



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 7, 1975

Opinion No. 75- 155

Mr. Robert E. Davis, Attorney
Kansas State Board of Pharmacy
P.O. Box 6150, Argentine Station
Kansas City, Kansas 66106

Dear Mr. Davis:

As counsel for the State Board of Pharmacy, you inquire concerning the interpretation of that portion of K.S.A. 65-4116(d), which states thus:

"Evidence of abuse as determined by the board relating to a person licensed by the state board of healing arts shall be submitted to the state board of healing arts and the attorney general within sixty (60) days. The state board of healing arts shall, within sixty (60) days, make findings of fact and take such action against such person as it deems necessary. All findings of fact and any action taken shall be reported by the state board of healing arts to the board of pharmacy and the attorney general . . ."

The question is posed whether

"the State Board of Pharmacy . . . has sixty (60) days from discovery of the evidence or sixty (60) days from the date it determines that there is abuse to submit this information to the Kansas State Board of Healing Arts."

It is the "[e]vidence of abuse as determined by the board" which must be submitted to the Board of Healing Arts "within sixty (60) days." In our view, this sixty (60) day period commences to run not from the initial discovery of the evidence, but from the date on which the Board of Pharmacy formally considers the evidence and determines that there is abuse. Within sixty (60) days from that date, the information underlying that determination must be submitted to the State Board of Healing Arts.

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A further question arises concerning the time within which the Board of Healing Arts must act thereon. After the information of abuse, as determined by the Board of Pharmacy, is submitted by that Board to the Board of Healing Arts, the latter board must "within sixty (60) days, make findings of fact and take such action . . . as it deems necessary." What is required of the Board of Healing Arts during this period, and indeed, when the sixty (60) day period commences to run, must be determined within the established statutory framework within which the Board exercises its disciplinary and regulatory powers over proceeding to suspend or revoke a license is put in motion by a direction from the Commission to the Attorney General, a county attorney, or its regularly employed attorney, to prepare and file a petition for such action, the petition to be filed with the secretary of the Board. The petition must state the charges "with reasonable definiteness." When the petition is presented to the secretary of the Board, that officer must make an order fixing the time and place for the hearing.

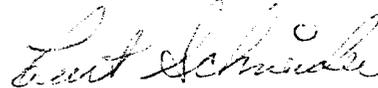
The requirement that the Board of Healing Arts "make findings of fact and take such action against such person as it deems necessary" within the sixty (60) day period described above does not, in our opinion, and cannot practicably be construed to mandate the Board of Healing Arts to file a petition and commence and conclude a formal statutory proceeding to suspend or revoke the license of the practitioner involved, within the sixty (60) day period in every instance. Manifestly, every allegation of abuse may not justify or warrant a formal disciplinary proceeding. Surely, more definite and supportive language in K.S.A. 65-4116(d) is necessary to deprive the Board of its inherent proceeding. Assuming that something less is required, the statute furnishes little helpful guide as to precisely what. Findings of fact are required; however, it is not clear whether these findings are to be made after an adversary proceeding, extra-statutory in nature and for purposes other than to suspend or revoke, or whether these "findings of fact" may be in the nature of a preliminary and informal determination following which further proceedings may or may not be begun. A practical resolution of the ambiguity in the statute would justify a construction of this language requiring only that within the sixty (60) day period after presentation to the Board of Healing Arts of evidence of abuse, that a sub-committee of the Board, duly appointed for that purpose, make further and informal inquiry into the evidence and allegations, and prepare for consideration by the Board tentative recommendations. If this sub-committee were to decide that a formal hearing was necessary, then under the provisions of K.S.A. 65-2838, they could direct the Board's regularly employed attorney to file the petition. In fact, I would suggest that the attorney regularly attend committee meetings in order to expedite matters. Completion of an inquiry by the sub-committee and the filing of its report or petition with the executive secretary of the Board, within the sixty (60) day period,

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for consideration by the Board at its next meeting, which may be within or beyond the sixty (60) day limitation, would constitute substantial compliance with the provision, in our view. In the case where a petition has been filed, there would be the necessity of having a hearing within forty-five (45) days in compliance with K.S.A. 65-2842.

Obviously, legislative clarification of this provision would be most helpful. If further questions arise concerning this matter, please feel free to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/JRM/PAH/ksn

cc: Mr. Bob Loughbom, Attorney
State Board of Healing Arts