

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 4, 2007  
Room 514-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Karin Brownlee  
Senator Chris Steineger  
Representative Arlen Siegfried  
Representative Josh Svaty  
Representative Mark Treaster

#### Members Absent

Senator Donald Betts  
Senator Ralph Ostmeyer  
Representative Lance Kinzer  
Representative Jan Pauls  
Representative Sharon Schwartz

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Martha Dorsey, Kansas Legislative Research Department  
Kenneth Wilke, Revisor of Statutes Office  
Judy Glasgow, Secretary

#### Others Present

Mary Lesperance, Kansas Health Policy Authority  
Brenda Kuder, Kansas Health Policy Authority  
Reid Stacey, Kansas Health Policy Authority  
Philip Hurley, Patrick J. Hurley and Company  
Ron Seeber, Hein Law Firm  
Whitney Damron, Kansas Automobile Dealers Association  
Susan Somers, Kansas Board of Accountancy  
Mark Boranyak, Capitol Strategies  
Leslie Kaufman, Kansas Co-op Council

Guy Meyer, Kansas Department of Agriculture  
Angela Stallbaumer, Kansas Department of Agriculture  
Brett W. Berry, Kansas Department of Agriculture  
Melissa Wangemann, Secretary of State's Office  
Rod Bieker, Kansas Department Of Education  
Rocky Nichols, Disability Rights Center of Kansas  
Richard Cram, Kansas Department of Revenue

## Morning Session

The meeting was called to order by Chairperson Vicki Schmidt at 10:15 a.m. The Chairperson requested action on the minutes of the previous meeting, November 20, 2006. *Representative Holmes moved to approve the minutes as presented; Representative Svaty seconded the motion. The motion carried.*

Chairperson Schmidt recognized Mary Lesperance, Pharmacy Program Manager, to speak to the proposed rule and regulation noticed for hearing by the Kansas Health Policy Authority. KAR 129-5-1, prior authorization.

Ms. Lesperance stated that the following drugs will require prior authorization: intranasal corticosteroids: flunisolide; inhaled corticosteroids: flunisolide; proton pump inhibitors: omeprazole NaHCO<sub>3</sub>, (prior authorization required only for acute dosing over 60 days); hypnotics: zolpidem and zolpidem CR; biphosphonates: risedronate and risedronate-calcium. There were no questions for Mary Lesperance. Chairperson Schmidt thanked her for her presentation before the Committee.

Susan Somers, Executive Director, was introduced by Chairperson Schmidt, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Accountancy. KAR 74-4-1a, experience requirements for attest services; KAR 74-5-2, definitions; KAR 74-5-101, independence; KAR 74-5-105, revoked; KAR 74-5-202, compliance with standards; KAR 74-5-403, advertising; KAR 74-5-408, change of address; and KAR 74-11-6, definitions.

Ms. Somers stated that changes in KAR 74-5-2, 74-5-101, 74-5-202, and 74-11-6 are proposed in order to update and add materials adopted by reference. KAR 74-5-403 is amended to restrict the use of the names of non-CPAs and entities not registered with the Board in advertisements or publications specifically used for certified public accountants.

Staff noted that in KAR 74-5-202, page 1, paragraph 1, fourth line, the reference to KAR 74-4-1a needs to be removed since this regulation has been modified. Ms. Somers stated that this would be taken care of before the public hearing. She responded to questions of a general nature from Committee members.

Ms. Somers notified Committee members that the advance placement credit issue was being reviewed by the Board of Accountancy and that an amendment to the statute and regulation was being prepared. Chairperson Schmidt thanked Ms. Somers for her presentation before the Committee.

Chairperson Schmidt recognized Rod Bieker, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Education. KAR 91-40-75, definitions; KAR 91-40-76, seclusion rooms; use and restrictions; KAR 91-40-77, seclusion rooms;

size and characteristics; KAR 91-40-78, physical restraint and mechanical restraint; use and restrictions; and KAR 91-40-79, seclusion rooms and physical restraint; reports and notification.

Mr. Bieker stated that the noticed rules and regulations were the result of hearings on a detailed legislative bill to restrict the use of these activities in schools. The provisions of these regulations were developed by representatives of educational organizations and schools, and student advocacy groups.

Mr. Bieker noted that no website address was given to request copies of the proposed rules and regulations and no e-mail address included for interested parties to provide comments to the agency. He stated that these would be included in future notices. Mr. Bieker noted that the State Board has not decided whether to adopt these as guidelines or regulations, but there is need to go forward with the regulations if it does decide to make them mandatory. In response to a question from the Committee, Mr. Bieker stated that these proposed rules and regulations covering the use of seclusion rooms are only for use with children with disabilities. The Committee questioned why these same requirements did not cover regular education students. A Committee member noted in KAR 91-40-77, paragraph 1, concerning the room size being "at least 36 square feet," that there should a minimum wall dimension given to avoid a room being utilized that is 2 X 18 feet. A concern was raised about the economic impact statement for KAR 91-40-77 and there not being sufficient funds allocated for schools to cover the cost to provide these rooms. Mr. Bieker stated that these rules and regulations would not be effective until 2008 and not all schools would be involved, giving schools a chance to assess their facilities and make room adjustments with minimal costs. He noted that training presently is being provided but these rules and regulations would require some additional personnel being trained and additional training courses offered. In response to a question from staff, Mr. Bieker stated that the training guidelines were being developed. The Committee suggested that several training options be listed giving schools a guideline for their training. Senator Steineger requested that it be recorded that he was not in favor of moving the proposed rules and regulations out of Committee. Chairperson Schmidt thanked Mr. Bieker for his presentation before the Committee.

Chairperson Schmidt recognized Rocky Nichols, Executive Director, Disability Rights Center of Kansas, to speak in favor of the proposed rules and regulations noticed by the Kansas State Education Department (Attachment 1). Mr. Nichols stated that the Department had worked with the Disability Rights Center and had addressed many of the concerns that it had raised. There were no questions for Mr. Nichols. The Chairperson thanked him for his appearance before the Committee.

Mr. Richard Cram was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Revenue. KAR 92-19-16a, gifts, premiums, prizes, coupons, and rebates; KAR 91-19-16b, manufacturers' rebates for motor vehicles; KAR 92-19-55a, revoked; KAR 92-19-81, abatement of final tax liabilities; KAR 92-21-7, revoked; KAR 92-21-8, revoked; KAR 92-21-10, revoked; KAR 92-21-14, place of business; sales from vehicle; KAR 92-21-16, revoked; and KAR 92-21-17, revoked.

Mr. Cram stated KAR 92-19-16a and KAR 91-19-16b, are the result of SB 404 that was passed in the 2006 Legislative Session.

The Committee noted that no website was included in the notice of the proposed rules and regulations. In KAR 92-19-16a, the Committee suggested that the last sentence needs to be clarified. Committee members requested that the Department do an audit which would show the amount generated from KAR 92-19-16a and the results be sent to the Committee through staff. Committee members were concerned that perhaps these were not being uniformly enforced and that the Department may be collecting double sales tax as a result of these rules and regulations and they need to be clarified. The Committee requested that a clarification be made on the Economic Impact

Statement indicating that it was for a five-year period. Mr. Cram responded to several questions of a general nature from the Committee. Chairperson Schmidt thanked Mr. Cram for his appearance before the Committee.

Chairperson Schmidt recognized Brett Berry to address the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-13-62, amount of proposed civil penalty; KAR 4-13-63, criteria to determine dollar amount of proposed civil penalty; and KAR 4-19-1, registration fee.

Mr. Berry stated that the penalty range was just a starting point and it could be amended or changed. Committee members noted that no e-mail address was listed in the notice for interested persons to use to provide the Department with comments about the proposed rules and regulations. Committee members had questions concerning KAR 4-13-63, page 2, (8)(c) and the percentages that were included in the paragraph and recommended that they be removed, since there was already a minimum and maximum penalty amount. Staff noted in KAR 4-13-63, page 1, paragraph (1), at the bottom of the page the reference to "subsection (a)" needs to be changed since subsection (a) has been removed. In response to questions on KAR 4-19-1, Mr. Berry stated that the statute allowed the fee to be increased to \$100. Chairperson Schmidt thanked Mr. Berry for appearing before the Committee.

Chairperson Schmidt stated that written testimony concerning the proposed rules and regulations by the Department of Agriculture had been received from the Kansas Agribusiness Retailers Association (Attachment 2), and from the Kansas Cooperative Council (Attachment 3). Copies of the written testimony were distributed to Committee members.

Chairperson Schmidt recessed the meeting until 1:30 P.M.

### **Afternoon Session**

Chairperson Vicki Schmidt reconvened the meeting and introduced Melissa Wangemann, Legal Counsel, to address the proposed rules and regulations noticed for hearing by the Office of the Secretary of State. KAR 7-44-1, definitions; KAR 7-44-2; enrolling agent registration; KAR 7-44-3; enrolling assistant training; KAR 7-44-4, information released to law enforcement agencies; KAR 7-44-5, forwardable mail; KAR 7-44-6, renewal of certification; and KAR 7-44-7, voting process.

Ms. Wangemann stated that these proposed rules and regulations were the result of the Safe at Home (SaH) Program enacted by the 2006 Legislature. The program provides: (1) a substitute address to be used by participants when creating or updating a public record with state and local agencies; and (2) a mail forwarding service. Enrolling agents are designated by the Secretary of State throughout Kansas. Costs for the first year are primarily for startup costs of computer hardware, software, office reconfiguration and publication and distribution costs for educational materials. Ongoing costs are primarily the SaH director's salary and mailing costs.

The Committee noted in KAR 7-44-5, that the reference to "commercial packages" should be more clearly defined. In KAR 7-44-6, line 4, the word "participant" should be inserted before the term "program certification."

Ms. Wangemann then addressed the proposed rule and regulation noticed for hearing by the Office of the Secretary of State. KAR 7-17-22, search logic.

Ms. Wangemann stated that this regulation outlines the search criteria used to conduct official searches of financing statements in the Uniform Commercial Code database. The Committee had no questions for her. Chairperson Schmidt thanked Ms. Wangemann for appearing before the Committee.

Chairperson Schmidt stated that the next Committee meeting would be held during the 2007 Legislative Session and members would be notified by the Kansas Legislative Research staff. The meeting was adjourned at 2:15 p.m.

## **Committee Comments on Proposed Rules and Regulations**

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning gifts, premiums, prizes, coupons, and rebates; manufacturers' rebates for motor vehicles; abatement of final tax liabilities; place of business, sales from vehicle; and revocations and had the following comments.

KAR 92-19-16a. The Committee is concerned about the issue of the potential of double taxation with respect to donated items. The Committee believes there is not clarity in this issue, either for the retailer or for the organization to which the items may be donated. Please respond to legislative staff regarding the agency's position on this issue. Please include information regarding the amount of agency time pursuing payment of the sales tax on donated items.

Economic Impact Statement. Please clarify that the economic impact is for a five-year period and not for a one-year period.

Request. Please provide in your notice a website address where the public may access the proposed regulations.

**Kansas Board of Accountancy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning experience requirement for attest services; definitions; independence; compliance with standards; advertising; change of address; definitions; and revocation and had the following comment.

KAR 74-5-202. The Committee suggests the removal of the reference to KAR 74-4-1a in this regulation, since the proposed amendments to KAR 74-4-1a no longer contain adoptions by reference.

**Kansas State Department of Education.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; seclusion rooms, use and restrictions; seclusion rooms, size and characteristics; physical restraint and mechanical restraint, use and restrictions; and seclusion rooms and physical restraint, reports and notification and had the following comments.

KAR 91-40-77. The Committee suggests that the specific guideline for the square footage for a seclusion room contain some more specific criteria so that the room could not have extreme dimensions.

KAR 91-40-78. In subsection (c)(2) regarding the guidelines for training, the Committee suggests that the agency provide in the regulation some specific options for the type of training to be provided to school employees.

Request. The Committee requests that the agency include in its notice of publication a website, where the public may access the proposed regulations. In addition, the

Committee requests that the public be provided the opportunity to comment on the proposed regulations through e-mail.

Comment. The Committee suggests that the Department consider developing a similar set of regulations for regular education students.

**Kansas Secretary of State.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning search logic; definitions; enrolling agent registration; enrolling assistant training; information released to law enforcement agencies; forwardable mail; renewal of certification; and voting process and had the following comment.

KAR 7-44-6. Please review the language at the end of the sentence to determine if the word "participant's" needs to be placed before the phrase "program certification."

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount of proposed civil penalty; criteria to determine dollar amount of proposed civil penalty; and registration fee and had the following comments.

KAR 4-13-62. In subsection (c), the Committee is concerned with the use of the word "shall," because if someone has three violations, then the agency would be required to levy the maximum amount, leaving no discretion to the agency to consider circumstances of the case. The Committee suggests the use of the word "may" rather than "shall." In addition, the agency should give consideration to the use of the word "may" throughout this regulation, which would give the agency the maximum amount of flexibility. Finally, in subsection (c), the Committee believes the phrase "substantially similar violation" is unclear and that language should be included to clarify what is meant.

KAR 4-13-63. In subsection (c)(1), a reference is made to pesticide misuse in subsection (a). The Committee believes that there are no references to pesticide misuse in subsection (a) and that the language needs to be clarified. In addition, the Committee believes that the penalty ranges only add confusion to the decision regarding the appropriate penalty to be imposed. The Committee suggests their removal, which again will give the agency added flexibility.

KAR 4-19-1. The Committee believes that there needs to be an expansion of the Economic Impact Statement to clarify how an increase in the fee can result in no economic impact.

Request. The Committee requests that the agency include in its notice of publication a website, where the public may access the proposed regulations. In addition, the Committee requests that the public be provided the opportunity to comment on the proposed regulations through e-mail.

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization and had no comments.

Prepared by Judy Glasgow  
Edited by Raney Gilliland and  
Melissa Calderwood

Approved by Committee on:

February 9, 2007

(Date)