

Kansas State Board of Nursing

Legal Issues for Nursing Students and
Applicants for Initial Kansas LPN/RN Licensure

Reference Packet

July 2012

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Kansas State Board of Nursing

Use of “RN”, “LPN”, “nurse” in e-mail addresses if UNLICENSED:

This is prohibited under K.S.A. 65-1114 of the Kansas Nurse Practice Act. The applicant must change this e-mail address immediately and provide written proof to KSBN of that change.

Application Completion:

See K.S.A. 65-1120 (a) (1) and (a)(6) as well as K.A.R. 60-3-110 (d) of the Kansas Nurse Practice Act: The use of white-out on any nursing application submitted to KSBN is **prohibited**. If an application completion error is made (wrong #, wrong letter, answered in wrong blank, etc) cross through the error, initial next to it and enter correct information. Completing a NEW blank application is better. Complete ALL blanks as applicable. There is a two part question which **must** be answered completely (Have you ever been licensed as a LMHT? Have you ever been licensed as an LPN?)

NCLEX Application versus Application for Licensure:

Application for **NCLEX** includes applying to Pearson-Vue and paying **their** fee. The KSBN licensing department verifies the applicant is eligible to take the NCLEX and the KSBN Investigator is NOT involved in that process. Application for **licensure** includes submitting a written application to KSBN with the appropriate fee/picture (& documents if required) & school transcript to KSBN.

Applicants who request Accommodations for NCLEX (d/t/disability):

Current/appropriate paperwork must accompany this written request to KSBN and should be submitted with the initial licensure application. See **Guidelines for Accommodations for NCLEX Testing** on our website (www.ksbn.org) for a list of documents that must be submitted when requesting NCLEX testing accommodations. An investigative case file is opened by the legal department in order to retain all paperwork/information for Investigative Committee review. The **Investigative Committee** determines whether the accommodation should be granted or not. If an applicant rescinds their request for NCLEX accommodations, the Investigative Committee still must review the investigative case **because the disability still remains**. The Investigative Committee may decide to license the applicant (upon the applicant’s successful completion of NCLEX), but may limit the license (this is determined according to the applicant’s disability). A limitation of licensure is documented in a written agreement per KSBN’s Disciplinary Counsel and the applicant/licensee formally agrees to this limitation. If circumstances change re: this need for a limitation, the process may start all over.

Guidelines for documentation required by KSBN:

Instruction pages have been provided for the applicant; these instruction pages can be downloaded of KSBN’s web site (www.ksbn.org)

- Click on Forms
- Click on Initial Licensure Application (the first two pages are the actual nursing application and the last three pages contain a list of the NAMES of the court documents as well as related information)

Diversion and Conviction Reporting:

A successfully completed court-ordered diversion is NOT a conviction and SHOULD NOT be documented/reported as a conviction per the nursing application. A diversion can become a conviction if you violate any/all of the terms/conditions of the diversion. The city/county attorney may file a motion to revoke the diversion. If the judge agrees with the motion, the judge orders the diversion revoked and the defendant is now convicted of the original misdemeanor and/or felony offense(s).

All felony convictions must be reported to KSBN

Convictions that occurred when the applicant was a juvenile ARE reportable to KSBN.

K.S.A. 65-1120 (a) (1) of the Kansas Nurse Practice Act states it is grounds for possible disciplinary action, if after a hearing, you are found guilty of **fraud or deceit** in practicing nursing or in procuring or **attempting to procure a license to practice nursing**.

Please review K/A.R. 60-3-113 of the Kansas Nurse Practice Act regarding the reporting of **misdemeanor** convictions to KSBN; in particular, note item (m) under this Practice Act regulation regarding a reportable misdemeanor; “any action arising out of a violation of any state or federal regulation” (please call the KSBN legal department prior to completing your application if you have questions regarding what is/is not reportable under this Practice Act regulation).

The following are some examples of reportable **misdemeanor** convictions:

- Worthless check/insufficient funds
- Theft and/or petty theft/shoplifting
- Theft of services (examples: eating at a restaurant without paying; staying at a hotel/motel without paying)
- Criminal damage to property
- Unlawful deprivation of property
- Criminal trespass
- Criminal use of a financial card
- Tampering with a theft detection device
- Harboring a vicious animal
- Dog at large
- Battery
- Assault
- Domestic battery and/or domestic violence
- Disorderly conduct
- Lewd and lascivious behavior
- Harassment by telephone
- Fleeing/eluding law enforcement
- Providing false information to law enforcement
- Obstruction of the legal process/resisting arrest
- Failure to appear
- Minor in possession/consumption of alcohol and/or cereal malt beverage
- DUI and/or DWI
- Pedestrian under the influence of drugs or alcohol
- Transporting an open container of alcohol
- Unlawful hosting of minors

- Possession of a controlled substance (usually marijuana,, but may be other drugs)
- Possession of drug paraphernalia
- Expired tags/registration
- Driving while license suspended/cancelled/revoked
- Driving without a driver’s license on your person
- Driving in violation of driver’s license restrictions
- Unlawful use of a driver’s license or non-driver’s ID card
- Reckless driving
- Careless and imprudent driving
- Leaving the scene of a motor vehicle accident
- Failure to report a motor vehicle accident

Sometimes when a person is cited and/or ticketed by a law enforcement officer, the offense may only have been a city ordinance violation or infraction and NOT a misdemeanor; check the front side of your ticket to see which box was checked by the officer (ordinance/infarction or misdemeanor).

In other states, a “set aside” conviction is usually the same as an “expunged” conviction and NOT reportable to KSBN as a conviction.

In **Missouri**, “SIS” (Suspended Imposition of Sentence) may be the same as a Kansas Diversion (see attached).

In **Oklahoma**, a misdemeanor/felony charge may result in a period of probation (1 – 2 years), then at the end of the successfully completed probation, the charge(s) is/are “expunged” from the record. This scenario MAY be equal to a Kansas diversion, but it is advisable to call the KSBN legal department prior to submitting your application to discuss the matter.

Court Document Requirements:

If the conviction occurred at the city level, the court documents can be obtained from the municipal court clerk.

If the conviction occurred at the county level, the court documents can be obtained from the district court clerk (circuit court in Missouri and some other states).

Certified/dated copies of the **ACTUAL** court documents are **required** by KSBN whenever possible.

If the conviction was greater than 5 years prior to the date of submission of the nursing application, many courts aren’t able to and/or don’t keep the actual court documents due to lack of space and/or retention policies for that particular court.

If the actual court documents are no long available, the applicant need to ask the court clerk to write the applicant’s court case information in a letterhead letter, including why the actual court documents are no longer available (clerk must sign/date the letter and that original letter must be sent to KSBN with the nursing application).

If the court clerk will not provide the above letter and/or court documents, the applicant shall state so in their own explanatory letter, giving the name/address/phone number of the court clerk with whom the applicant spoke. The applicant **must** make an effort to obtain the court documents and/or letterhead letter. If the applicant is unsuccessful, the KSBN legal staff may be able to call/write the court clerk in an effort to assist the applicant

Some courts can only provide certified/dated copies of computer screen printouts (usually in traffic cases), which is acceptable to KSBN if it is the only way to provide proof of a conviction..

When the applicant is not near the location of the court where the conviction occurred, the applicant can mail/fax the applicable portion of the application instructions and/or KSBN instruction letter **to** the court clerk so the court clerk will know exactly what document/information is required by KSBN.

The “Filed” stamp date on a court document (usually in the upper right hand corner of a court document) is **NOT** the same as **certified/dated**. The “filed” stamp date is the date someone (usually an attorney or their secretary) “filed” that document with the court clerk so that it would become “official”.

Certified/dated by the court clerk indicates the copies of the court documents given to the applicant are “authentic” copies of the originals maintained in the clerk’s office.

Certification/dating (of the court documents) can be in the form of:

- an **ink stamp** (somewhat like a notarized stamp)
 - Example of what is stamped on the court document when **certified**:
 - “the above is true and correct copy of the original instrument which is on file or of record in the court:
 - _____ (date)
_____ (signature of court clerk)
_____ (location of court)
- an **embossed/raised seal**
- a **cover letter** or a **cover letter with a sticky gold seal& red ribbon** (federal cases)

If the court documents for a single court case are stapled together and only the top/bottom page is certified/dated by the court clerk, then that is acceptable to KSBN as long as the staple is not disturbed prior to delivery of the documents to KSBN.

The applicant **MUST** either mail or bring the **certified/dated** copies of the court documents to KSBN (that were given to them by the court clerk).

Certified/dated copies of the actual court documents **CANNOT be faxed** to the KSBN or to the applicant.

Xeroxed copies of Certified/Dated copies are **NOT** acceptable for KSBN

The applicant should make sure that she/he is providing KSBN with ALL court documents for ALL reportable misdemeanor/felony convictions. If any/all of the required documents are not received by KSBN with the nursing application, a letter will be mailed to the applicant by a KSBN investigator specifically naming the document deficiencies. Applicants are encouraged to call the KSBN legal department to inquire if the applicant has the correct documents **BEFORE** mailing them to KSBN.

“Traffic” offenses include, but are **NOT** limited to: parking, speeding, some DUIs, expired/altered tag, no proof of insurance, no driver’s license in possession, driving on a suspended driver’s license, no seat belt, no child restraint.

Parking and speeding “traffic” offenses do not have to be reported to KSBN per the “conviction” question.

Any other “traffic” offenses (when conviction occurs) must be reported to KSBN as they are usually low level **misdemeanors**.

A traffic “citation” is the same as the court document called “Complaint” (uniform Notice to Appear and Complaint is often printed at the top of a “traffic” ticket). The “Complaint” is the front side of the actual traffic citation(s). The “Complaint” contains the offense(s) of which the applicant has been charged.

When the conviction occurs in a county/circuit court and/or a federal/U.S. district court, this “Complaint” document may be called “Complaint, Indictment, Information or Petition”.

If the original charges were increased or decreased, the court may have created a document called “Amended Complaint” (petition, indictment, information). Sometimes the “Amended Complaint” information is contained within the “Journal Entry” or “Judgment” court document.

The “Journal Entry” or “Judgment” court document contains conviction/sentencing information. Sometime the “Journal Entry” is on the back side of the “traffic” citation(s). If the conviction and/or sentencing information is not on the back side of the traffic citation, the court may have created a separate 8 ½ x 11 sheet of paper called “Journal Entry” or “Judgment”.

There can sometimes be two (2) separate Journal Entries: the 1st is created on the date of “conviction” and the 2nd is created on the date of “sentencing” – these two journal entries can be a week or so apart.

Municipal Courts typically DO NOT create a “Journal Entry” instead they depend upon a computer screen print that they certify/date (example: Party Detail Summary; Case Summary etc.); this computer screen print usually contains the court case number, name of the offense(s), conviction date, sentencing date and whether the fines/fees/costs/restitution has been paid or are being paid.

If you have a misdemeanor/felony conviction in Kansas, the court documents will contain the abbreviation **K.S.A.** (Kansas Statute Annotated) followed by the statute number that was violated (example K.S.A. 21-3512).

Kansas criminal convictions usually contain “CR” somewhere in the court case number (example: 99CR1234 or CR99-1234). If the misdemeanor conviction occurred in a “traffic” court, the court case number may contain “TR” in place of the “CR”.

If the conviction occurred in Missouri, the abbreviation RsMO (Revised statutes/Missouri) will appear in the court documents.

If the conviction was in Oklahoma, a case number on the court documents such as **CM-1234** indicates a **misdemeanor** and a case number such as **CF-1234** indicates a **felony**.

Document Requests from KSBN Legal Department Due To Criminal Background Check:

If an applicant doesn’t report any conviction/disciplinary action on their nursing application, but **something** shows up on the criminal background check that is questionable and/or unresolved, a case is opened to investigate the matter. The city/county/federal court clerks are responsible for entering the “outcome” of all arrests into a central criminal databank. Sometimes that task doesn’t get done(for a variety of reasons) so it now becomes the applicant’s task to provide KSBN with a “paper trail” regarding the “outcome” of the misdemeanor/felony arrest. The applicant is notified, in writing, per KSBN investigator regarding documents and/or information required/requested of them.

Expungement of Conviction:

If a conviction has been expunged prior to the date of submission of the nursing application, then the “conviction” is really no long a “conviction” and NOT reported as a conviction. A conviction is NOT automatically expunged by the court after a certain time period:

- a person must hire an attorney (for a fee)
- the attorney then files a Petition for Expungement with the court
- the court (Judge) then must grant the petition

- if the petition is granted, a court document called “Order of Expungement” is usually created and maintained by the court office

If a nursing applicant submits conviction court documents with the initial application for licensure, then later has the conviction(s) expunged, the applicant is **required** to provide KSBN with a **certified/dated** copy of the Order of Expungement for that conviction; the Expungement court document would be maintained in the applicant’s applicable KSBN case file.

Application Question Regarding Disciplinary Action:

Licensure question: “**has any license, certification or registration (nursing or other) ever been denied, revoked, suspended, limited or disciplinary action taken by a licensing authority of any state, agency of the US government, territory of the US or country?”**

The above question regarding disciplinary action is on ALL KSBN nursing applications (initial, renewal, reinstatement and endorsement). This question includes but, is not limited to disciplinary action against ALL licenses, certification, and/or registration as well as disciplinary action by a governmental agency.

Some examples are, but NOT all inclusive (there may be others):

- Driver’s license (see explanation following)
- Fishing license
- Hunting license
- Day care license (see explanation following)
- Nursing home administrator’s license
- Nursing license in Kansas or another state
- CNA/CMA/HHA certification (see explanation following)
- EMT certification
- School teach certification (see explanation below)
- “Dishonorable discharge” and/or “other than honorable discharge” from any branch of the military (see explanation following)
- “Disciplinary sanction” from any branch of the military (see explanation following)
- Article 15 – applicant must obtain documents from the U.S. military and provide an explanatory letter (written by the applicant)
- “deportable alien”/or issues involving U.S. Visa/green card – the applicant must obtain documents from U.S. Immigration and provide explanatory letter (written by the applicant)

Driver’s license:

If the applicant has had a **driver’s license** suspension, restriction, revocation, denial and/or cancellation for **any** reason, it is reportable to KSBN.

- Many times, a driver’s licenses is suspended for a month when a DUI has occurred, regardless of whether the DUI results in a diversion of conviction
- The driver’s license is then often restricted for the next 333 days (to/from work, home, school and for medical emergencies)
- A driver’s license can be restricted in association with a pattern of DUIs (i.e. ignition interlock) and/or with the 1st DUI in association with state law requirements
- A driver’s license can be suspended for a short period of time when you are convicted of minor in possession/consumption of alcohol

- A driver's license can be suspended due to nonpayment of a traffic citation (example: failure to pay speeding and/or parking tickets)
- A driver's license can be suspended due to no proof of vehicle insurance, expired tag and driving on an (already) suspended driver's license (with or without a court-diversion)
- A driver's license can be cancelled when you pay for your driver's license renewal with a worthless check
- When someone is determined to be a "habitual violator" due to excessive DMV "points" and/or type of offenses/convictions, their driver's license is usually revoked for three (3) years

It is possible to have your driver's license suspended and/or restricted in association with a misdemeanor and/or felony offense, regardless of whether you received a diversion or you were convicted of the offense(s).

The Kansas Department of Revenue (who governs the DMV) is the "keeper" of your Kansas driving record. The **Kansas** driving record shows convictions, suspensions, restrictions, revocations, denials and cancellations (a legend is provided through the Kansas Department of Revenue web site that will enable the user to decipher the codes on the driving record).

If disciplinary action has been taken against your (Kansas) driver's license within the past three (3) years, you are **required** to provide a copy of your current **Driving Record**. A copy of your Driving Record can be obtained from the DMV for a small fee.

If disciplinary action has been taken against you (Kansas) driver's license more than three (3) years ago, you are **required** to provide a copy of your **Driver's License Folder**, which can be obtained from the DMV for a small fee and is more complete than your driving record. Call DMV first to see if anything in their folder as DMV has not always been consistent with record keeping. If no Drivers License folder, then applicant includes what **they** know about their disciplinary action in their explanatory letter.

If the disciplinary action on your driver's license occurred in **other states**, the applicant shall call the agency for that state which is responsible for maintaining the driving record and any/all written notices. The applicant shall inquire how long driver's license information stays on their record, then the applicant can decide which document(s) would be appropriate for the KSBN application process.

CNA/CMA/HHA certification:

If the applicant's name has appeared on the **Kansas Department of Health and Environment (KDHE) abuse/neglect/exploitation registry** for CNA/CMA/HHA certification, the applicant is required to report this to KSBN. A **certified/dated** copy of the applicant's actual KDHE disciplinary action document must be provided to KSBN (with an explanatory letter from the applicant).

Day Care license:

If the applicant has had disciplinary action taken against a **day care license**, the applicant is required to provide **certified/dated** copies of the disciplinary documents, usually obtained from KDHE and/or SRS (with an explanatory letter from the applicant).

"Dishonorably discharged", "Other than honorable discharge", "Disciplinary Sanction", "Article 15"

If the applicant has been "dishonorably discharged", received an "other than honorable discharge", received a "disciplinary sanction" and/or an Article 15 **from any branch of the military**, the applicant must provide **certified/dated** copies of the appropriate documents from that military branch regarding the disciplinary action (with an explanatory letter from the applicant). A person can be dishonorably discharged etc. in association with misdemeanor and/or felony crimes.

School Teacher's certificate:

If the applicant has been disciplined by a **Board of Education regarding a school teacher's certificate**, the applicant must provide **certified/dated** copies of the appropriate documents indicating that disciplinary action (with an explanatory letter from the applicant). The official documents can usually be obtained from the Board of Education where the disciplinary action occurred.

Explanatory Letter for Any Disciplinary Action and/or Conviction:

The explanatory letter should be short and to the point!! Remember: who, what, when, where, why and how!

- Circumstances leading up to the conviction and/or disciplinary action
- Date of the conviction and/or disciplinary action
- Actual name of the conviction and/or disciplinary action
- Current status of the conviction and/or disciplinary action

When there is a driver's license suspension/restriction related to a court-diversion (such as DUI) and the court-diversion has been successfully completed prior to the date of submission of the nursing application, that court-diversion will be mentioned in the applicant's explanatory letter only as a reference point as to why the driver's license was suspended/restricted etc.

Does the Number and/or type of Convictions Determine Licensure

Please see K.S.A. 65-1120 (a) (2) of the Kansas Nurse Practice Act.

Felony Crimes Against Persons are an automatic bar to Kansas nursing licensure as set by the Kansas legislature. It would require a LAW (statute) change by the Kansas legislature to allow licensure.

Read the K.S.A. number in the Kansas court document called "Journal Entry" as this K.S.A. number should tell you if the applicant was convicted of a felony crime against a person.

If the felony occurred in another state, the language of the statute from the other state is compared to the Kansas statute language. When in doubt, the applicant is encouraged to call the KSBN legal department for assistance in determining whether the crime was a person or non-person felony.

Other felony convictions and all misdemeanor convictions are considered by the KSBN's Investigative Committee on a case-by-case basis at the time of application for licensure. When making a decision regarding licensure, the Investigative Committee (chairperson) takes into consideration:

- The TYPES(s) of convictions; how often the convictions occurred; how long ago they occurred; rehabilitation (court-ordered and/or lifestyle change)
 - For example: a string of DUI convictions over the course of a short period of time could cause the Investigative Committee concern and may result in a referral to Kansas Nurses Assistance Program (KNAP) for a chemical dependency evaluation; the results of that evaluation would determine licensure and whether any limitations would need to be placed on that license (once licensed); limitations could include: no home health/private duty/staffing agency work, employer quarterly reports and/or no controlled substance access
 - Another example: the same could apply for multiple drug convictions
 - Another example: multiple domestic battery, disorderly conduct/brawling convictions over a short period of time could cause the Investigative Committee concern which may result in a KNAP referral for a mental health evaluation; licensure limitations could include prohibition from

settings where the licensee is along and/or prohibition from certain patient population types (Alzheimer's, pediatrics, etc).

- If the convictions were long ago and no/little current concern exists, the Investigative Committee may approve the application, but the case file information would remain available to the legal department for future reference (i.e. pattern of behavior).

Investigative Committee Decision Letter:

Since the Investigative Committee only meets four (4) times per year (during "Board Week"), the Committee chairperson is contacted once weekly (per telephone) in between "Board Week" regarding new graduate, reinstatement and endorsement applicants who have a history of convictions/disciplinary actions. The Committee chairperson usually makes her/his decision regarding licensure/limitations per that telephone contact. However, in some instances, the Committee chairperson chooses to pass the investigative case/application on to the next FULL Investigative Committee for review/decision. Once the "decision" has been made by the Committee chairperson, all efforts are made to mail a "decision" letter to the applicant in a timely manner (usually within a day or two). If the Committee chairperson's decision was to pass the case/application to the next FULL committee for review/decision, the applicant is notified of that fact (in writing) in a timely manner. If an application is denied by the Investigative Committee, a decision letter is mailed to the applicant in a timely manner, then the case/application is forwarded to the KSBN's Disciplinary Counsel for further disposition and written notification to the applicant; that decision letter contains the telephone number of the Disciplinary Counsel so the applicant can call if they have any questions.

Reporting of Convictions and/or Disciplinary Action per FUTURE Nursing Applications:

The above "decision" letter contains a KSBN Case number that was assigned to that applicant's case. That KSBN Case number can be used in the explanatory blank on future paper nursing applications submitted to KSBN (convictions and/or disciplinary actions already reported to KSBN). If the licensee renews their Kansas nursing license on-line in the future, they are still **required** to report their prior misdemeanor/felony convictions and/or disciplinary actions per that on-line application. There is no "free space" in which to record a KSBN case #, but there are "main" questions and "sub" questions for the applicant to answer. It would be wise for the applicant/licensee to retain any/all correspondence they receive from KSBN so they can reference it in the future if needed. When the applicant becomes licensed and it is now time for their first renewal, referring to the (above) "decision" letter becomes very helpful. If the applicant/licensee has not kept the letter, they can always call the KSBN legal department for assistance.

What Happens to the (Licensure) Application after Approval:

The approved application is immediately forwarded to the licensing department for further processing. Per KSBN office policy, the licensing clerk has three (3) business days in which to license those (approved) applicants whose applications have been returned to the clerk from the KSBN legal department. If the applicant (otherwise) qualifies for licensure, as a courtesy, the licensing clerk usually calls the applicant when licensed. This applies only to approved applications returned from the KSBN legal department. The license is mailed to the applicant shortly thereafter.

Licensure Verification:

Licensure verification can be accomplished per KSBN's website. Some employers will accept this as "proof" of licensure while other employers want to wait to see the ACTUAL license card, which is the employer's prerogative. The licensure verification database is updated **hourly**, so the employer can check back throughout the day to see if their employee is "licensed" yet or not. If the applicant is licensed via this KSBN database, but they don't yet have their license card in hand, they will NOT be cited for unlicensed practice.