed. Goal is to provide education on substance use/misuse to the healthcare workforce, including students and licensed professionals.
- b. IV Hydration Clinics – discussion between Board of Pharmacy, BOHA and KSBN
- c. Provide outreach education: avenues include newsletter, create video of licensing process, Investigative staff reviewing KNPA Self-Study Module to develop additional education

2. Systematic evaluation of advanced practice nursing

Outcome Measures:

- a. Continue with the five-year review of advanced practice statutes and regulations
- b. Review and monitor statutory changes for advanced practice nurses in Kansas – Involving KAPN (for APRN) and KUAHEC (for RN and LPN) scope of practice questions.
- c. Monitor the progress of the APRN consensus model and the national progress of the APRN compact and report back annually to the Board or when changes occur
- d. Develop methodologies for Kansas APRN scope of practice questions

Performance Assessment

3. Retain independent status of the Board of Nursing

Outcome Measures:

- a. Monitor legislation introduced during legislative session
- b. Submit data to the National Council of State Boards of Nursing (NCSBN) for the ~~Commitment to Ongoing Regulatory Excellence (CORE)~~ Member Board Profile reports. The purpose of CORE Member Board Profiles is to provide an ongoing performance measurement system for nursing regulators. CORE Member Board

Profiles utilize data collected periodically from nursing regulatory bodies and stakeholders and identifies best practices in the provision of regulatory services.

Annually completed and submitted to NCSBN

- c. Monitor performance metrics for the agency and adjust processes as needed to improve outcomes
- d. Promote the agency to consumers and key stakeholders
- e. Explore software or web-based services that could provide dashboard-style metrics regarding agency performance

Performance Assessment:

b.

4. Promote education about multistate licensure

Outcome Measures:

- a. Provide education about the NLC and multistate licensure -Done continuously with applicants, licensees, employers, Legislators, and public
- b. Include information in the KSBN newsletter at least twice annually – Information included in the KSBN newsletter quarterly
- c. Provide information on our website and social media channels, with links to NCSBN, for further information sharing
- d. Distribute the NLC “*Tip of the Week*” to the agency staff – Distributed weekly to agency staff
- e. Update Board members on the total number of multistate licenses as compared to single state licenses in Kansas for RNs and LPNs – Updated quarterly at KSBN Board meetings
- f. Evaluate the possibility of recording an educational video for our website that could be viewed by students and others
- g. Institute more frequent information about multistate licensure via social media

Performance Assessment:

5. Legislative Engagement

Outcome measures:

- a. Develop a legislative agenda
- b. Identify a main point of contact with legislative expertise
- c. Strategic engagement through key partnerships and education campaign
- d. Consideration of structure and staffing to support these efforts

Performance Assessment:

Priority #2: Fiscal and Human Resources Responsibilities

Strategic Objectives

1. Monitor Board's financial position

Outcome Measures:

- a. Monitor monthly financial reports for trends – **Executive Administrator reviews financial reports monthly**
- b. Update the Finance Committee regarding the monthly financial reports during the quarterly meetings – **Standing agenda item on quarterly Finance Committee**
- c. Information regarding agency budget included in the quarterly Executive Administrator's report that is submitted to the Board – **Included in Executive Administrator's report quarterly**
- d. Prepare and present the budget as directed by Division of Budget – **Completed annually**
- e. Provide information regarding proposed budget to Division of budget analyst, Legislative Research budget analyst and House and Senate budget committees and respond to any inquiries as necessary. **Completed annually**
- f. Include information regarding the budget in agency annual report – **Included in FY 22 and FY 23 Annual Reports**
- g. Provide information to Board members about the fee fund guidelines included in KSBN Articles – **Information provided to Finance Committee**

Performance Assessment:

- ~~2. Monitor funding solution for the maintenance of K-Tracs (prescription monitoring program)~~ **KSBN has not contributed to the funding of K-Tracs since FY 20?? The Legislature has approved for K-Tracs funding includes a variety of source: Pharmacy fee funds, Opioid Settlement Litigation funds, and three federal grants. The Board of Pharmacy actively looks for grants to help fund K-Tracs. There is no expectation there will be a fee fund transfer from KSBN Fee Fund.****

Outcome Measures:

- ~~e. Monitor legislative funding for K-Tracs~~
- ~~f. Track impact of fee fund transfer for K-Tracs~~
- ~~g. Participate in discussions regarding exploration of sustainable funding solutions for K-Tracs~~

Performance Assessment:

3. Develop succession plans for key board members and ensure orientation occurs for all board members that includes information about the responsibilities of serving as a Board member to strengthen board governance and operations

Outcome Measures:

- a. Identify key board member positions that require a succession plan
- b. Develop succession plans for key board member positions identified
- c. Develop succession planning at the Board and staff level throughout
- d. Consider utilization of committees for pipelining
- e. Build stronger understanding and relationship with Governor's Appointments Office
- f. Develop onboarding process for board members
 - a. Complete orientation for each new Board member before their first Board meeting – Orientation occurs for new Board and Committee members before their first committee and Board meeting
 - b. Assign a Board member mentor to each new Board member – KSNB Board President assigns a mentor for new Board members when they start as a Board member
 - c. Offer the option of observing in the agency for board members
 - d. Develop an orientation evaluation that can be distributed to board members immediately after orientation, at six months, and one year
- g. Provide additional training for Board members regarding board meeting information technology resources (perhaps a follow-up orientation meeting after the first board/committee meeting)
- h. Strengthen board operations
- i. Enhance and maximize effectiveness of committee and board meetings

Performance Assessment:

4. Recruit, develop and retain qualified staff and develop succession plans for key agency leadership positions

Outcome Measures:

- a. Identify key agency leadership positions that require succession plans
- b. Develop succession plans for the key leadership positions identified – Executive Administrator has a succession plan
- c. Develop orientation plan for new employees that contains the core information, then Supervisor for each division can develop specific orientation to their division and roles – Ongoing, needs revision
- d. Review the salary structures and pay bands of other fee funded and state governmental agencies, and explore how to incorporate a competitive and sustainable program within the board of nursing - Ongoing
- e. Include funds allocated for staff development in each budget year, based on feedback from the departmental Supervisors and/or to support an agency strategic initiative (such

as a new agency-wide software or HR requirement) - **Occurs annually with the Budget request submitted to Division of Budget**

- f. Explore changing the requirements for registered nurses for the Investigator positions (excluding the Special Investigators) to individuals with non-nursing law enforcement backgrounds – **Two full-time Investigator positions were changed to Special Investigator positions that a nursing license is not required for the position**

Performance Assessment:

5. Maintain a superior and secure information technology infrastructure

Outcome Measures:

- a. Evaluate licensing and enforcement software needs of the agency - **Ongoing**
- b. Provide informational presentations to the Board and agency leadership from potential solution providers - **System Automation presentation at June 2022 Board meeting and ORBS presentation at March 2022 Board meeting**
- c. Establish informational guidelines regarding staff members that would be responsible for the development, implementation and maintenance of future or enhanced licensing and enforcement solutions
- d. Identify and replace technology equipment that requires updates to stay in compliance with state guidelines or advance an agency strategic initiative
- e. Include funds allocated for maintaining information technology infrastructure and relevant technology business plans in each budget year – **Included annually in agency budget submitted to Division of Budget**
- f. Maintain an appropriate cybersecurity program and supporting IT infrastructure
- g. Proactive involvement with state IT and information security organizations
- h. Continue to evaluate technology and information security needs for internal and remote hybrid working employees
- i. Evaluate the agency information security posture as required by ITEC policies.
- j. Coordinate and execute a bi-annual Disaster Recovery tabletop exercises and review and store documentation in a central location.

Performance Assessment:

6. Finalize plans for electronic storage of records in the agency as per agency record retention schedule

Outcome Measures:

- a. Review and revise the agency record retention schedule as needed – **Reviewed annually by Executive Administrator and more frequently when needed**
- b. Track agency records that are imaged
- c. Develop process for imaging of past investigative and discipline case files and maintain as per agency record retention schedule
- d. Establish a completion date for secondary agency records center in the Mills building – **Completion date of June 1, 2024 is set**
- e. Education for staff, as needed, on appropriate record retention - **Ongoing**

Performance Assessment:

7. Maintain a thorough and updated Continuity of Operations Plan (COOP)

Outcome Measures:

- a. Share current the COOP plan with the Board President annually
- b. Annually review and test the COOP plan with agency leadership and update as needed. Centrally store the COOP plan with the Kansas Division of Emergency Management (KDEM).
- c. Back-up orientation about the management of the COOP plan for Executive Administrator, Executive Assistant and Operations Administrative Support staff.

Performance Assessment:

Priority #3: Maintain Quality Customer Service

Strategic Objectives:

1. Applicants will be licensed timely after receipt of all required and approved information

Outcome Measures:

- a. Provide licenses and license renewals to eligible practical nurses, registered nurses, advanced practice registered nurses, registered nurse anesthetists, and mental health technicians
- b. Issue a license to practice or authorization to practice within 3 business days after receipt of all required information 95% of the time - **Monitor and report annually with performance based budget (PBB)**
- c. Enter information into the licensing system with 95% accuracy – **Monitor and report annually with PBB**
- d. Include the percentage of each type of licensure applications that were processed within the stated timeframe, within the Performance Based Budget reports – **Reported annually with budget submission**

Performance Assessment:

2. Potential Nurse Practice Act violations submitted to the Board are reviewed and assessed

Outcome Measures:

- a. Review complaints received in the agency for possible violations of the Nurse Practice Act and assign a priority level in a timely manner – Reviewed continuously
- b. Review applications with legal history before the license is granted – Reviewed continuously
- c. Investigate possible violations of the nurse practice act in a timely manner and present to the Board – Investigative summaries of cases are presented to the Investigative Committee every six weeks when they meet
- d. Explore the option of adding a second Investigative Committee that would enable larger numbers of board members to participate and potentially decrease the amount of time needed to present a case to the committee – Started every six week meetings in October 2023
- e. Implement a sanction reference guide to ensure consistency in disciplinary actions
- f. Evaluate the investigative and discipline processes and reach out to other boards of nursing to identify promising practices to enhance process improvement
- g. Review with the agency's legal counsel to identify the extent the KSBN Executive Administrator can participate in the Investigative Committee (open portion, quasi-judicial and KAPA parts of the meeting) – Done and Executive Administrator can attend open portion of Investigative Committee meetings
- h. Include within the Performance Based Budget reports, the percentage of complaints received and reviewed in the agency and the percentage of investigations completed within 9 months of opening the case. – Data is submitted with PBB annually with budget submission

Performance Assessment:

3. Discipline licensees who violate the Nurse Practice Act

Outcome Measures:

- a. Gather additional information on emergency suspensions, when appropriate, to increase public protection. Present the information to the Board for their review.
- b. Include within the Performance Based Budget report the number of licensees who were disciplined via initial orders, consent orders, evidentiary hearings, denied licenses, revoked licenses, limited and/or suspended licenses or diversion agreements – Data is submitted with PBB annually with budget submission

Performance Assessment:

4. Oversee nursing education programs and continuing nursing education providers to ensure requirements in Nurse Practice Act are met

Outcome Measures:

- a. Review and approve continuing education providers and programs that meet the Board's rules and regulations – **Initial and five-year renewal applications are taken to the CNE/IV Therapy Committee quarterly for their review and decision regarding approval**
- b. Oversee the nursing programs, which includes surveying each nursing program once every 5 – 10 years – **Nursing programs are surveyed as per schedule**
- c. Receive an annual report from each nursing program by June 30th each year (as per regulation) – **Monitor the receipt and report back to the Education Committee annually**
- d. Receive an annual report from each continuing education provider by July 31st each year (as per regulation) – **Monitor the receipt and report back to the CAN/IV Therapy Committee annually**
- e. Ensure continuing nursing education providers submit five-year renewal applications as per schedule – **Monitor receipt and report to the CNE/IV Therapy Committee**
- f. Review single nursing continuing education provider applications within 2 weeks of date received in the agency – **100% of the time, the application is reviewed within 2 weeks of receipt**
- g. Include with the Performance Based Budget reports the following data:
 1. percentage of nursing programs surveyed per schedule – **reported annually with budget submission**
 2. percentage of nursing programs submitting an annual reports per regulation – **reported annually with budget submission**
 3. Percentage of continuing nursing education providers submitting an annual report as per regulation – **reported annually with budget submission**
 4. Percentage of continuing nursing education providers submitting a five-year renewal application as per schedule – **reported annually with budget submission**
 5. Percentage of applications for single continuing education provider reviewed within 2 weeks of receiving – **reported annually with budget submission**

Performance Assessment:

5. Communication provided is high quality, clear, accurate, current and includes effective methods available to give feedback to the Board. Expand digital forms of communication.

Outcome Measures:

- a. Develop a methodological process in which the website content can be reviewed to determine if the content needs updated. Identify core content areas to review in quarterly increments.

- b. Explore the possibility of an outside entity evaluating agency website and social media offerings, with the goal of recommending changes that would improve upon the information dissemination on our platforms
- c. Update the customer feedback survey which allows customers to provide give feedback to the Board. Review submissions with agency leadership quarterly.
- d. Continue to monitor the website, social media and nursing newsletter metrics and report to the board quarterly
- e. Provide additional marketing information to stakeholders regarding the agency's social media accounts. Continue to utilize frequent social media communication to highlight the Board's work
- f. Create a single page overview flyer of the Board's regulatory work that could be disseminated to legislators and other key stakeholders. – **completed annually before legislative session starting with 2023 Legislative Session**
- g. Explore the feasibility of expansion of the current collection of nursing workforce information as part of the licensure renewal process, and evaluate methods to share this information with stakeholders and workforce development partners
- h. **Tell our story better to nurses, the public, and Legislature**
- i. **Develop a full brand strategy that is clear and consistent**
- j. **Gather feedback from various stakeholders (nurses, LMHTs, employers, risk management officers, other state agencies)**

Performance Assessment:

6. Communication pathways between board members, agency staff and consumers are consistent and clear

Outcome Measures:

- a. Provide clearly defined information to Board members regarding transmission of emails between the Board member's official state email accounts, as opposed to their personal email accounts. Utilize push text notifications to reference their state email accounts when important agency information needs their attention.
- b. Explore options of forwarding calendar invitations and meeting notices, versus email communications regarding agency specific issues
- c. Establish regular progress status reports to be provided to the Investigative Committee on a quarterly basis, regarding status of cases transferred to AAG's for discipline
- d. Solicit feedback annually from the Board members to evaluate communication methods utilized by the agency and review suggestions for improvement
- e. Explore ways in which Board members could educate legislators on the Board's regulatory work

Performance Assessment:



2023 Strategic Planning Retreat Summary Report

The Kansas Board of Nursing Strategic Planning Retreat was designed to help the Board and Agency leadership focus on continuing to operationalize their Strategic Plan and strengthen their Board Governance for deeper success. Emphasis was placed on helping board and agency leaders leverage their strengths, build on their gaps, and address current realities for better effectiveness, agility and deeper knowledge.

KEY RECOMMENDATION AREAS

Based on extensive discussion and activities throughout the retreat, below are key areas that the Board and Leadership identified as critical next steps for consideration.

- 1) Legislative Engagement
 - Developing a legislative agenda
 - Identified as the main point of contact with expertise
 - Strategic engagement through key partnerships and education campaign
 - Consideration of structure and staffing to support these efforts
- 2) Board Governance & Operations
 - Evolving the onboarding process
 - Strengthening board operations
 - Enhancing committee effectiveness
 - Maximizing meetings
- 3) Partnership Prioritization & Pipelines
 - Strategically identify, strengthen, and prioritize partnerships
 - Expand engagement efforts - legislative, public/private, key systems, and the Administration
- 4) Communications Strategy
 - Tell our story better to nurses, to the public, to Legislature
 - Develop a full brand strategy that is clear and consistent
 - Gather feedback from various stakeholders to re (nurses, LMHTs, employers, risk management officers, other state agencies)
- 5) Succession planning and pipelines
 - Develop succession planning at the Board and staff level throughout
 - Identify strategic partnerships to enhance the leadership pipeline
 - Consider utilization of committees for pipelining
 - Build stronger understanding and relationship with Governor's Appointments Office

The next section are summary notes pulled from discussions and actual exercise during the retreat that provide detailed recommendations generated by the Board and Agency Leadership in each of the key areas above.

LEGISLATIVE ENGAGEMENT

- Aspire to be the go-to point of contact for the Legislators for all things nursing
- Provide Legislative 101 for new members and refresh for old – statutes, policies, regs, etc.
- Focus on partnership and coalition building with other organizations
- Consider a Legislative Affairs role for the agency – maybe split with another agency or use a contractor
- Hold planning sessions for board and staff during off season
- Hold engagement/education sessions with key legislators during off session time
- Clearly articulate concerns in opening up key pieces of legislation and consider partnerships to help mitigate those concerns
- Gain an understanding of the issues that are rising to legislative agenda and which members interested in related issues (current sense is that there will be limited health care related bills for the next 2 years)
- Track national issues and legislation that may also impact state agenda
- Identify legislators in each board members district and evaluate the possibility for connections and relationship building
- Think about nurse representation and how that could/should play into your engagement
- Think about how to continue to distinguish between KSBN and the Nurses Association – roles and responsibilities
- Policy committee – need, utilization, impact?
- Truly understanding the risk of change in statutes – weighing the gains versus the risk
- Issues that may need attention in the statute
 - Discipline statute
 - Board terms
 - Mental health licensing

BOARD GOVERNANCE & OPERATIONS

Onboarding Recommendation

- Consider a ½ day orientation
- All staff present to help provide various areas of expertise and information
- New members visit all committees during first board meetings to gain understanding of what each does
- Provide each new board a mentor for questions and support
- Provide mentors with guidelines/checklist to ensure members are receiving similar information
- Provide overview of statute, regulations, and any other governance documents and include information on how they work together in the Board's work
- Share NEO with new board members
- Develop and provide descriptions of each committee and their responsibilities /charter
- Require Committee Chair reach out to new members joining their committees to review board packet, responsibilities, and answer any questions
- Think about how to onboard differently public members (non-board) onto the committees

- Review NSCBN board training webinars (not state specific) for relevant trainings that could be used for new board members

Board Operations

- Create/communicate formal structure for board and committee member to send questions for staff to respond
- Create organizational chart and make available to board and committees
- Review board's understanding of legal counsel – how it is used, how it should/could be used
- Understand changes and trends – NLC workforce, market indicators, etc.
- Larger philosophical mission conversation - Are we set up to serve the public interest or is it just regulatory/negative
- Clarify and define the boundaries of our work – careful of mission creep
- Consider creating a dashboard of strategic priorities and showing progress / status to board in regular basis
- Ensure linkage of fiscal outlook/forecasting in support of the strategic priorities
- Other areas for further exploration:
 - LMHT
 - Evaluate CAN/CMA/HHA oversight
 - 65-1116 – question of military equivalent to education
 - CE – Act after 1st renewal

Committees

- Define roles and commitments needed for nature of specific committee work
- Include KSBN articles during committee orientation
- Set clear expectations during orientation
- Better define the value and impact of the work the committees' handle
- Create committee descriptions, roles and responsibilities as well as expectations that are shared with current and new members
- Consider adding an attendance policy to board and non-board before they apply – helping to set expectations – must consider the consequences and if those consequences can and will be enforced
- Aspire to focus on accountability and productivity within committee structure

Meetings

- Things that are working that should continue – guest speakers, cadence of meetings, length of meetings, calendar notifications of when things are due
- Expand the text push reminders to committee members – ex. Week before meeting reminding of meeting and materials available
- Prioritize agenda by time given and importance
- Consider use of consent agenda and agreements
- Add quorum to agenda to clarify what is needed to do work
- Include education at meetings
- Add % of change column to the financial reports and spreadsheets, label fund reports with name of the fund not just the number, i.e. fingerprint fund report

PARTNERSHIP PRIORITIZATION

- Define list of strategic partnerships each year to focus on
- Consider expanding into other areas like chamber, minority community orgs, active engagement of elected officials state and local
- Meet employers regionally around licensing
- Work with nursing schools to ensure they view the Board as a partner and ally
- Identify, strengthen and PRIORITIZE some of the key partners below
 - SON
 - Legislature
 - State Agencies (KDHW, KDADS, Pharmacy, BOHA, etc.)
 - Associations
 - KS Hospital Assoc
 - MO-KAN
 - KSNA**
 - KAPN
 - Healthcare councils
 - National council
 - KU National Institute of Nursing (fundraising...)

COMMUNICATIONS STRATEGY

- Aspiration - Modern Brand – full integration
 - Website
 - Social media
 - Data analytics dashboard
 - Board process and agenda evolution from operational to strategic
- Create “Meet our Board” – see other state boards for examples – name, organization, terms, bio and background – board and agency leadership team
- Create video of board members sharing “why they serve”
- Hold “Meet and Greet” with board and different organizations (ex. Nurse association, different hospitals or groups of hospital administrators, program admins)
- Create consistent messaging and talking points around who you are and what you do
- Create a templated PowerPoint presentation on KSBN mission and purposes that board members could easily be trained on and deliver to various organization to educate them
- Hold listening session with employers
- Create ways to thank employers that includes significant recognition of employers who support their board and committee members
- Think about messaging in the discipline areas
- SHRM – do licensing and investigation webinars

SUCCESSION PLANNING & PIPELINES

For Board & Committees

- Consider how to identify/elevate public members for committees – consider opportunities for strategic partnerships, industry leaders, media representation, etc.
- Identify nurse leads/potential board members from committees
- Committee and board members – we need to optimize our diversity
- Strengthen relationship with key partners with the intent to help identify new talent and potential board members
- Create board member description – share with members as recruiting and onboarding. Also share with Gov Appointment's Office for context when identifying potential new members
- Clarify process for board members to be reappointed and ensure everyone shares that understanding
- Develop demographic profile matrix of current board and committee members – include things like gender, race & ethnicity, geography, industry/sector, skillsets, etc. to help as board continues to identify candidates that are reflective of the communities it serves
- Mitigate succession planning gaps

For Staff

- Review Carol's plan periodically
- Very intensive EA succession planning and history of promoting/developing talent from within is working, and should continue to be capitalized on
- Establish plans for other key staff roles, ensuring plans for institutional knowledge transfer across time
- Decide sequence of succession plans
- Mitigate succession planning gaps

APPENDIX

STRENGTHS & ASPIRATIONS

Below are the Board and Leadership teams identified strengths and aspirations that should be leveraged to continue to meet operational and strategic goals. This document is more for internal use and can be separated from the report as needed.

Strengths

Operational / Reputational

- Ever evolving and ready to respond to opportunities and challenges
- Technology/security/ assessing gaps is key to our current success
- Representation at the national level
- Consistency of performance metrics
- Focused on the future needs
- Full board – lots of experience and ideas
- Covid response - lessons learned

Staff

- Responsiveness and efficiency of staff
- Staff retention, knowledge, competency and passion
- Listening and always looking for ways to improve
- Board staff support is strong and informative
- Investigation division

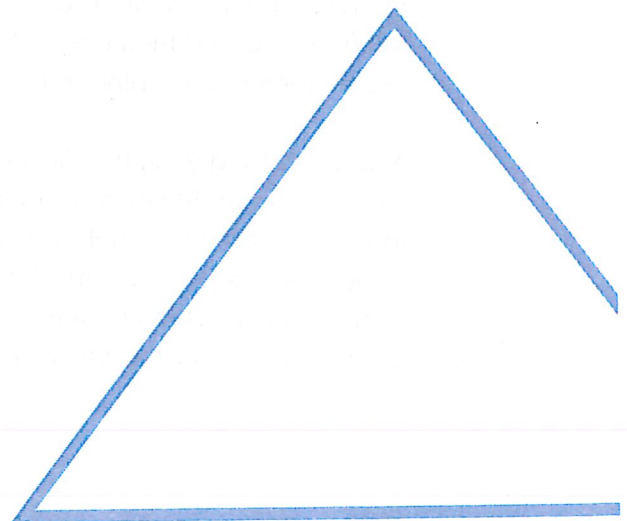
Aspirations for where we want to be

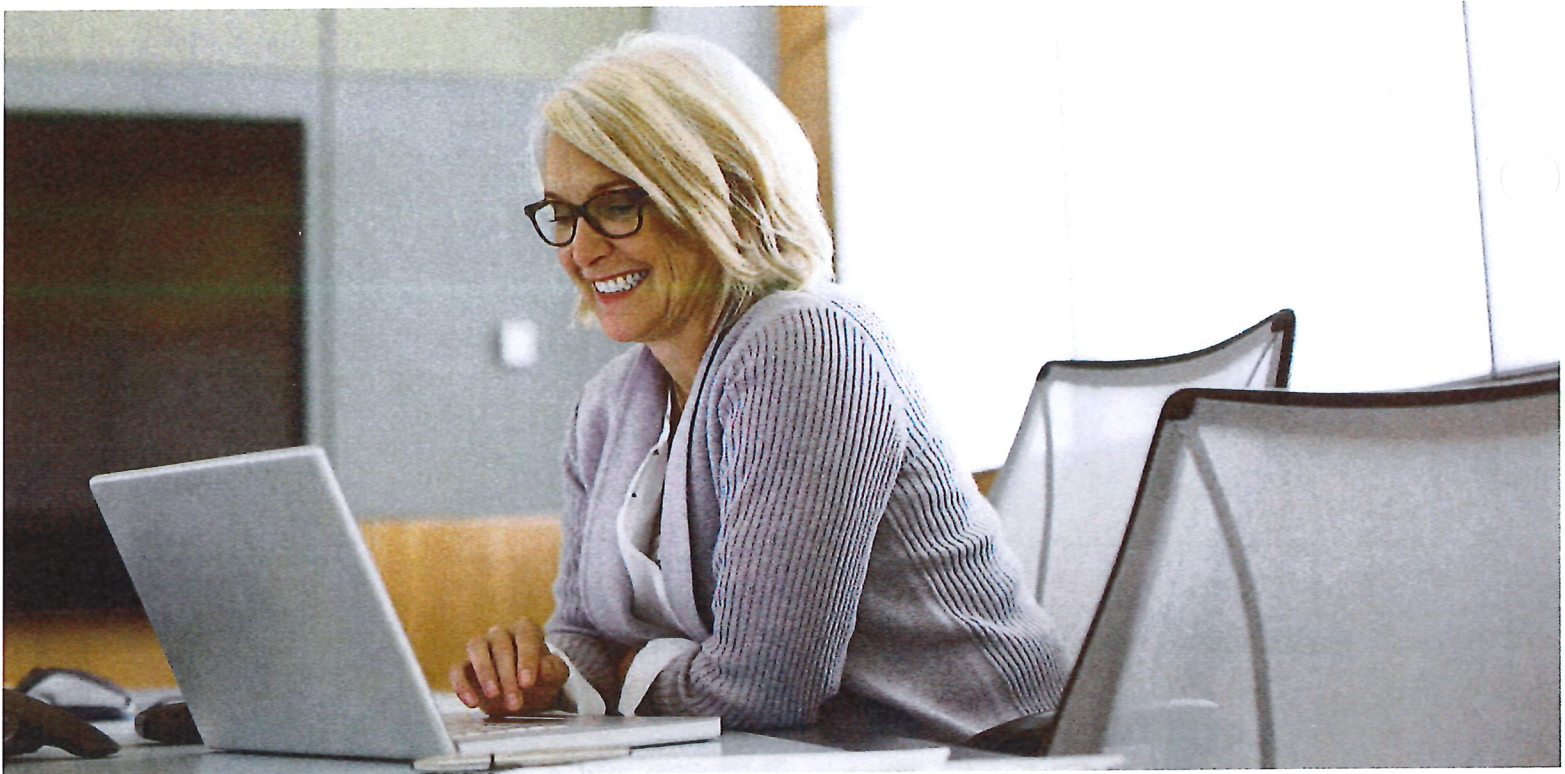
- trusted agency to go to for nursing regulations and understanding
- statewide recognition and education
- continue with high quality methods national benchmarking
- continue high quality staff retention
- maintaining infrastructure, resources to keep agency as role model in technology to advance our goals
- continue with 95% turn around rate for issuing license
- continue working with expediting complaints and investigative cases/issues

2023 Board Effectiveness Survey

A Clear Call for Change

Executive Summary	3
Acknowledging Ineffectiveness	4
Keys to Making Better Boards	6
Recent Gains and Future Goals	9
About the Survey	13





Boards worldwide face immense pressures in 2023 and beyond as they continue to contend with the ravages of high inflation, ongoing workforce issues, increased regulatory scrutiny, an unstable economy, and waning trust in board leadership exacerbated by recent high-profile bank failures.

With predictions of more layoffs and a recession later this year, the many challenges facing boards likely will get worse before they get better. As leaders work to navigate these difficult times, many board stakeholders are equally concerned about the internal deficiencies that may be holding them back as they try to address external challenges. Chief among those concerns are that boards are being stymied by ineffective board members, a lack of diversity, inefficient processes, and outdated technologies, according to results of our 2023 Board Effectiveness Survey.

Now in its third year, the OnBoard Board Effectiveness Survey analyzes the trends that contribute to boardroom success or “board effectiveness.” By examining the influence of factors such as technology usage and respondents’ self-described concerns and priorities for their boards and the organizations they serve, our analysis of the survey results intends to demonstrate universal themes and challenges for boards, no matter the sector they serve.

Acknowledging Ineffectiveness

Ineffective Board Members Are Everywhere

As they work to navigate a convergence of economic, regulatory, and social challenges from outside their organizations, many board leaders see internal factors as their primary barriers to progress. In fact, many survey respondents said some of the biggest obstacles lie within their own ranks.

Most said they could identify at least one ineffective board member who is sitting on their board today, and two-thirds said at least 1 in 10 board members are ineffective.

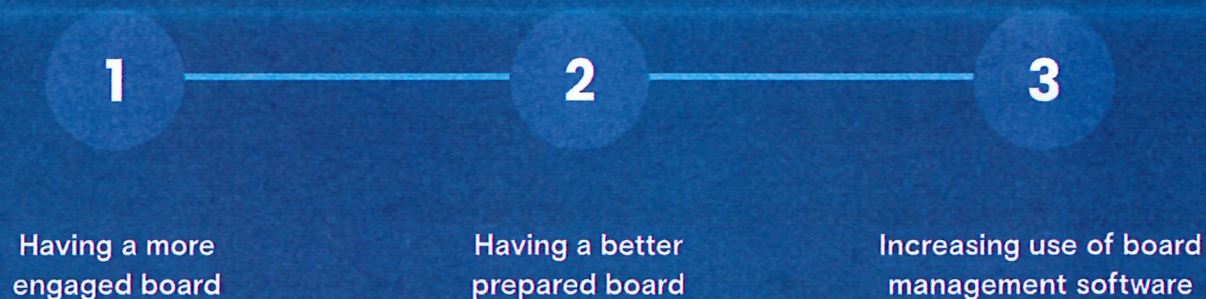


**Two-thirds said at least
10% of their board
members are ineffective**

Common characteristics respondents attribute to ineffective board members:

- Disengaged and complacent
- Underprepared for meetings; fail to review materials in advance
- Unclear about board goals and objectives
- Lack diversity, background, and expertise
- Resistant to change; lack creative insight
- Ineffective at using board tools and technology

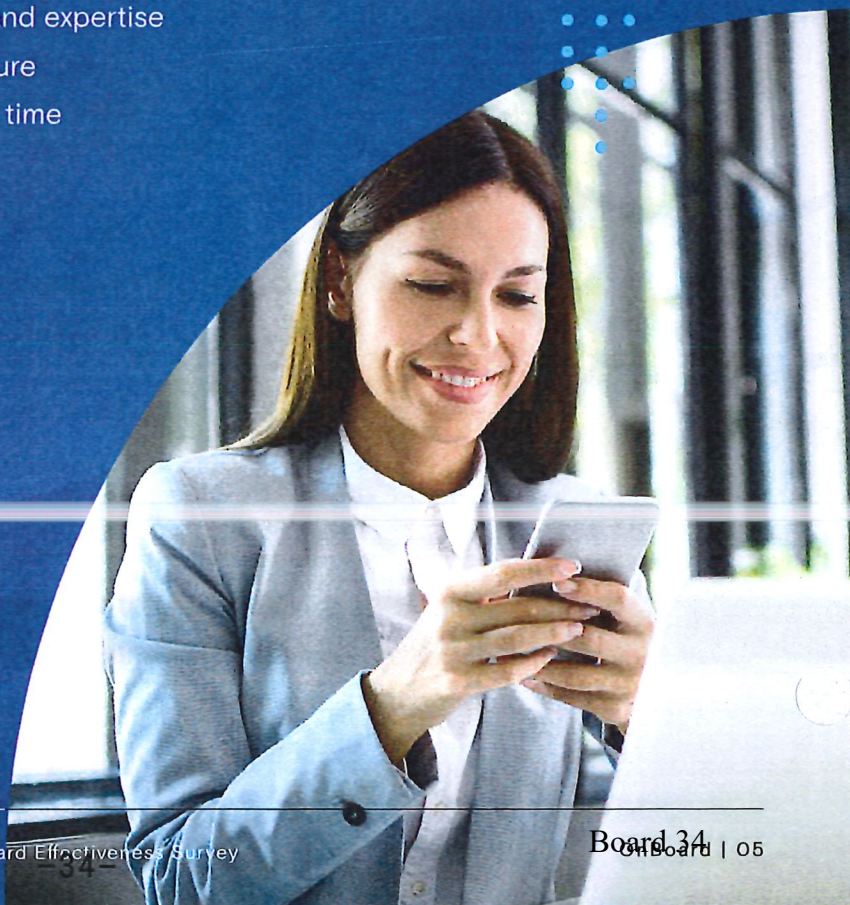
Defining Board Effectiveness



To better understand what makes boards and board members ineffective, we asked survey respondents to first rank the top three things that make boards effective. Board engagement was identified as the No. 1 driver of board effectiveness, followed by board preparedness. How well organizations leverage board management software — which can positively effect board engagement and board preparedness — ranked as the third defining factor of an effective board.

Other factors respondents said contribute to board effectiveness:

- Board member diversity, leadership skills, and expertise
- Collaboration; having an ethical board culture
- Providing board materials correctly and on time
- Having clear roles and responsibilities



Keys to Making Better Boards

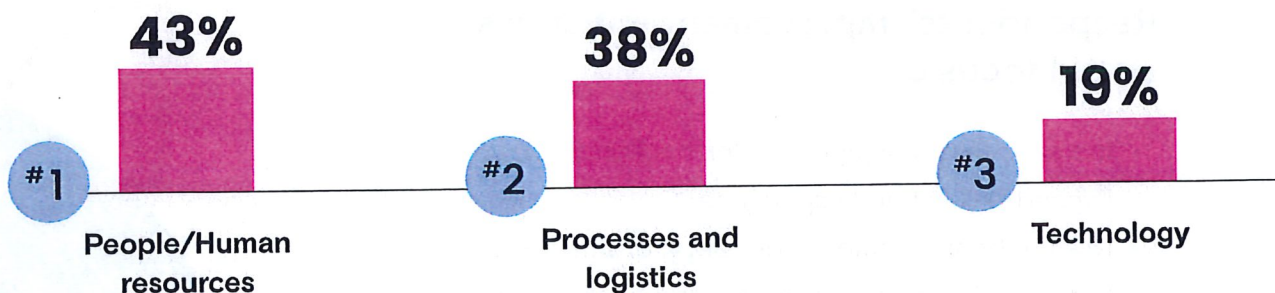
People Are the No. 1 Priority for Needed Change

Survey respondents have clear ideas about how to make their boards more effective. Interestingly, answers to this question naturally aligned with the top three characteristics of an effective board, further reinforcing their importance.

More than 43% of respondents said their first priority would be to improve people and human resources to make their boards better. This priority ties to having a more engaged board and is not surprising, given that so many can identify ineffective members on their boards.

Thirty-eight percent said they would improve board processes and logistics, which aligns with board preparedness. Nearly 19% said they would improve the technology their boards rely on to conduct board business, which corresponds to effective use of board management software.

What would you change to make your board more effective?



1

An Overwhelming Call for More Diversity

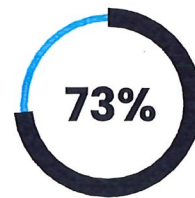
To delve in further, we asked respondents to identify their main underlying concerns for each of the three top priorities for change. For human resources, an overwhelming majority — 95% — identified a lack of diversity and new ideas as the No. 1 driver of an ineffective board environment.

Nearly three-fourths cited poor engagement and collaboration, and ineffective leadership as top concerns, while 69% identified a need for more board turnover.

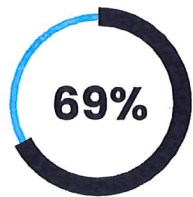
Top concerns relative to human resources



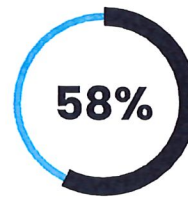
Lack of diversity, new ideas,
outside expertise



Poor engagement and collaboration,
ineffective leadership



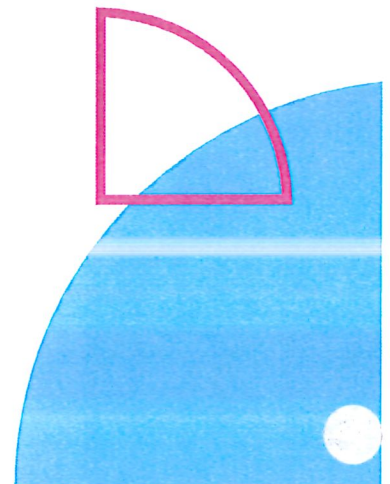
Lack of board member
turnover



Over-representation of
industry expertise

Respondents' improvement initiatives would focus on:

- Increase diversity (age, gender, background)
- Expand skill set and experience
- Nurture board members' development/maturity
- Replace disengaged members and back-fill turnover
- Gain modern perspectives and overcome rigid mindsets



The Missing Focus on Mission

When asked to identify what factors contributed most to ineffective processes, most respondents (84%) said lacking a clear mission or measurable objectives was the principal concern.

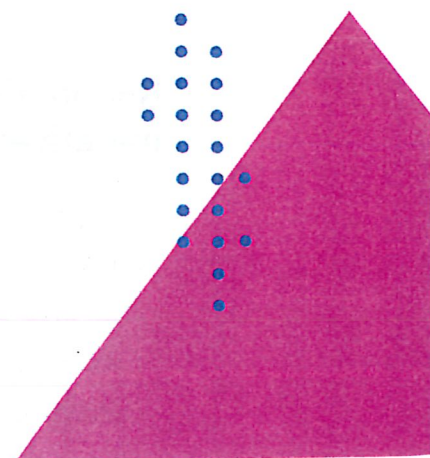
Nearly three-fourths said boards do not have enough governance maturity, and more than three-quarters identified poor planning and preparation for meetings as top concerns.

Top process concerns



Respondents' process improvement initiatives would focus on:

- Ensure clearer focus on mission and strategy
- Remove red tape/bureaucracy
- Clarify roles and responsibilities
- Build more accountability and greater efficiencies
- Track key performance indicators and objectives
- Ensure greater consistency and repeatable processes



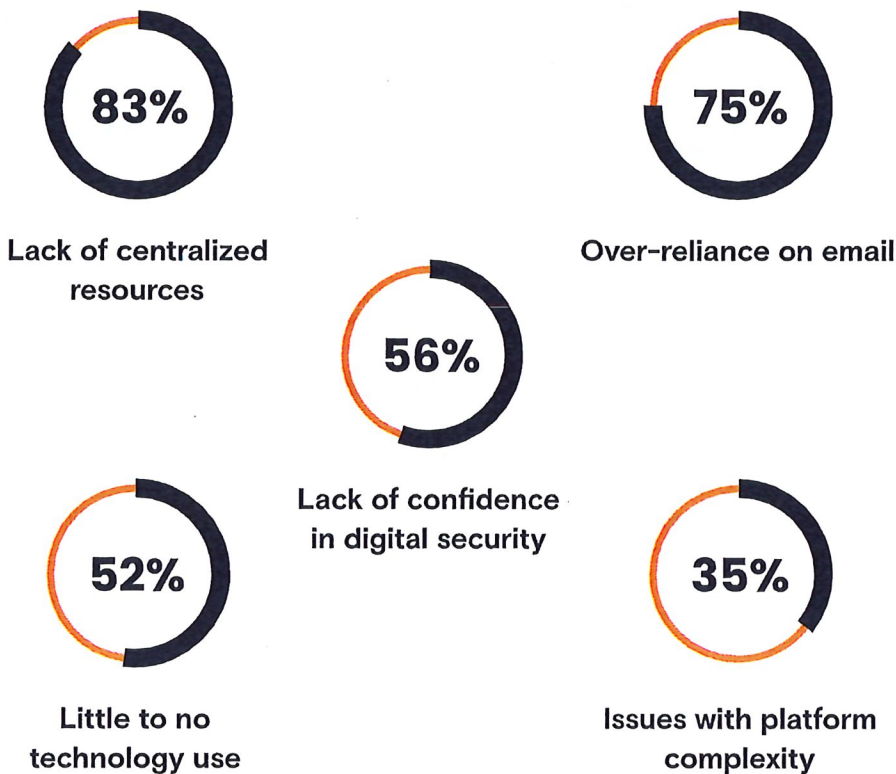
3

Outdated Technologies Hinder Progress

In terms of technology, more than 83% of survey respondents expressed clear frustration about their inability to access board resources from a single, centralized location.

Three-fourths said board members and staff rely too much on email as a primary means of communication. Low levels of confidence in digital security and limited use of technology also contribute to an ineffective board environment, according to more than half of respondents.

Top technology concerns



Respondents' technology improvement initiatives would focus on:

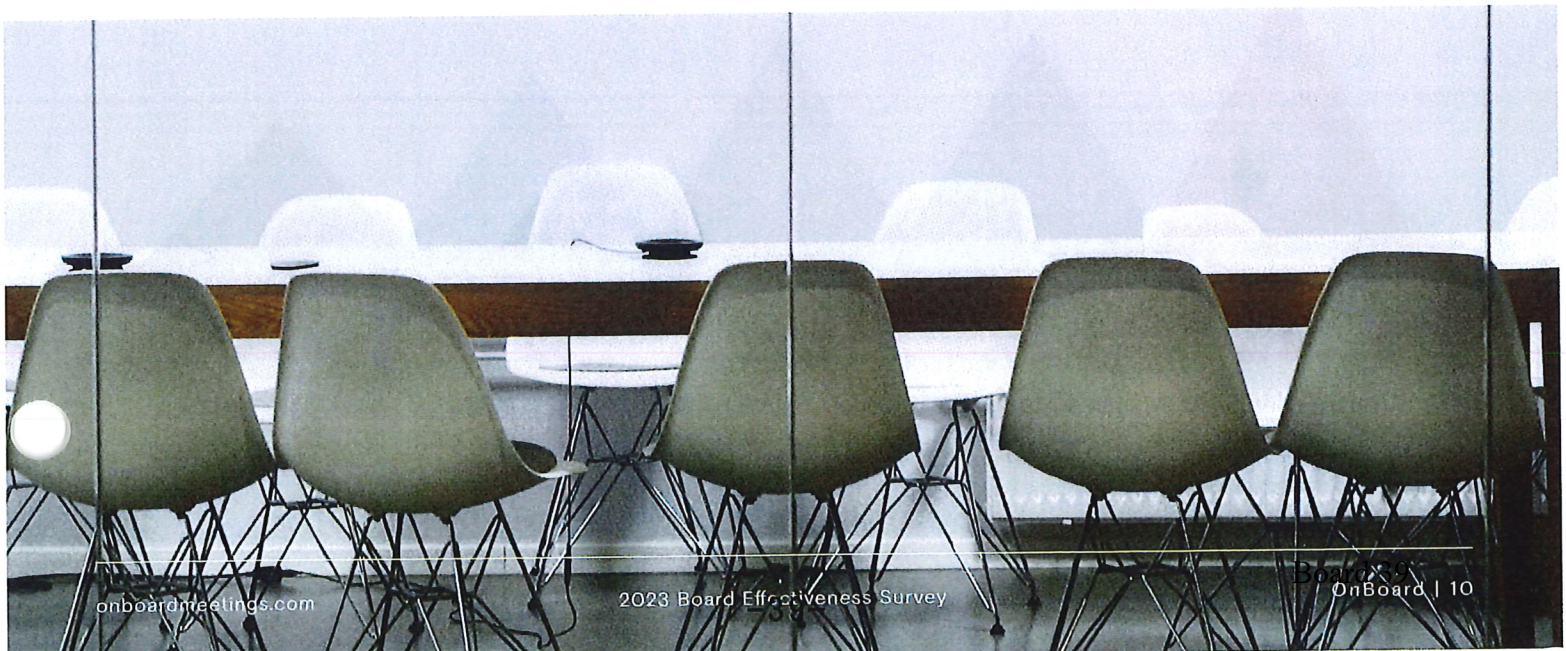
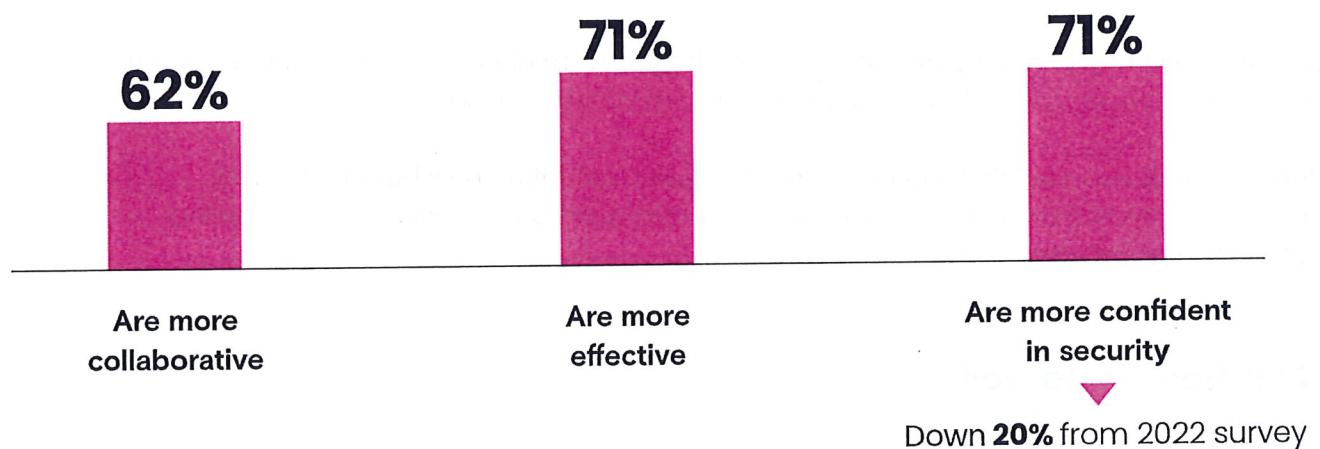
- Maximize investment in existing board management technologies
- Improve organization of information
- Improve scheduling and minutes approval processes
- Automate processes and avoid use of paper, phone, email
- Build confidence in security

Recent Gains and Future Goals

Boards Have Made Some Strides

Despite the many challenges facing boards in recent years, boards have made some gains. Compared to 12 months ago, 62% of respondents said their boards were more collaborative, and 71% said their boards were more effective.

Seventy-one percent also said they had greater confidence in board security. While still high, the share of those who were confident in board security marked a sizable 20% decline from 89% in our 2022 survey, likely due to recent breaches and increased focus on cybersecurity threats. Not surprisingly, industries such as technology, health care, and financial services had some of the biggest declines.





Areas of Strength

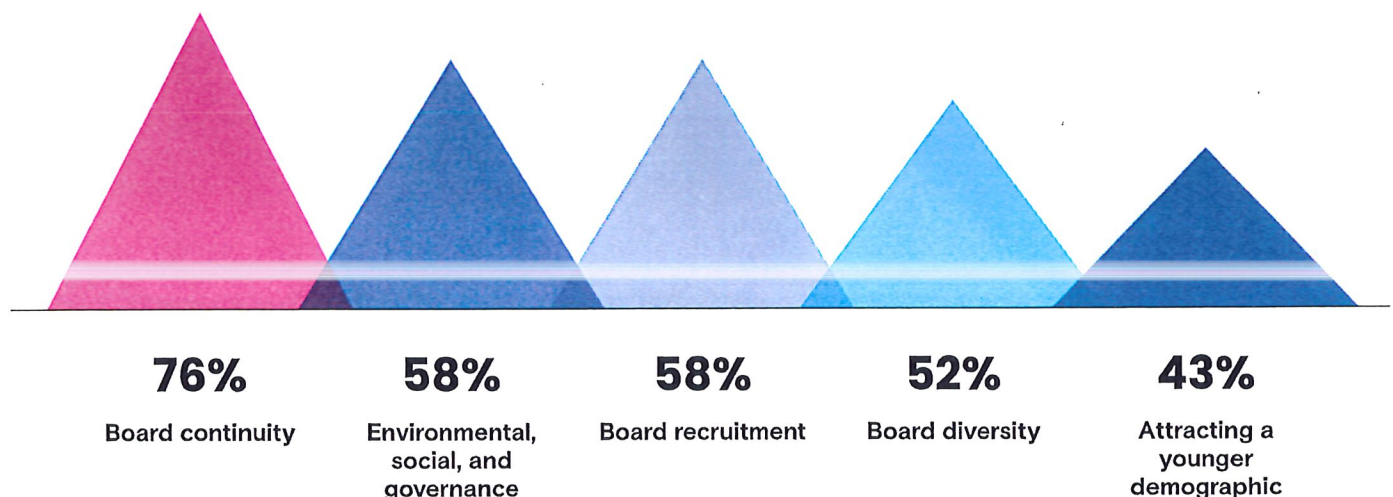
Asked what their boards do exceptionally well, more than three-fourths of survey respondents identified board continuity as their biggest strength.

Some continuity is essential to maintaining effective board operations. But the widespread calls for greater diversity and new ideas noted earlier raise real and legitimate concerns. The question then becomes: Are boards' biggest strengths also their greatest liabilities?

More than half (58%) of respondents said their boards were effective at managing environmental, social, and governance (ESG) issues related to sustainability and ethics.

More than half also said their boards were effective at recruiting new board members and ensuring a diverse board, yet only 43% said their boards were effective at attracting a younger demographic.

What boards do well



In Their Own Words

Respondents Note Goals for 2023 and Beyond

Board Education

"Improve our onboarding and orientation process."

- Board Administrator,
Higher Education

"We have turnover in board members. Therefore, we will have board member training."

- C-level executive
Higher Education

"Implement learning portal aimed at developing technology skill sets."

- Analytics Manager
Retail

Engagement Initiatives

"Develop rigorous board member role descriptions and expand their service expectations."

- Board Director,
Higher Education

"Increase communication and expand use of OnBoard in disseminating resources."

- Board Director,
Association

Strategic Board Initiatives

"Improve trust in the board room by refreshing the Chair, CEO, and ineffective members."

- Board Director,
Insurance

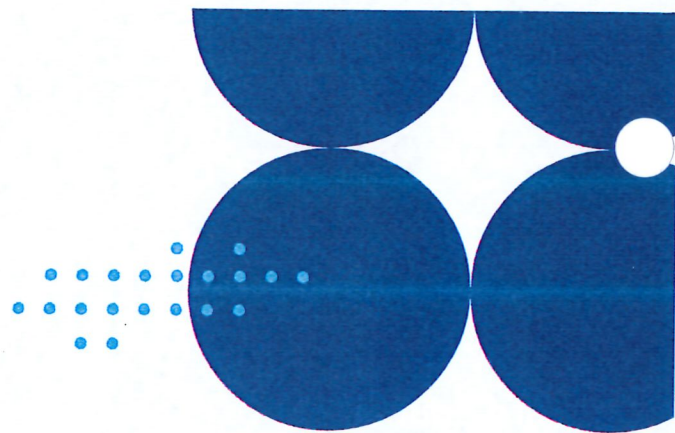
"Refine and optimize our current proficiencies, digital literacy, strategic thinking."

- Executive Manager,
Technology

"Recruit new board members with new areas of expertise. We have too many experts focused on just one area."

- Executive Manager, Health Care

About The Survey

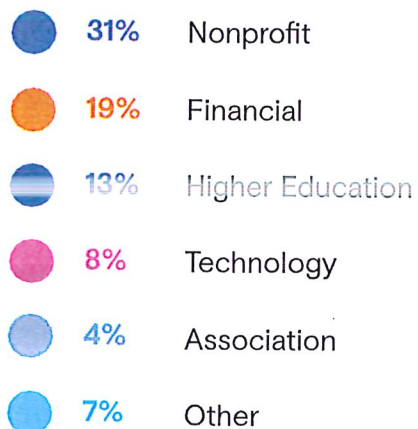
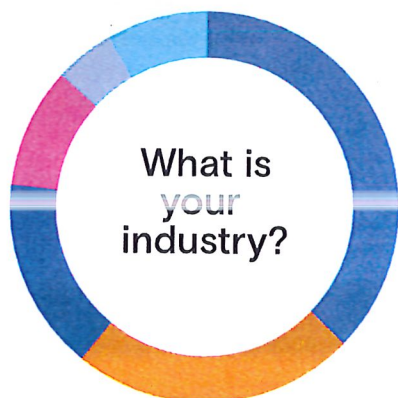
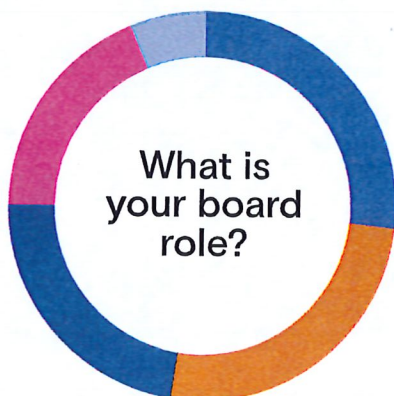


A Look at Who Responded

This year's survey results represent input from 208 individuals serving at all levels of boards across a variety of industries around the globe, including the U.S., Canada, Asia, Africa, Australia, and New Zealand.

By role, chief executive officers, chairs, and board directors made up the largest share of respondents. By sector, nonprofits and the financial services industry had the largest representation.

Nearly 8 in 10 respondents (79%) said they used board management software, while just 21% did not.





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Kansas Nursing Workforce Center Report
for the Kansas Board of Nursing, March 27, 2024

Report prepared February 14, 2024

Mission

The mission of the Kansas Nursing Workforce Center is to ensure that Kansans have access to quality nursing care when and where it is needed, and to support the nurse as an individual and member of the healthcare team.

Summary

First, thank you to the Kansas Board of Nursing for providing access to the National Nursing Workforce Survey data specific to Kansas.

This report provides a reference for foundational information on the Workforce Center and an update on activities aligned with our strategic plan, accomplished this quarter.

We are planning a report on *The State of the Nursing Workforce in Kansas* to be released September 30, 2024.

Kansas Board of Nursing questions about how Nursing Workforce Centers in other states are funded and where they are located are answered on pages 4 and 5.

We appreciate introductions to people or organizations interested in our mission.

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How are other state Nursing Workforce Centers funded?	4
Where are other state Nursing Workforce Centers located?	4
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B) Create a One-Stop-Shop for Nursing Workforce Supply and Demand Data	9
C) Increase Research on Nurses and the Nursing Workforce	9
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F) Fill Every Nursing School Seat	11
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Background Information

Why a Nursing Workforce Center is Needed

- [What do nursing workforce centers do?: PDF](#)
- [Introductory Manifesto: Video](#)
- [Why a Nursing Workforce Center is Needed: Video](#)
- [Standard Kansas Nursing Workforce Center Presentation: Video](#)
 - Please fast forward to the 3:25:42 mark
 - Presentation ends at the 3:55:55 mark
- [FAQs](#)

Center Location and Contact Information

The Kansas Nursing Workforce Center is based at the University of Kansas School of Nursing on the University of Kansas Medical Center campus in Kansas City, Kansas.

Meet Our Staff

Co-Director	Amy Garcia, DNP, MSN, RN, FAAN	agarcia5@kumc.edu
Co-Director	Barbara MacArthur, MN, RN, FAAN	bmacarthur2@kumc.edu
Nurse Scientist	Shin Hye Park, PhD, RN	spark@kumc.edu
Data Scientist	Alexander Alsup, MS	a752a465@kumc.edu
Marketing and Communications	Amy Curtis	acurtis2@kumc.edu
Executive Assistant to the Dean	Ellen Bietz	ebietz@kumc.edu

Mailing Address:

Kansas Nursing Workforce Center
3901 Rainbow Blvd.
Mailstop 4043
Kansas City, KS 66160

Email address: nursingwill@kumc.edu

Website: kumc.edu/nursing-workforce

Communications

Newsletters: The Center currently publishes a monthly digital newsletter available by [email subscription](#) and on [our website](#).

- [January 2024](#)
- [December 2023](#)
- [November 2023](#)
- [October 2023](#)
- [September 2023](#)
- [August 2023](#)

Public Facing Reports:

3901 Rainbow Blvd., Mail Stop 4043, Kansas City, KS 66160
nursingwill@kumc.edu | kumc.edu/nursing-workforce

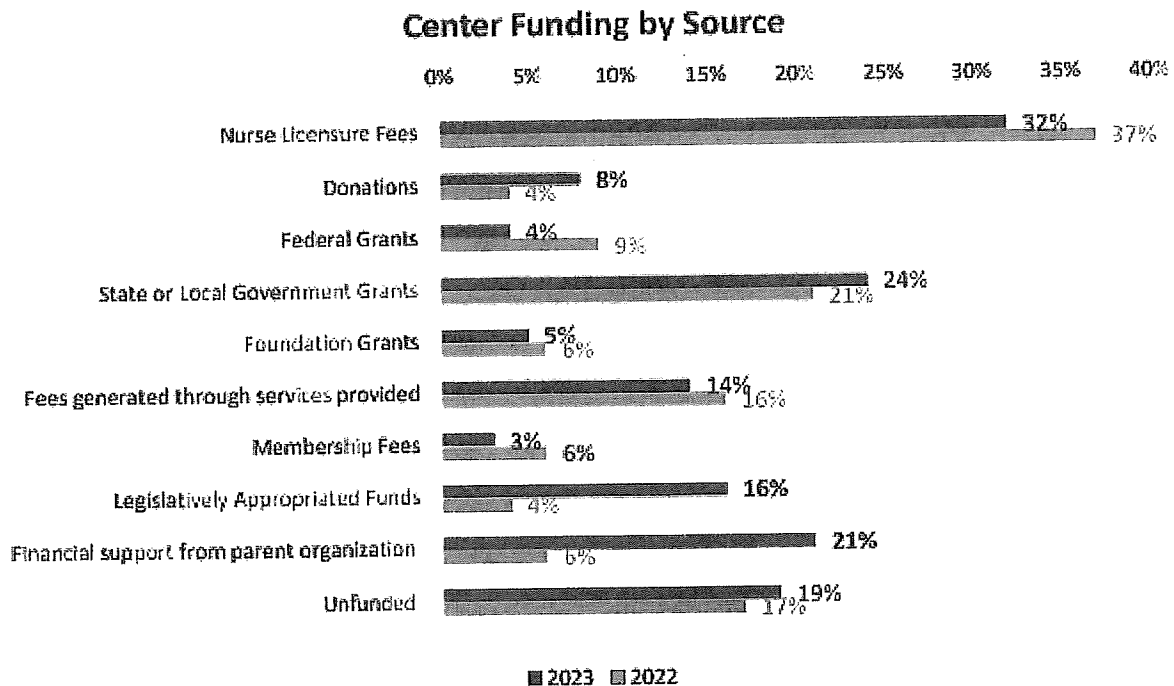
- [March 21, 2023: Kansas Nursing Workforce Stakeholder Meeting Report \(PDF\)](#)
- [Q2 2023: Regional Stakeholder Meeting Report \(PDF\)](#)

Member of the National Forum of State Nursing Workforce Centers

As of August 2023, the Kansas Nursing Workforce Center officially represents the state of Kansas as a member of the [National Forum of State Nursing Workforce Centers](#) (National Forum). Prior to joining, Kansas was one of only 10 states without a dedicated statewide nursing workforce center. Designation as a member of the National Forum provides access and support to the work being done to strengthen the nursing workforce across the United States. Kansas is actively represented on the Research Committee, the Minimum Data Set Committee, and the Conference Committee of the National Forum.

How are other state Nursing Workforce Centers funded?

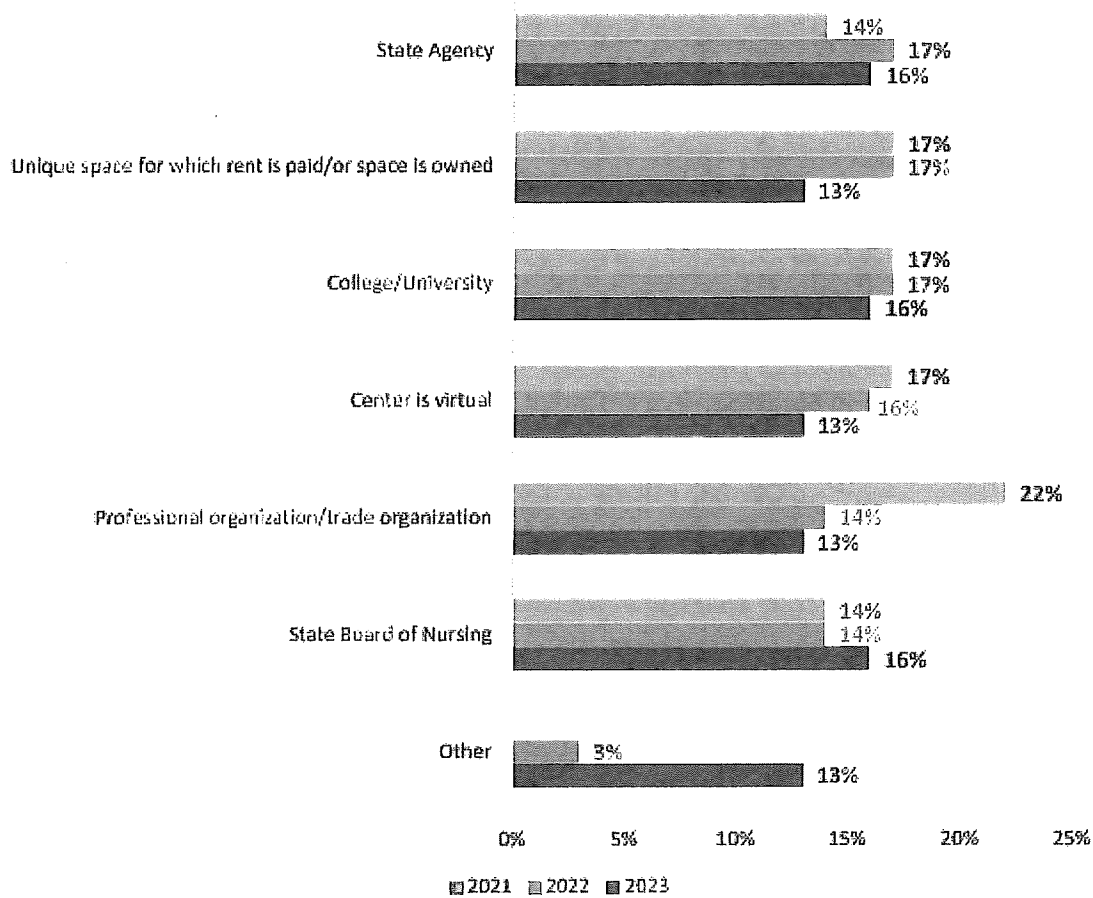
In 2023, Nurse Licensure Fees provided an average of 32% of total funding followed by State or Local grants at 24%. Nineteen percent of centers were unfunded.



Where are other state Nursing Workforce Centers located?

During 2023, Centers were based in a variety of locations including state agencies, a unique space, a college/university, or the center was virtual. Other responses included management through an association management company, part of a larger non-profit, part of a medical council or that they are virtual and housed within a university.

Location of Center



To learn more about other Nursing Workforce Centers

- <https://nursingworkforcecenters.org/>

Examples of reporting available through other state-level Nursing Workforce Centers

- [Washington Center for Nursing](#)
- [Hawaii State Center for Nursing](#)
- [Florida Center for Nursing](#)

Financial Information

- The KU School of Nursing Chief Financial Officer serves as Treasurer for the Center. The KU School of Nursing Office of Grants and Research staff processes grant funding.

KU KANSAS NURSING WORKFORCE CENTER

The University of Kansas Medical Center

- The Center is currently funded through the KU School of Nursing for the 2023-2024 Fiscal Year, ending June 30, 2024.
 - Total Budget: \$435,435
 - Payroll Expenses: \$299,435
 - Non-Payroll Expenses: \$136,000
- The Center thanks Sunflower Health Plan and the Centene Foundation for a generous award focused on collecting and transforming data to actionable decision support. A reception to celebrate the award is scheduled for February 27, 2024 at 3:30 p.m.
- The Center thanks the Reilly Foundation for a generous award focused on nursing leadership.
- The Center has contracted with the University of Nebraska to provide analytic support for their HRSA grant to develop preceptors in NE, KS, IA, and MO.
- The Center is supporting Dr. Karen Weis and the Rural Health Center to map access to maternity care and providers in KS.
- The Center and the KU School of Social Work have applied for funding from the Kansas Department of Aging and Disability Services to map career pathways to and through Direct Service Workers, an important pipeline to nursing.

Advisory Board

The Kansas Nursing Workforce Center has formed an Advisory Board to provide strategic support and guidance. The Advisory Board will help formulate, revise, and evaluate goals for the Center on a regular basis. The Advisory Board will consist of research, practice, community, and other stakeholders who can provide critical insight into the Center's programs, activities, and services. Advisory Board members are encouraged to share their time, talent, and treasure to support the Kansas Nursing Workforce Center in achieving its goals and mission.

Members will join the Advisory Board by invitation from the Kansas Nursing Workforce Center Directors. The Advisory Board will consist of a maximum of 25 members to include individuals that represent the diversity of practice, education, employment settings, and geographic locations in Kansas.

Committees and Task Forces

During 2024, the Kansas Nursing Workforce Center will form standing committees to advance work along specific issues. The Chairperson of each committee will participate in the Advisory Board.

Standing committees:

- Conference
- Data Use
- Research

Task forces will form, as needed, to address specific Kansas Nursing Workforce needs. These task forces, in no particular order, may include:

- Fill Every Nursing School Seat in Kansas!
- Expanding Pathways to Nursing
- Nursing Student and Workforce Diversity

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nursingwill@kumc.edu | kumc.edu/nursing-workforce

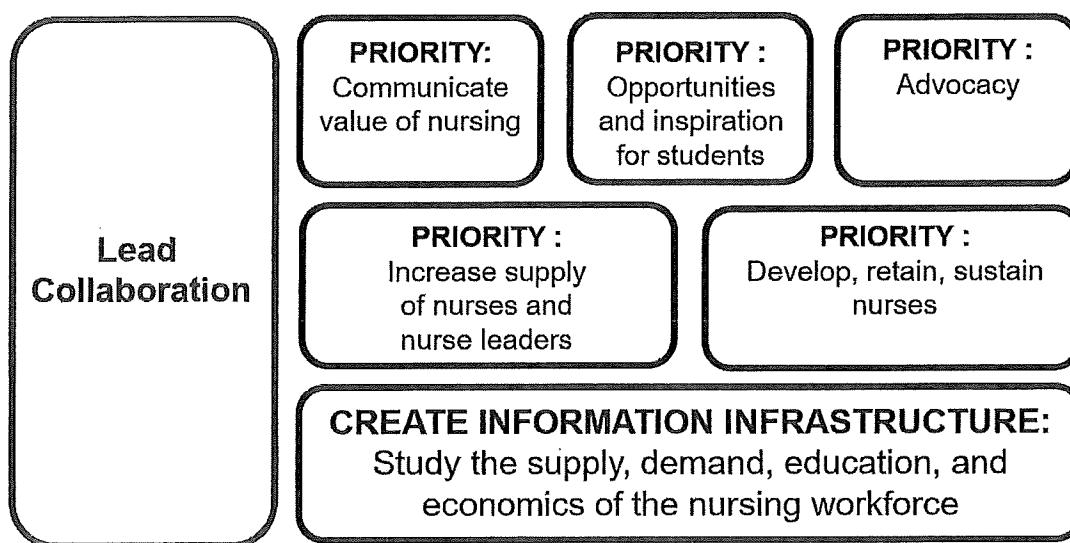
KU KANSAS NURSING WORKFORCE CENTER

The University of Kansas Medical Center

- Nursing Leadership
- Nursing Workplace Safety
- Clinical Learning and Preceptorship
- Shared Curricula and Shared Faculty
- Media Outreach
- Professional Identity in Nursing
- Models of Care
- Rural and Frontier Nursing

A conceptual model of our priorities

How do we expect to make a difference?



////////////////////

Strategic Plan – Activities This Quarter

This DRAFT Strategic Plan of activities for Now, Next and in the Future is supported by a 5-year \$19M budget, with funding from a variety of sources.

Activities from December 2023 to February 2024 are listed in blue.

STRATEGIC PLAN: NOW

A) Build the Center Infrastructure, Laying the Foundations for Future Activities

- Hire and develop team
 - Fully staffed as of October 1, 2023, current total 3.0 FTE, staff development ongoing
- Develop Advisory Board, strategic plan
 - *Advisory Board met November 29, 2023*
 - *Actively working to implement available strategic planning software*
- Identify and secure funding streams to meet operational costs and implement strategic plan activities
 - *Will celebrate the Sunflower Health/Centene Foundation award on February 27, 2024*
 - *Contracted with the University of Nebraska to support a regional grant*
 - *Active applications for state and federal grants*
 - *Support researchers*
 - *Identify funding opportunities*
 - *Assist with grant writing*
 - *Provide mentorship and consultation for funded projects*
- Continue environmental scan, identify gaps
 - *Linda Aiken and Peter Buerhaus' work has influenced us to reframe "nursing crisis" to "ongoing imbalance in the supply of and demand for nurses"*
 - *Diversity, equity, inclusion and belonging will be specified within our vision statement and threaded through all activities*
- Align with exiting organizations to avoid duplication of programs/efforts
 - *Active with KS Board of Nursing, KS Department of Aging and Disability Services, KS State Nurses Association, KS Organization of Nurse Leaders, KS Hospital Association, the KS Rural Health Council, the Landon Center, the Kansas City Metropolitan Health Council, the Kansas City Nursing Research Coalition, and the National Forum of State Nursing Workforce Centers*
 - *Ready to work with KansasWorks, Kansas City Metropolitan Health Council, REACH Foundation, Kansas Chapter-Health Occupations Students of America (HOSA), and KC Digital Drive.*
- Continuously evaluate and revise our work to be data-driven, collaborative, efficient, effective, and sustainable

- Disseminate findings widely
 - *Webpage, newsletter, press releases, social media posts*
 - *KSBN and KSNA newsletter submissions*
 - *Completed Presentations: Kansas City Nursing Research Coalition and the National Forum of State Nursing Workforce Centers*
 - *Upcoming Presentations: KC Digital Drive, The KS Organization of Nurse Leaders, The Connecticut Center for Nursing Workforce*

B) Create a One-Stop-Shop for Nursing Workforce Supply and Demand Data

- Identify and secure data sources: public and private
 - *National Nursing Workforce Survey Data:*
 - *Record level Kansas data received for 2020 & 2022*
 - *Expect data collected during 2023 in April 2024*
 - *Kansas Department of Aging and Disability Services:*
 - *Certification data available*
 - *Awaiting Kansas data from the ANA's Healthy Nurse Healthy Nation*
- Develop dashboards and reports for stakeholders (nurses, educators, employers, agencies, the public use)
 - *Utilize Minimum Data Sets (MDS) to ensure that data is comparable across the state, region, and nation*
 - *Actively serving on the national committee to review and revise the MDS used by state Boards of Nursing*
 - *Focus on better understanding nursing telehealth and travel nursing*
- Provide "the" Kansas nursing workforce report for the Kansas Legislature
 - *Releasing data teasers monthly (see January newsletter)*
 - *Will release a State of Nursing in Kansas September 30, 2024*
- Develop better models for projections of nurse supply and demand
 - *Collaboration with the University of Kansas Medical Center Department of Biostatistics & Data Science*

C) Increase Research on Nurses and the Nursing Workforce

- Expand our existing monthly speaker series statewide
 - *January 2024 featured Dr. Amy Hite, University of Pittsburgh, on SANE programs*
 - *February 2024 will feature Dr. Karen Weis, KUSON, on access to maternity services*
- Develop scalable quality improvement, research, and translation programs
 - *Hospital-Based Patient Care Assistants' Perceptions of Preparedness to Work and Intent to Stay (PDF)*

- Provide research opportunities for students
 - Completed projects include
 - MS in Informatics Student – analysis of Nursing Workforce Dashboards Across States
 - Current projects include
 - Nursing Honors Student – Nurse Well-Being
 - MS in Informatics Student – Supply and Demand for CNAs in Kansas
 - MS in Informatics Student – Demographics of Nurses in Kansas
 - PhD Student – Dashboard Usability
 - PhD Student – Comparison of Kansas to National Nursing Workforce Data
- Facilitate access to data for nursing workforce researchers statewide
- Facilitate multi-site research and translation programs
- Increase federal funding to Kansas for nursing workforce

STRATEGIC PLAN: NEXT

D) Recruit and Retain Faculty and Preceptors

- Deans and Directors of all BSN and ADN programs statewide will have the opportunity to participate in a listening session. The goal is to identify issues and opportunities for support and collaboration with the Center.
- Increase the use of technology to enable shared faculty
- Educate about the need for salary equity between practice and education
- Increase joint appointments between health facilities/systems and educational programs
- Identify and share best practices to support nurse faculty and preceptors
 - Partnered with Dr. Heidi Keeler at the University of Nebraska on HRSA funded research on preceptors in NE, KS, MO, IA
 - Support Dr. Lisa Guthrie and Dr. Ericka Sanner-Stiehr to develop an app to provide just on time micro learning to nurse preceptors

E) Develop Nurses

- Map institutionally agnostic pathways for continuing education, return to school, and access to career resources
 - Partnering with Dr. Carrie Wendell-Holmes at the KU School of Social Work and KDADS to map paths into Direct Service Work and on to nursing and social services
 - Studying the pathways software developed by the Connecticut Nursing Workforce Center
- Utilize technology for expanded nurse leadership training, including simulation
 - Presenting to KC Digital Drive on virtual reality and AI in nursing education

- Determine the supply of and demand for nurse specialty practice (i.e., maternal child) statewide and by region
 - *Partnered with Dr. Karen Weis to map access to maternity care across KS*
- Develop collaborative, efficient, and effective models to drive decision-making processes among organization's executive leaders
- Facilitate recognition of rural nursing as a specialty
- Host a summit for practice and academia to strengthen nurse leadership programs
 - *Working with KONL to develop a Leadership Summit, Fall 2024*

STRATEGIC PLAN: FUTURE

F) Fill Every Nursing School Seat

- Standardize admission process at KBOR schools
- Map clear educational pathways to nursing
- Project a positive identity of nursing
- Increase diversity in nursing to ensure that providers reflect the diversity of the patients
- Reduce financial and other barriers—scholarships are needed!
- Identify barriers to education for nursing students and develop ways to help students overcome these barriers

G) Advocate for Stability of Supply and Demand

- Educate our stakeholders on the impact of nursing shortages on the health and economics of our communities
- Host a nursing workforce policy conference

Addendum

There are many sources of data, each with limitations. For example, while the Kansas Board of Nursing can count licenses, this does not reflect how many nurses are working, what their specialties are, or their intent to stay. We have developed the capacity to integrate data from many sources, including labor, commerce, health, and research. We want to provide timely data and build better models for projecting supply and demand.

Imagine what YOU could do with better data.

	Current Data Reports	Proposed 2024*	Future State
Usability	<ul style="list-style-type: none"> • Historical report • PDF published annually 	<ul style="list-style-type: none"> • Interactive, usable, layered dashboards • Up-to-date by month 	<ul style="list-style-type: none"> • Authored up-to-date annual report(s) • Additional reports as needed
Supply	Nurses licensed	<ul style="list-style-type: none"> • Nurses licensed • Nurses working 	Holistic continuum: CNA, LPN, RN, Advanced Practice, Specialty, etc.
Demand	N/A	Nurses needed	Holistic views
Geographic	Licenses by county	By region, county, ZIP, Rural/Urban	As needed
Integrated	Supply only	<ul style="list-style-type: none"> • Supply and Demand • Data integrations: labor, commerce, etc. 	<ul style="list-style-type: none"> • New data • What can you imagine?
Projections	Limited trend analysis	Near-term & longterm trend analysis	<ul style="list-style-type: none"> • New and improved projection models • Interactive projection tools
Researchers	N/A	N/A	De-identified data sets

*Requires KSBN execution of Data Use Agreement

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Kansas State Board of Nursing Position Description

The Kansas State Board of Nursing (KSBN) is governed by eleven Board members. The Board is led by a board president. The Board works closely with the agency staff to fulfill the mission of the KSBN which is to assure the citizens of Kansas safe and competent practice by nurses and mental health technicians.

Responsibilities of the Board members:

1. Serves as an active member on committees as assigned by the Board president and vice-president.
2. Consistently attends the quarterly assigned committee and Board meetings. Reviews the material prepared by the staff before the meeting and comes prepared to participate in discussions about agenda items.
3. Utilizes electronic tools as per State of Kansas policies to receive information and communicate as a Board member. Includes devices and state email. Responds to emails and messages asking a response in a timely manner.
4. Continuously aware of actual or potential conflicts of interest and recuse from Board decision when appropriate.
5. Accept responsibility and accountability for Board decisions, regardless of opinion.
6. Good understanding of the Kansas Nurse Practice Act (NPA), which includes statutes and regulations authorizing the regulation of nurses and mental health technicians in Kansas.
7. Revises and adopts standards of practice for licensees of KSBN. Licensees include registered nurses, licensed practical nurses, advanced practice registered nurses and mental health technicians. Ensure all standards for nursing practice are consistent with current nursing practice.
8. Approves nursing education programs in Kansas and enforces the prelicensure and graduate nursing education standards.
9. Discusses any proposed changes to statutes and regulations in NPA.
10. Develops strategic plan for KSBN.
11. Participates in yearly performance evaluation of the Executive Administrator.

Competencies of KSBN Board Members:

- Strategic thinking
- Leadership
- Accountability
- Knowledge of state nursing laws and regulations
- Decisiveness
- Teamwork
- Strong communication skills

Kansas State Board of Nursing Board Member

Code of Conduct

This Code of Conduct consists of expectations of a Board member to ensure the citizens of Kansas the Board members uphold the highest level of integrity and ethical standards. These principles shall be followed by Board members:

1. Understand and support the mission of the Kansas State Board of Nursing (KSBN) which is to assure the citizens of Kansas safe and competent practice by nurses and mental health technicians.
2. Board members must be familiar with the statutes and regulations in the Kansas Nurse Practice Act (NPA).
3. The major functions of Board members are to revise NPA, if applicable, and ensure the mission, vision, and values of KSBN are followed. The Board members govern rather than manage.
4. Regardless of whether a Board member is a licensee or a public member, it is important to understand each Board member represents the public. Board members do not represent the profession, or any other private or political group.
5. Board members must report an actual or perceived conflict of interest to the Board president. If there is an actual or perceived conflict of interest the Board member must recuse from Board decision making.
6. Prepare, attend and actively participate in all scheduled meetings of the Board and committees as assigned.
7. Follow State of Kansas policies when utilizing State of Kansas electronic tools. This includes devices and emails.
8. Respond to all emails related to Board communication timely.
9. Accept responsibility and accountability for decisions made by the Board.
10. Treat other Board members and agency staff with respect and support.
11. A Board member does not act or speak for the Board without authorization from the Board.
12. Maintain confidentiality about matters of the Board.

KANSAS STATE BOARD OF NURSING

ARTICLES

Insofar as these articles conflict with or limit any federal or state statute or regulation, the statute or regulation controls. These articles are not intended to create any rights, contractual or otherwise, for any person.

ARTICLE I - NAME AND LOCATION

Section 1. The name of the agency shall be the Kansas State Board of Nursing, hereinafter referred to as the Board.

Section 2. The Board is located in the Landon State Office Building, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230.

ARTICLE II - PURPOSE AND FUNCTIONS

Section 1. Purpose. The purpose of the Board is to protect and promote the welfare of the people of Kansas. This purpose supersedes the interest of any individual, the nursing profession, or any special interest group. This is accomplished through the regulation of standards for nursing education, licensure, and practice.

Section 2. Functions. The Board performs the functions set forth in 1997 Supp. K.S.A. 74-1106 and are summarized as follows:

- a. Licenses registered professional and practical nurses, and mental health Technicians, licenses APRN's and authorizes RNA's;
- b. regulates the practice of nursing, mental health technology, and advanced nursing practice;
- c. accredits educational programs leading to licensure;
- d. approves continuing nursing education programs and offerings;
- e. provides guidance to licensed nurses and mental health technicians on the practice

- acts;
- f. receives reports and investigates possible violations of the Nurse Practice Act and rules and regulations;
 - g. disciplines violators through appropriate legal action to enforce the Nurse Practice Act and rules and regulations;
 - h. promotes effective communications with organizations, groups and individuals interested in health care;
 - i. complies with K.S.A. 77-415 et seq. for public comment with regard to the rules and regulations and the Nurse Practice Act and reviews and modifies the rules and regulations when necessary and appropriate;
 - j. recommends to the legislature appropriate changes in the Nurse Practice Act to ensure that the act is current and applicable to changing needs and practices; and
 - k. performs such other functions as specified in the Nursing Practice Act.

ARTICLE III - MEMBERSHIP

Section 1. Members. The Board shall consist of six registered professional nurses, two licensed practical nurses, three shall be members of the general public and at least one public member shall not have been involved in providing health care.

Section 2. Qualifications. Appointments shall be made by the governor. Such person shall have qualified as per K.S.A. 74-1106 (b).

Section 3. Privileges of Membership. Each member of the Board has the privilege of voting, of holding office, and of serving on committees.

Section 4. Reimbursement. Members of the board of nursing attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-

3223, and amendments thereto. No member of the board of nursing shall be paid an amount as provided in K.S.A. 75-3223 and amendments thereto, if such member receives an amount from another governmental or private entity for the purpose for which such amount is payable under K.S.A. 75-3223 and amendments thereto.

Section 5. The Board may request voluntary resignation of any of its members for neglect of duty or other conduct which shall mean:

- a. failure to attend two consecutive meetings without justification;
- b. failure to participate in committees to which appointment was accepted without justification;
- c. abuse of position.

Any member wishing to resign shall submit resignation in writing to the Governor and Board President who shall present it to the Board.

Section 6. In keeping with the Board's Purpose as stated above in Article II, Section 1, Board members are disqualified and will recuse themselves from chairing or voting in any proceeding before the Board or a Board committee if:

- a. the Board member has an substantial economical interest in a subject matter;
or
- b. the Board member or the Board member's spouse, parent, or child is an officer or director of a professional association that is actively promoting or representing a particular subject matter or issue on behalf of the association;
or
- c. the Board member has prior knowledge of the allegations in a licensee's disciplinary case or personally knows or is involved with the licensee who is the subject in the discipline case.

ARTICLE IV - OFFICERS

Section 1. The officers shall consist of a President, Vice-President and Secretary.

Section 2. The three officers shall be elected at the September meeting, and shall serve for one year. At each September Board meeting an individual Board member will be designated to make decisions on the behalf of the agency head for purpose of granting or denying petitions for reconsideration or review filed with the agency head.

Section 3. In the event of the vacancy of one of the three offices, a new election will be held at the next meeting to fill the vacancy.

Section 4. The President shall:

- a. preside over all meetings of the Board;
- b. establish a proposed agenda in consultation with the Executive Administrator for meetings of the Board;
- c. gain consent and appoint all members of ad hoc and standing committees, including chair and vice chair of each committee;
- d. serve as ex-officio member of all standing and special committees with a voice, but shall not vote except when needed as a member to establish a quorum;
- e. remove any committee member not fulfilling obligation to a committee;
- f. have the right to vote on all Board issues;
- g. sign appropriate legal documents;
- h. advise Executive Administrator;
- i. oversee the annual evaluation of the Executive Administrator;
- j. be responsible for the proper functioning of the work of the Board; and
- k. have power and authority to administer oaths.

Section 5. The Vice-President of the Board shall:

- a. serve in the absence of the President; and
- b. assume all such functions or responsibilities as may be delegated by the President.
- c. assist President and Executive Administrator with appointments to committees.

Section 6. The Secretary shall:

- a. sign all Board minutes;
- b. keep a record of all meetings of the Board
- c. have power and authority to administer oaths and
- d. preside in the absence of the President and Vice-President.

ARTICLE V - EXECUTIVE ADMINISTRATOR

The Executive Administrator shall:

- a. administer agency operations by the following:
 - 1. evaluate staffing patterns to enhance operation of the organization;
 - 2. direct professional and clerical staff for efficient functioning;
 - 3. solve administrative problems;
 - 4. evaluate agency staff; and
 - 5. assist professional staff to review investigative cases
- b. manage board activities as follows:
 - 1. develop a proposed agenda for meetings of the Board with the President;
 - 2. research and prepare informational materials for Board meetings;
 - 3. assist staff in completing work of permanent and Ad Hoc committees;
 - 4. serve as professional staff to both standing and Ad Hoc committees; and
 - 5. report on national and state issues to the Board;
- c. manage agency budget:
 - 1. develop agency budget based on current agency expenditures, trends,

- and issues;
- 2. present budget to legislature and appropriate others; and
- 3. evaluate on-going expenditures and revenues to maintain balanced budget;
- d. participate in legislative and regulatory activities as follows:
 - 1. evaluate current statutes and regulations as to changing needs of nursing and health care as directed by Board;
 - 2. prepare drafts of changes in statutes and regulations for Board approval;
 - 3. present testimony on proposed changes in statutes before the legislature; and
 - 4. prepare statistical and technical reports for the legislature;
- e. participate in professional activities:
 - 1. provide information on nursing issues to licensees, nursing schools, and providers of continuing nursing education;
 - 2. facilitate joint activities with nursing organizations, Attorney General's office, and other state agencies;
 - 3. represent the Board at local, state, and national meetings;
 - 4. write articles for newsletters;
 - 5. compile an annual report; and
 - 6. lecture on nursing issues;
- f. perform such other duties as directed by the Board.

ARTICLE VI - MEETINGS

Section 1. The Board adheres to the provisions of the Open Meetings Law.

Regular business meetings shall be held at a place and time designated by the Board.

Section 2. A minimum of four regular meetings shall be held each year, March, June,

September and December. In the case of unusual circumstances and the Board cannot meet at a regularly scheduled time, then notice shall be given and the meeting shall be rescheduled.

- a. The annual meeting shall be held in September.
- b. A schedule of dates for meetings shall be presented to the Board a year in advance.
- c. Notice shall be given to the public at least twenty-one (21) days prior to the date of the meeting except in cases of special or emergency meetings when notice will be given as soon as possible. The purpose of the meeting shall be stated in the meeting notice.
- d. There shall be a quorum of six Board members including at least two professional nurse members. For the purpose of a quorum, one or more members may participate by telephone conference call, video conference or other interactive means of conducting conference communications.
- e. Minutes of each meeting shall include the names of participating members, by what means they were participating, and a report of the roll call on each vote.

Section 3. Special Meetings. Special meetings shall be called by the Executive Administrator at the request of the President, or upon the request of three members of the Board.

Section 4. The Board shall use a consent agenda, whereby those items that require no discussion, no action, or action but no anticipated discussion can be adopted in one motion. A Board member, after reviewing the agenda, may request the removal of an item from the consent agenda for purpose of discussion.

Section 5. Notice of meetings - Request for notice of meetings pursuant to the

Kansas open meetings act should be directed to: Executive Administrator, Board of Nursing LSOB, 900 SW Jackson, Rm 1051, Topeka, Kansas, 66612-1230. Written requests are preferred, but not required.

Section 6. Members of the public may participate at Board or committee meetings only at the discretion of the Board President or Committee Chair. Articles for the public will be available at all meetings.

Section 7. Parliamentary procedure.

- a. The Board shall use parliamentary rules of order adopted by the Board.
- b. Robert's "Rules of Order, Newly Revised" latest edition, shall govern the proceedings of the Board in all cases not provided for in the parliamentary rules adopted by the Board.

ARTICLE VII. - COMMITTEES

Section 1. The committees serve as an advisory body to the Board.

- a. Standing committees shall be Practice, Continuing Nursing Education/IV Therapy, Advanced Practice, Finance, Investigative, Education, and Certified Nurse-Midwife Council.
- b. Committees may submit recommendations to the Board. A Board member will need to make the recommendation in a motion which would then be subject to approval by the entire Board.
- c. Committee meetings shall conform to the law regarding open meetings. The dates, times, and places of all committee meetings shall be listed with their agenda.
- d. Members of the Board on standing committees shall be appointed by the President in consultation with the Vice President following the annual meeting.

- e. Non-Board members shall be appointed to standing committees by the President in consultation with the Vice President and shall serve for two year terms. Each non-Board committee member shall have qualifications related to the committee of appointment.
- f. Appropriate Board staff shall serve as non-voting members of all committees. Board staff or designees shall provide support services to each committee, and prepare and distribute minutes and agendas of each meeting to committee members.
- g. Agendas will be prepared in accordance with Agenda Policy (see attachment A).

Section 2. Practice Committee (no changes from committee – Dec 2023)

- a. Membership: A minimum of three Board Members, including at least one Practice RN member, one LPN member, and at least five non-Board members engaged in practice and/or IV Therapy.
- b. Purpose: To review and recommend revisions in APRN and RNA statutes and regulations. To provide nonbinding guidance on the scope of nursing and LMHT practice in response to written inquiries. To make recommendations to amend the practice act that reflect current nursing and mental health technician practice.

Section 3. Continuing Nursing Education/ IV Therapy Committee

- a. Membership: A minimum of three Board Members, including one RN member and three non-board members who are representatives of approved CNE providers and/or IV Therapy approved providers.
- b. Purpose: To review continuing nursing and mental health technician education; To review and recommend revisions to CNE statutes and regulations; To monitor and approve CNE providers for both initial and renewal status; To review

statistical information regarding providers of CNE. To review and recommend revisions in educational statutes and regulations for IV therapy programs. To review educational policies for IV therapy programs; to review all reports and evaluations of IV therapy programs.

Section 4. Advanced Practice

- a. Membership: A minimum of three Board Members including at least one APRN member and four non-Board members representing each of the categories of advanced practice registered nurses: clinical nurse specialist, nurse midwife, nurse practitioner, and registered nurse anesthetist.
- b. Purpose: To review and recommend revisions to statutes and regulations for approval of APRN and RNA programs in collaboration with the Education Committee.

Section 5. Finance Committee

- a. Membership: A minimum of three Board Members.
- b. Purpose: To review and project budgetary needs to support agency; To maintain a structured system for monitoring impaired licensees; To review and recommend revisions to the impaired assistance program yearly contract.
- c. Fee Fund Balance Guidelines Purpose: The Board has established these guidelines to ensure that the agency maintain a sufficient balance in the fee fund to ensure continuous operation of the agency if there was a decrease in revenue or an emergency in which all equipment, furniture, supplies, office space, etc were destroyed by a natural or manmade disaster. The State of Kansas is self insured, and the agency is a fee funded agency which receives no state general funds.
- d. Fee Fund Balance Guidelines Policy: The agency is required to submit a biennial

budget. During the budget process, the fee fund is reviewed. The fee fund balance should be reviewed by the Board after budget has been submitted to the Governor and receiving the Governors' Recommendations. The following criteria will be applied to determine the balance to be maintained in the fee fund:

- (1) The replacement cost of all physical assets
- (2) The cost for temporary relocation of office for up to six months of expenses
- (3) Six months of operating expense

Section 6. Investigative

- a. Membership: A minimum of three Board Members including at least one RN member.
- b. Purpose: To review and recommend revisions in investigative and discipline statutes and regulations. To conduct a review of cases opened by the legal department, determine what type of disciplinary proceeding, and recommend proceedings be initiated. To review and recommend changes to investigative and discipline policies and procedures. To maintain a structured system for monitoring impaired licensees; to review and recommend revisions to the impaired assistance program yearly contract.

Section 7. Education

- a. Membership: A minimum of three Board Members including at least two Educator RNs and four non-Board members representing the four types of educational programs: LPN, ADN, BSN, and APRN.
- b. Purpose: To review and recommend revisions in educational statutes and regulations for nursing, APRN, RNA, and LMHT programs. To review

educational policies for nursing and LMHT programs; to review all reports, evaluations, and site visits of schools of nursing, APRN, RNA, and LMHT programs.

Section 8. Nurse-midwives Council

- a. Membership: A minimum of four non-Board Members who are certified nurse-midwives licensed and appointed by the Board Nursing and a minimum of two members licensed by the board of Healing Arts to practice medicine and surgery and whose specialty and customary practice includes obstetrics, appointed by the Board of Healing Arts.
- b. Purpose: The statute establishes a Nurse-midwives Council to advise the Board of Healing Arts in developing, reviewing, and implementing the rules and regulation pertaining to certified nurse-midwives engaging in the independent practice of midwifery.

Section 9. Other Committees

Such other committees, standing or ad hoc, shall be appointed by the President as deemed necessary to carry on the work of the Board. The President shall provide any such committee with a stated purpose or mission.

Section 10. Appointments, Quorum, Annual Reports

- a. The President and Executive Administrator shall be ex-officio members of all committees.
- b. A quorum of the committees shall consist of a majority of the members. Only committee members duly appointed shall be entitled to vote within the committee.

The President may serve as a voting member of any committee in order to establish a quorum. Other Board members may participate but have no vote.

- c. In the sustained absence or temporary inability to serve by one committee member, the President shall appoint a new member.
- d. Meetings of the committee shall be held at least once each year and whenever deemed necessary by the chairperson of the committee or the Board.

ARTICLE VIII. - AMENDMENTS TO THE BYLAWS

Section 1. Proposals

- a. Proposed amendments to the bylaws shall be submitted to the Secretary and sent to each member of the Board by the Secretary at least two weeks prior to the meeting of the Board and shall be included in the agenda of that meeting.
- b. The President will form an ad hoc committee of Board members as needed to review bylaws.

KSBN BOARD MEMBER TRAINING

Charles Macheers, Assistant Attorney General
Legal Counsel to the Board
December 2021

AGENCY IS A CREATURE OF STATUTE

In exercising regulatory power, members of a licensing board often struggle with the issue of what their authority is and what their authority is not. At times board members want to exercise discretion when discretion is not allowed, for example, when the statute or regulation uses "shall." Other times board members do not want to exercise discretion when discretion is authorized, for example, when the statute or regulation uses "may." To exercise appropriate and lawful authority, a board member must understand the board's governmental role.

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. A board may administer, implement and enforce only those statutes. The Kansas State Board of Nursing administers, implements, and enforces the Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq.*, and the Licensed Mental Health Technician Act, K.S.A. 65-4201 *et seq.*

A professional or occupational licensing board is created by enabling legislation, which also establishes the board's form, mission, powers, functions, tools of implementation, and enforcement abilities. Appointment of members by the Governor embodies the board, which in most cases, then hires an executive director. Appropriation of money by the Legislature sustains the board; even if fee funded, the board must receive a legislative appropriation in order to expend monies collected. Repeal of enabling legislation by the Legislature would eliminate the board. The enabling legislation for the Kansas State Board of Nursing is found at K.S.A. 74-1106 through K.S.A. 74-1112.

Besides statutes specific to a board, limitations on a board's authority derives from Constitutional doctrines of fundamental fairness that issue from the Equal Protection and Due Process clauses - 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. Constitutional doctrines of freedom of speech, rights of privacy, unreasonable search and seizure, and vagueness also establish parameters on a board's authority.

For licensing boards, the general purpose (whether explicit or implied) is to secure for the people of Kansas the services of competent, trustworthy practitioners and to protect the public against unprofessional, improper, unauthorized and unqualified practitioners. It is not to promote the profession as a whole or to protect individual members of the profession.

Licensing boards accomplish these purposes through licensing applicants who meet established eligibility qualifications (generally education, experience and examination) and

through the disciplinary process by which a license may be revoked, suspended or otherwise sanctioned for violation of a statute or regulation. Some boards also have authority to levy administrative fines.

FUNCTIONS AND DUTIES OF A LICENSING BOARD

In order to carry out its purpose, a board is granted (delegated) powers and functions which somewhat parallel the three branches of state government—executive, judicial, and legislative. For a board, “executive authority” is an administrative function by which the board carries the enabling act into effect. In exercising this authority, a board is required to follow the Kansas Open Meetings Act, K.S.A. 75-4317 *et seq.*, and Kansas Open Records Act, K.S.A. 45-215 *et seq.*, to ensure that the public’s business is conducted openly.

A board’s “judicial authority” is an adjudicative function to enforce the enabling act by holding due process proceedings and hearings to determine whether violations of law have occurred and thereafter issuing orders that include findings of facts and conclusions of law. In serving in a “quasi-judicial” capacity, a board follows the Kansas Administrative Procedures Act in order to achieve uniformity among applicants and licensees as well as various agencies of the state with respect to procedural safeguards.

A board’s “legislative authority” (technically, a form of administrative authority) is the authority to adopt regulations in order to implement or interpret legislation applicable to the Board with more detailed or specific requirements. In adopting rules and regulations, a board is required to follow Rules and the Regulations Filing Act, K.S.A. 77-415 *et seq.*

To increase your effectiveness as a board member:

- Bear in mind that less time, money, energy and resources are expended in preventing a legislative post-audit review, a lawsuit, an appeal of administrative action, or a complaint against the board than in responding to any of those unfortunate situations.
- Read the enabling act establishing the Board, its practice act(s) and re-read the practice act(s)—especially as a statute(s) pertains to a specific issue or matter. Re-read them as necessary to familiarize and understand the boundaries contained therein.
- Read the regulations and re-read the regulations—especially as a regulation(s) pertains to a specific issue or matter.
- Be on the alert for agency policies and internal procedures which are inconsistent with or conflict with statutes and regulations or impact requirements for applicants or licensees. “We’ve always done it this way” is not a legal defense.
- Ensure that decisions are within the authority granted. If any doubt about the legality of an action, consult with the board’s attorney.

- Be willing to initiate action to amend statutes or modify regulations. If a statute or regulation seems confusing, unfair, vague or overly burdensome to you, chances are good that it is confusing, unfair, vague or overly burdensome to those persons obliged to comply with them. Statutes and regulations may also have to be amended as they become outdated.
- Remember the role of the board is to protect the public, not the licensee

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. Board 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.

Types of Potential Conflict in External Activities

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). Some examples of personal conflict include:

- **Personal gain:** Will this decision affect the board member's personal life, career advancement, or business in any direct way?
 - **Example:** The Board holds a hearing on a summary proceeding order that denied a license to an applicant who works near Board Member Doe. Board Member Doe is the only other licensee in the area. The denial of applicant's request for licensure means Board Member Doe would see an increase in business.
- **Bias:** Does the board member's personal relationship with the licensee in question impair his or her ability to render an impartial decision? Is the board member privy to information about the licensee that the other board members do not know, and that will affect the board member's ability to vote objectively?
 - **Example:** The Board is considering whether to grant a license to an application who has a felony conviction and provided some evidence of rehabilitation. The Board is divided on whether to approve the application. Board Member Doe and the applicant's mother are close friends and Board Member Doe has known the applicant since he was a child. Board Member Doe wishes to "vouch" for the applicant.
- **Effects on personal relationship:** Will there be an effect on the board member's current, past or future personal relationship(s)?

- **Example:** The Board is considering whether to fine a licensee. Board Member Doe's supervisor is a close relative of the licensee, and she fears that she will face retaliation from her supervisor if she votes in favor of the fine.

CONFIDENTIALITY

At all times the board 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. 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.

- **Executive sessions during open meetings:** The purpose of an executive session is to allow board members to discuss certain matters privately, outside the public view. Taking an executive session without a proper motion that states the statutory grounds for the executive session can result in the imposition of a penalty. While there is no penalty for sharing matters discussed during an executive session with another party, it defeats the purpose of the executive session. In addition, breaching executive session confidentiality could expose the board to KOMA complaints because revealing information intended to be confidential suggests that there was no need to discuss the matter in private. Finally, the purpose of an executive session is typically to discuss private information about an employee or to obtain advice from the Board's attorney is to preserve attorney-client confidentiality. A Board member may subject the Board to litigation by discussing private information about an employee or waive attorney-client confidentiality by revealing attorney-client communications to a third party. So, do NOT disclose the information that was discussed during an executive session.
- **Deliberations after a hearing:** Discussions on a decision regarding a particular pending case are considered quasi-judicial deliberations. The Kansas Open Meetings Act (KOMA) and the Kansas Administrative Procedure Act (KAPA) allow Board members to deliberate in private in order to reach a decision in a particular pending case regarding the applicable facts, law, and sanctions. It is understood that discussions during private deliberations are meant to be confidential.

EX PARTE COMMUNICATIONS

An ex parte communication typically involves receiving information from or discussing with a party or an outside person without the knowledge of the other party; for this reason, it is regarded as a one-sided or partisan viewpoint. For the purposes of the board, an ex parte communication can occur when a board member discusses the details or merits of a particular case with only the applicant or licensee, the board's litigation counsel, or board staff. In other words, one or more litigants in a case are not present during the discussion.

Ex parte communications are problematic because licensees and applicants for licenses are entitled

to due process and the board's decisions must be fair and objective. In the case of an applicant for licensure or a licensee in a disciplinary action, the KAPA prohibits board members charged with rendering a decision in a matter from communicating – directly or indirectly through staff – with any party or participant regarding any issue in the proceeding. This rule is designed to prevent decisions based on “secret” information not provided to the other side.

A board member may encounter ex parte communications without advance warning to the board member. For example, a person who has a pending application for licensure may call a board member to advocate for him or herself. Similarly, a licensee might approach a board member at a conference to ask that the disciplinary action against him or her be lifted or changed.

A board member may also inadvertently create ex parte issues by contacting board staff or litigation counsel with questions about a pending hearing or application. Board staff and litigation counsel are aware of ex parte concerns. They will refrain from discussing the particulars of a case with you. Decisions on applications and disciplinary matters must be made based only upon the agency record or evidence presented at the hearing.

It is the responsibility of the board member to disclose ex parte communications. The KAPA requires disclosure of ex parte communications on the record (i.e., in a document filed in the agency record and sent to the litigants or during a hearing open to the public with the litigants present). If a licensee attempts to engage in ex parte communications with a board member but the board member ends the conversation before a discussion of the particulars of a case, the board member still needs to disclose the attempted ex parte communication. If the ex parte communication is such that the board member is partial or biased or if there would be an actual or perceived conflict of interest, the board member must recuse himself or herself from the discussion and decision of the case.

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.

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.

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

RULES AND REGULATIONS FILING ACT

A board must distinguish between statutes, regulations, and policy. Statutes are enacted by the Kansas Legislature through authority derived from the Kansas Constitution. When

properly enacted, statutes have force and effect of law. Statutes—existing and future—control inconsistent regulations and policy. Thus, regulations and policies must be reviewed to be sure they remain consistent with subsequent statutes. Regulations are promulgated by administrative agencies that have an authorizing statute to do so.

In adopting rules and regulations, a board is required to follow the Rules and the Regulations Filing Act to ensure that the process of adopting administrative 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. 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. 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. In determining whether to adopt a regulation, the following factors should be considered:

- a. The need for a regulation
 1. Does the action contemplated meet the statutory definition of a regulation? A regulation is "a standard, requirement or other policy of general application that has the force and effect of law, including amendments or revocations thereof, issued or adopted by a state agency to implement or interpret legislation." K.S.A. 77-415(c)(4).
Is the contemplated action one of those specifically excluded from the definition of a regulation? See K.S.A. 77-415(b)(2)(A)-(F).
 2. Would a regulation add anything?
 - (i) Does it simply repeat the statute?
 - (ii) Is it purely self-directive?
 - (iii) Is it informational rather than regulatory?
- b. Determine statutory authority to adopt a regulation
 1. Does the agency have rule and regulation authority? The history section of every regulation must show the agency's statutory authority to promulgate regulations.
 2. Does the agency's authority extend to the subject matter of this regulation? The history section must also state the statutes that are being implemented or interpreted by the regulation; the authorizing statute must correspond to the implementing statutes.
- c. Procedure to adopt a regulation
 1. Draft the regulation in accordance with the Policy and Procedure Manual for the Filing of Regulations published by the Department of

Administration for form and style requirements. See:
https://admin.ks.gov/docs/default-source/chief-counsel/website-documents/reg-manual-june-2018.pdf?sfvrsn=4f2688c7_14

2. Prepare an Economic Impact Statement, and Environmental Impact Statement (if appropriate), and a Private Property Protection Act Report, if Appropriate. See K.S.A. 77-416(b), (c), (d), (e) and K.S.A. 77-706(e).
3. Attach any documents adopted by reference in a regulation. All adopted documents must also be within the board's authorizing and implementing statutes.
4. Submit the regulation, any documents adopted by reference, and the Economic Impact Statement to the Director of Budget for approval. The regulation, any documents adopted by reference, and the Economic Impact Statement to the Secretary of Administration for approval as to form, style, and orthography. Once approved by the Department Administration, submit the regulation, any materials that are adopted by reference, and the Economic Impact Statement to the Office of the Attorney General for approval. The offices of the Secretary and AG review the entire regulation, not just the new or amended provisions. The AG's review determines:
 - a. Board's authority to adopt rules, generally
 - b. Regulation is within the board's scope
 - c. Regulation does not conflict with statutes or constitution
 - d. Regulation is otherwise lawful (AG also makes suggestions regarding clarity and any errors).
5. The regulation must be revised if any changes are made as a result of the review by Secretary of Administration or the Office of the Attorney General. When the revisions are completed, the regulation and the Economic Impact Statement must be resubmitted to the Director of Budget, Secretary of Administration, and Office of Attorney General for approval.
6. After the regulation has been approved by all three agencies, it is filed with the Secretary of State for submission to the State Rules and Regulations for approval of a temporary regulation and/or the Joint Committee on Rules and Regulations for comment on a permanent regulation. If promulgating a temporary regulation, it is recommended that you also process a permanent regulation at the same time so that it will be ready to take effect when the temporary regulation expires.
7. Submit notice to the Kansas Register making sure there will be at least 60 days between public notice and the hearing date.
8. During the 60-day notice/public comment period for a permanent regulation:
 - a. The Joint Committee on Rules and Regulations reviews the rule and makes comments to the agency
 - b. The public has an opportunity to make written comments to the regulation.
9. Hearing
 - a. Circulate a sign-in sheet for those in attendance

- b. Record the comments
- 10. Revisions
 - a. If revisions are necessary, the Economic Impact Statement and revised regulations must be resubmitted to the Director of Budget, Secretary of Administration, and AG for approvals.
 - b. If the regulation ends up substantially different than what was in the notice of public hearing, the notice, review by the Joint Rules and Regulation Committee, and the public hearing should occur.
- 11. Adoption

If the agency head is a bod, the regulation must be adopted in an open meeting and by roll call vote for each regulation. A certificate of the vote must be completed.
- 12. File the regulation and certificate of the vote with the Secretary of State.
- d. File the regulation with the Secretary of State and publish in the Register.
- e. Effective date of regulation
 - 1. Permanent regulation: 15 days after publication in the Register
 - 2. Temporary regulation: Upon approval by the State Rules and Regulations Board and filing by the Secretary of State.

A board must distinguish between a regulation and a policy. The purpose of a policy is to govern internal operations. A policy is adopted by the agency, but has no force and effect of law. In other words, applicants and licensees cannot be required to comply with a policy. To be effective, any policy governing the agency's enforcement or administration of legislation must be properly adopted, filed, and published as a regulation.

THE KANSAS TORT CLAIMS ACT

The Kansas Tort Claims Act (KTCA), K.S.A. 75-6101 *et seq.*, 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). 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.

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 Attorney General's Office defend you at no cost. To obtain representation by the Attorney General's Office, you must submit a written request to the Attorney General within 15 days after service of a process (include a copy of the petition and summons) and cooperate in your defense. The State may choose not to defend you if you acted with actual fraud or malice or failed to make a timely request for representation. A two-year statute of limitations typically applies to lawsuits governed by the KTCA. Former Board members are covered employees under the KTCA for acts and omissions during their former appointment period with the Board that were within the course and scope of their duties. K.S.A. 75-6102(d)(1)(H).

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

Things to remember if you are sued:

1. File a timely written request with the Deputy of Civil Litigation for representation by the Attorney General's Office and attach a copy of the petition and summons;
2. Do not sign anything; and
3. Do not say anything.

THE 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.

KOMA applies to "all meetings for the conduct of the affairs of, and the transaction of business of all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, and other subordinate groups thereof receiving or expending and supported in whole or in part by public funds." K.S.A. 75-4318. 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 KOMA.

KOMA does not apply to an otherwise covered entity when lawfully authorized "to exercise quasi-judicial functions when deliberating matters related to a decision involving such quasi-judicial functions," K.S.A. 75-4318(g)(1), or to conduct 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.

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. K.S.A. 75-4317a.

Meetings may be conducted by telephone or other medium (Zoom, Teams, Skype) if the Board complies with all KOMA requirements. A meeting includes informal discussions before or 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. The majority of the membership for a meeting is calculated by the next whole number greater than one-half the total number of members—including vacant positions and absent members.

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. Emails present a special challenge because whenever a majority of the Board or a committee of the Board communicate by email to discuss Board business, a "meeting" may occur if there is interactive communication, thereby triggering the notice requirement to anyone who has requested notice of a meeting.

The presiding officer has a duty to provide notice of the meeting, but this duty may be delegated to another person. K.S.A. 75-4318(c). Contrary to popular belief, 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. The notice must provide date, time, and location where body will meet to the person requesting notice 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.

Other than prohibiting a vote by secret ballots, KOMA does not address meeting procedures; thus, the Board is not required to follow Roberts Rules of Order or any similar formal rules of procedure. KOMA also does not require the Board to create an agenda, but if one exists, it must be made available to everyone. An agenda does not have to be mailed out in advance of the meeting. The person may record a meeting as long as doing so is not disruptive. The public does not have the right to speak, but only to listen and observe.

A policy of the Board may require minutes to be kept, but KOMA does not require the Board to have minutes *unless* there is a motion to go into executive session. KOMA requires the "complete motion" to be recorded in the minutes and maintained as part of the Board's permanent records. K.S.A. 75-4319(a). An executive session permits discussion of certain enumerated matters outside of public view. 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.

Executive sessions are governed by statutes. The statutory requirements for an executive session are:

1. A formal motion must be made, seconded, and carried;
2. The motion for executive session must contain:
 - (a) A statement describing the subject(s) to be discussed (without revealing confidential information);
 - (b) The justification (listed in the statute) for closing the meeting; and
 - (c) The time and place the open meeting will resume; and
3. The complete motion must be recorded in the minutes and permanently retained by the Board. K.S.A. 75-4319(a).

Discussions in the executive session are limited to those subjects stated in the motion. The justification for an executive session is listed in subsection (b). The two most common justifications used by the Board are personnel matters of non-elected personnel and consultation with the Board's attorney. Executive sessions for personnel matters of non-elected personnel are used to protect the privacy interests of the employee. K.S.A. 74-4319(b)(1). This justification can cover discussions of applicants for employment with the Board. Board employee(s) may participate in the executive session if the Board determines such employee(s) will aid in their discussion. Executive sessions under this justification do *not* include contractors or appointments to boards or committees or public officers. The other justification for an executive session is a consultation with legal counsel that would be deemed privileged in the attorney-client relationship. K.S.A. 75-4319(b)(2). It requires the Board members and the Board's legal counsel to be present and the communication to be privileged, *i.e.*, confidential. Board employee(s) may be present if the Board determines that such employee(s) are a part of the client relationship. No third parties may be present as that breaks the attorney-client privilege.

The most common KOMA complaints raised by the public include:

- Executive sessions
- Improper motions for executive sessions
- An executive session for a subject matter, but discussing a different or additional subject matter in session
- Inclusion of non-board members in executive session
- Executive session is extended without reconvening the open meeting, making a motion to extend the executive session, and voting
- Failure to return to open meeting at the stated time/place after an executive session ends
- Revealing information discussed in executive session
- Serial communications
- Failure to give notice of meetings

Prosecutions under KOMA are civil, not criminal, actions. 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.

The burden of proof lies with the Board to sustain its action. K.S.A. 75-4320a(b). The remedies for a KOMA violation include: voiding any illegal action taken if the attorney general or county/district attorney prosecutes by filing a petition within 21 days after the alleged violation); an injunction (stopping the action); a mandamus (forcing action); and a declaratory judgment. The penalties for a KOMA violation include: a fine up to \$500 against each Board member, *not* the Board, for each violation; ouster from office; recall from office; court costs assessed to Board to the person seeking enforcement of KOMA; court costs. K.S.A. 75-4320; K.S.A. 75-4320a.

Additionally, the Attorney General can enter into a consent order or issue a finding of a violation. K.S.A. 75-4320d(a). Under either procedure, the burden of proof lies with the

Board to sustain its action. K.S.A. 75-4320a(b). Under the consent order provision, the Attorney General may investigate any time prior to filing an action under K.S.A. 75-4320a, use the preponderance of evidence standard, and enter into a consent order with the Board member that may:

- Contain admissions of fact;
- Require completion of training approved by the Attorney General;
- Impose a civil penalty up to \$250 for each violation;
- Set forth an agreement to comply with the KOMA; and
- Bear the signature of any Board member found to have violated the KOMA and of any other person required by the Attorney General.

K.S.A. 75-4320d(a)(1).

Under the provision for finding a violation, the Attorney General may investigate, use the preponderance of evidence standard, and issue a finding of a violation to the board that may:

- Contain findings of fact and conclusions of law;
- Require the Board to do any or all of the following:
 - Cease and desist from further violation;
 - Comply with the KOMA;
 - Complete training approved by the Attorney General;
 - Pay a civil penalty up to \$500 for each violation; and
 - Submit proof of compliance with the finding of violation.

K.S.A. 75-4320d(a)(2).

The Attorney General may apply to district court to enforce a consent order or a finding of violation. If it finds that the attorney general did not abuse discretion, then the district court shall:

- Enjoin the public body or agency to comply with consent order or finding of violation;
- Impose a civil penalty not less than the one imposed by the Attorney General and not more than \$500 per violation
- Require public body or agency to pay court costs and investigative costs incurred by the Attorney General;
- Impose any other remedy authorized by K.S.A. 75-4320a(a) and amendments thereto.

K.S.A. 75-4320d(c).

The district court may also award the Attorney General reasonable attorney fees; in certain instances, the district court is required to do so. See K.S.A. 75-4320d(c)(4).

For further information or registration on the next training session, please view the Attorney General's website at: <https://ag.ks.gov/open-government/upcoming-training> Copies of decisions by the Attorney General for KOMA enforcement actions can be viewed at: <http://ag.ks.gov/open-government/enforcement-actions>

THE 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). *Bottom line: Assume that everything you write, including electronically, or record that has to do with Board activities will be available to the public.*

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. K.S.A. 2020 Supp. 45-217(f)(1). The term "instrumentality" is not defined in 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. K.S.A. 2020 Supp. 45-217(f)(2). In short, the Board and its Committees are considered a public agency.

A public record includes only records 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. 2020 Supp. 45-217. A public record includes "any recorded information regardless of form, characteristics, or location, which is made, maintained, or kept by or is in the possession of: (A) Any public agency; or (B) any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is relate to the functions, activities, programs or operations of any public agency." K.S.A. 2020 Supp. 45-217(g)(1). As such, it includes written records, photographs, computer data, and e-mail. 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." K.S.A. 2020 Supp. 45-217(g)(3)(A). A "private person" does "not include an officer or employee of a public agency who is acting pursuant to the officer's or employee's official duties." K.S.A. 2020 Supp. 45-217(g)(3)(A). Thus, public business conducted on a private e-mail may be subject to the KORA.

Under KORA, the Board must:

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

In Kansas, any person may make a request for records; 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. 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." The Board is not required to make a copy of recordings, tapes, discs, video tapes, or films, pictures, slides, graphics, or illustrations *unless* played or shown at a public meeting.

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.

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

By statute, discretionary closure includes medical, psychiatric, psychological, or alcoholism/drug dependency treatment records pertaining to identifiable patients; personnel records other than an employee's name, positions/titles, salaries or employment contracts; and length of service; information that constitutes a clearly unwarranted invasion of personal privacy if disclosed; records privileged under rules of evidence unless consent is given; records; and records of an investigation conducted under civil litigation or administrative adjudication, if disclosure interferes with the procedure. See K.S.A. 2020 Supp. 45-221(a). Mandatory closure includes records that are required to be closed by federal or state statute that are not found in KORA; KORA looks to other statutes first.

The Board may recover only actual costs to provide the requested records. These costs include staff time to retrieve and review records, redact information from a record, copy the record, and mail the copies to the requestor. The fees may be estimated and collected before the records are provided. K.S.A. 45-218(f) and K.S.A. 2020 Supp. 45-219.

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. 2020 Supp. 45-222(e). The district court may review the requested records *in camera*. 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. 2020 Supp. 45-222 and K.S.A. 2020 Supp. 45-223.

Additionally, the Attorney General or a county/district attorney can use a consent judgment in lieu of prosecution. A consent judgment may contain any remedy available to a district court but cannot include an award of reasonable expenses, investigation costs, or attorney fees. The district court must approve a consent judgment and enter judgment. Breach of a

consent judgment is a violation of the court order and subject to penalties provided by law. See K.S.A. 2020 Supp. 45-253.

The Attorney General is authorized to enter into a consent order or issue a finding of a violation after an investigation showing by a preponderance of the evidence that a violation has occurred. K.S.A. 2020 Supp. 45-251(a). The Attorney General can seek district court enforcement of a consent order or a finding of violation. K.S.A. 2020 Supp. 45-251(c). The district court may review the requested records *in camera*.

Under the consent order provisions, the Attorney General may investigate using the preponderance of evidence standard and enter into a consent order that may:

- Contain admissions of fact;
- Require completion of training approved by the Attorney General;
- Impose a civil penalty up to \$250 for each violation;
- Set forth an agreement to comply with the KORA; and
- Require submission of proof that consent order requirements met.

K.S.A. 2020 Supp. 45-251(a)(1)(A).

A consent order with a public agency that is not a governing body must bear the signature of the head of the public agency, any officer found to have violated the KORA and of any other person required by the Attorney General. A consent order with a public agency that is a governing body shall include the signatures of all members. K.S.A. 2020 Supp. 45-21(a)(1)(B).

Under the provisions for finding of a violation, the Attorney General may investigate using the preponderance of evidence standard. The Attorney General issues a finding of violation to a public agency that may contain findings of facts and conclusions of law and require the agency to do any or all of the following:

- Cease and desist from further violation;
- Comply with KORA;
- Complete training approved by the Attorney General;
- Pay a civil penalty up to \$500 for each violation; and
- Submit proof that of compliance with the finding of violation.

K.S.A. 2020 Supp. 45-251(a)(2).

In an enforcement action, if it finds that the attorney general did not abuse discretion, then the district court shall:

- Enjoin the public agency to comply with consent order or finding of violation;
- Impose a civil penalty not less than the one imposed by the Attorney General and not more than \$500 per violation
- Require public agency to pay court costs and investigative costs incurred by the Attorney General; and
- Impose any other remedy authorized by K.S.A. 45-222(a).

K.S.A. 2020 Supp. 45-251(c).

The district court may also award the Attorney General reasonable attorney fees; in certain instances, the district court is required to do so. See K.S.A. 2020 Supp. 45-251 (c)(5).

The most common complaints raised by the public include:

- Calculation and explanation of the "reasonable" fee/actual costs
- Records provided did not meet the requester's expectations
- Requester believes there should be existing public records, but none were found
- Is agency/entity covered by KORA, and if not, why not?
- Failure to respond within three business days
- Failure to provide the requested records
- Access to criminal investigation records

For further information or registration on the next training session, please view the Attorney General's website at: <https://ag.ks.gov/open-government/upcoming-training>

KANSAS ADMINISTRATIVE PROCEDURE ACT

Attorney General Opinion No. 2014-07 was drafted at the request of the Kansas Board of Emergency Medical Services. It discusses the extent to which that Board's investigations committee must conduct its business in a public meeting under the Kansas Open Meetings Act (KOMA). The general rule is that licensing boards, like the KSBN, must do business in an open meeting unless directed by statute to conduct the proceeding or hearing pursuant to the Kansas Administrative Procedure Act (KAPA). The Acts are mutually exclusive.

The key conclusion in this opinion is that when a licensing board's statutes provide that the Kansas Administrative Procedure Act (KAPA) applies to certain decisions, the Board shall follow KAPA, not the open meetings law, 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.** 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 disciplinary case has to be open to public observation **other than a hearing**. The KAPA applies "only to the extent that other statutes expressly provide that the provisions of [the KAPA] govern proceedings under those statutes." K.S.A. 77-503(a). The Board's KAPA provision is found in K.S.A. 65-1120(b): If the Board determines the investigation "reveals reasonable grounds for believing the applicant or licensee is guilty of the charges [alleged under subsection (a)], the Board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas Administrative Procedure Act." Thus, the KAPA does not apply until a reasonable grounds determination has been made by the Board.

For disciplinary cases, this means that prior to a reasonable grounds determination, the Investigative Committee must meet under the KOMA to review and determine pending cases. However, the Investigative Committee may deliberate in private if it is engaged in "quasi-judicial deliberations." Quasi-judicial deliberations involve weighing evidence for and

against a particular action, balancing the interests of those involved, and applying the law to the facts of a specific case. The Investigative Committee's disciplinary counsel may be present during the quasi-judicial deliberations to aid the Committee. While conducting quasi-judicial deliberations, the Investigative Committee can discuss only pending disciplinary cases. Once deliberations have concluded, the Board must announce its decision by taking a vote in open session.

For disciplinary cases after the Investigative Committee has made a reasonable grounds determination, it does not have to meet in an open meeting to make determinations about continuing the investigation, deciding whether to issue a summary proceeding order, settling the matter, or filing a petition. Actions that occur after a hearing, such as the Board's consideration of petitions for review, stay or reconsideration, also may be reviewed and determined without conducting an open meeting.

The public does not need to be notified of when the Investigative Committee meets to decide matters under the KAPA, and the Board does not need to take a vote in public for decisions made under the KAPA; under the KAPA, the Board's decision is effective when it issues the license or an order. Board staff and the Board's attorney can be present during the KAPA discussions to make sure Board members have the information they need.

There are some Board activities that are not covered by the KAPA, and these must be acted on in an open meeting. 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 to take a particular action;
- Receiving agency updates regarding the budget, legislation, complaints, investigations committee statistics, 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.

All of the above activities are conducted under the KOMA and require a vote in an open meeting to take action, but the Board may receive confidential legal advice in an executive session before making any of the above decisions.

Taken together, this means that if the Board is considering only KAPA matters (a pending case for a specific applicant or a licensee involving licensure or discipline, petitions for review, petitions for stay, petitions for reconsideration) as authorized by its licensing act, the Board does not have to notify the public of when it is conducting a proceeding in a pending case, can conduct the proceeding in person or electronically, and does not have to have an agenda. The Board, of course, must provide notice to the parties if required by KAPA.