

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 20, 2006  
Room 519-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative Jan Pauls  
Representative Sharon Schwartz  
Representative Arlen Siegfried  
Representative Josh Svaty  
Representative Mark Treaster

#### Members Absent

Senator Donald Betts  
Representative Lance Kinzer

#### Staff Present

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

#### Others Present

Kelly Benadut, PWSW  
Robin Kempf, Kansas Board of Regents  
Mark Boranyak, Capitol Strategies  
Matt Tomc, Kansas Corporation Commission  
Leo Haynos, Kansas Corporation Commission  
Kirk Hoeffner, Kansas Department of Health and Environment  
Mike Cochran, Kansas Department of Health and Environment  
Sandy McAdam, Kansas Department of Health and Environment

George Barbee, Kansas Board of Technical Professions  
Betty Rose, Kansas Board of Technical Professions  
Reid Stacey, Kansas Health Policy Authority  
Nialson Lee, Kansas Health Policy Authority  
Larry Buening, Board of Healing Arts  
Chris Tymeson, Kansas Department of Wildlife and Parks  
Pat Michaelis, Kansas State Historical Society  
Julie Ehler, Kansas Department of Agriculture  
Steve Moris, Kansas Department of Agriculture  
Irma Lightner-Reimer, Kansas Department of Agriculture  
Randall J. Forbes, Kansas Pharmacy Board  
Debra Billingsley, Kansas Pharmacy Board  
Max Heidrick, Kansas Pharmacy Board

### **Morning Session**

Senator Vicki Schmidt, Chairperson, called the meeting to order at 9:10 a.m. on November 20, 2006.

Chairperson Schmidt recognized Robin Kempf, Associate General Counsel, to speak to the proposed rules and regulations notice for hearing by the Kansas Board of Regents. KAR 88-29-1, definitions; KAR 88-29-2, scope; KAR 88-29-3, categories of admission; KAR 88-29-4, qualifications required for the admission of an applicant with 24 or more transferable credit hours; KAR 88-29-5, qualifications required for the admission of a Kansas resident who is under the age of 21; KAR 88-29-6, qualifications required for the admission of a Kansas resident who is 21 or older; KAR 88-29-7, qualifications required for the admission of a nonresident; KAR 88-29-8, the ten percent exception window; KAR 88-29-9, admission policies for state educational institutions; KAR 88-29-10, methods for state educational institutions to use when evaluating qualifications for admission; KAR 88-29-11, requirements for the qualified admission precollege curriculum; KAR 88-29-12, establishment of a qualified admission precollege curriculum by an accredited high school in Kansas; KAR 88-29-13, content requirements for qualified admission computer technology courses; KAR 88-29-14, content requirements for qualified admission English courses; KAR 88-29-15, content requirements for qualified admission mathematics courses; KAR 88-29-16, content requirements for qualified admission natural science courses; KAR 88-29-17, content requirements for qualified admission social science courses; KAR 88-29-18, functional equivalents of the qualified admission precollege curriculum; residents; KAR 88-29-19, and functional equivalents of the qualified admission precollege curriculum; nonresidents.

Ms. Kempf give a brief history concerning the need for the rules and regulations noticed for hearing. She stated that these are now policies of the Kansas Board of Regents and state universities are currently following these but each university has a slightly different interpretation of these policies. With the adoption of these rules and regulations, there will be universal guidelines to follow. She stated that the date proposed for implementation may be need to be changed in order for the universities to be able to comply. Ms. Kempf responded to questions from Committee members concerning KAR 88-29-8, and the 10 percent exception window and how the selections are made. Questions also were raised regarding whether these 10 percent exceptions were designated by categories and also the retention and graduation rate of this group. She stated that she would get a copy of the written report and provide it to Legislative Research.

Staff noted that throughout the packet the use of “and” and “or,” when listing criteria requirements, needed to be reviewed. Staff also indicated that the numbering of paragraphs was inconsistent and should be reviewed. Ms. Kempf stated that she would have these corrected before the public hearing. The Committee noted that the website should be included in the notice. The Chairperson thanked Ms. Kempf for her appearance before the Committee.

Chairperson Schmidt asked for action on the October 3, minutes of the Committee. *Representative Svaty moved that the minutes be approved as presented; Senator Steineger seconded the motion. Motion carried.*

Leo Haynos was recognized by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission. KAR 82-14-1, definitions; KAR 82-14-2, excavator requirements; KAR 82-14-3, operator requirements; KAR 82-14-4, notification center requirements; and KAR 82-14-5, violation of act; enforcement procedures.

Mr. Haynos stated that the proposed rules and regulations were the result of SB 490 passed in the 2002 Legislative Session and SB 464 passed during the 2006 Legislative Session. Mr. Haynos answered questions and was asked that the Commission include a statement to allow comments by e-mail. Mr. Haynos was thanked by the Chairperson for appearing before the Committee.

Chairperson Schmidt introduced Bill Waters, Division of Property Valuation, to address the proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 93-7-1, definitions; KAR 93-7-2, transfer of title presumption; KAR 93-7-3, possession and use presumption; KAR 93-8-1, definitions; KAR 93-8-2, transfer of title presumption; and KAR 93-8-3, possession and use presumption.

In KAR 93-7-2, a Committee member questioned the term “title” and whether or not this was referring to a paper title or some other type of certification. It was suggested that a definition of the term “title” might be helpful. The Committee noted that the e-mail address and website should be included in the notice along with the notation that e-mail comments will be accepted.

Staff noted that in KAR 93-7-3 and KAR 93-8-3, the date of July 30, 2006 should be changed to June 30, 2006. After responding to questions from the Committee, Mr. Waters was thanked for his appearance before the Committee.

Betty Rose, Executive Director, was recognized by Chairperson Schmidt, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions (Attachment 1). KAR 66-6-4, professional conduct; KAR 66-8-8, examination standards acceptable to the board for reciprocity applicants; KAR 66-10-9, engineering experience of a character that is satisfactory to the board; KAR 66-10-10a, surveying experience required of an applicant who is a graduate of an approved land surveying curriculum; and KAR 66-11-2, admission requirements for fundamentals of engineering examination.

Regarding KAR 66-6-4, a Committee member suggested that the term “licensee’s judgment is overruled” needs to have a more descriptive term to clarify the intention of the statement. In KAR 66-11-2, (b) the statement should be added “should show evidence of meeting” prior to “one of the following requirements.” The Committee noted that the agency website should be included in the notice of hearing and that the statement that e-mail comments will be accepted. After responding to all questions from the Committee, Ms. Rose was thanked for her presentation before the Committee.

Chairperson Schmidt recognized Mike Cochran, Chief of the Geology Section, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachments 2 and 3). KAR 28-46-2a, definitions; KAR 28-46-25, prohibition of unauthorized injection; KAR 28-46-26a, prohibited class V wells; KAR 28-46-34a, closure of class V motor vehicle waste disposal wells (MVWDW) and large capacity cesspools; KAR 28-46-38, inventory and assessment of class V injection wells; and revocations.

Mr. Cochran stated that these proposed rules and regulations would make the Kansas Department Health and Environment Underground Injection Control (UIC) regulations consistent with the U.S. Environmental Protection Agency (EPA) UIC regulations. After responding to general questions from Committee members, Mr. Cochran was thanked for appearing before the Committee.

Nialson Lee was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 30-5-88, revoked; and KAR 129-5-88, scope of physician services.

Mr. Lee stated that there was a correction on the Economic Impact Statement. He stated that the cost for each transplant would be \$56,000. A Committee member ask how many persons were on the list for a transplant and Mr. Lee stated that there were four at this time. The pancreas transplants are done in conjunction with kidney transplants. He stated that these transplants are done for persons who are diabetic to provide freedom from insulin dependence and have a very high success rate. After answering all questions from the Committee, Mr. Lee was thanked for his presentation before the Committee.

Chairperson Schmidt recognized Larry Buening, Executive Director, to address the proposed rule and regulation noticed for hearing by the State Board of Healing Arts. KAR 100-28a-10, supervision and direction; adequacy.

Mr. Buening explained the changes would require the physician to determine whether or not the physician assistant has performed patient services with reasonable skill and safety. He responded to some general questions raised by Committee members. A Committee member asked whether e-mail comments would be accepted by the Board and noted that if it did, then the statement should be included in the notice. Mr. Buening was thanked for his appearance before the Committee.

Mack Smith, Executive Secretary, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State Board of Mortuary Arts. KAR 63-1-1, definitions; and KAR 63-5-1, definition of unprofessional or dishonorable conduct.

Mr. Smith stated that these proposed rules and regulations were the result of the Board review of all of its rules and regulations. A Committee member noted that in KAR 63-1-1, page 2, (3) the last word should be changed to "or." Staff noted that the history section should be updated and that the authorization authority should include KSA 74-1704. After responding to all questions, Mr. Smith was thanked for his presentation before the Committee.

The Chairperson recessed the meeting until 1:30 p.m

### **Afternoon Session**

The Chairperson reconvened the meeting at 1:30 p.m. and called on Chris Tymeson, Chief Counsel, to address the proposed rule and regulation noticed for hearing by the Kansas Wildlife and

Parks and Commission. KAR 115-18-10, importation and possession of certain wildlife; prohibition, permit, requirement, and restrictions.

Mr. Tymeson stated that KAR 115-18-10 was being amended to add the category of white perch as a prohibited species. Mr. Tymeson stated that the agency would include the e-mail address and that they would accept e-mail comments on proposed rules and regulations. There were no questions from the Committee and Chairperson Schmidt thanked Mr. Tymeson for his appearance before the Committee.

Julie Ehler was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-15-9, fees for the certification of live plants, plants and plant products, bees, beekeeping equipment, and regulated articles; KAR 4-11-2, definitions; KAR 4-11-3, egg containers; requirements for marking and labeling; and KAR 4-11-15, license fee.

Ms. Ehler reviewed the rules and regulations for the Committee. Ms. Ehler stated that KAR 4-11-15 currently is being enforced under a temporary rule and regulation. She responded to questions of a general nature from the Committee. The Committee noted that the e-mail and website address should be included in the notice along with the statement that e-mail comments would be accepted by the agency. The Chairperson thanked Ms. Ehler for appearing before the Committee.

Chairperson Schmidt introduced Patricia Michaelis, Director, Library and Archives, to address the proposed rule and regulation noticed for by the Kansas State Historical Society (Attachment 4). KAR 118-4-4, fees.

Ms. Michaelis explained that the fee increase was to cover expenses from a one-half time position to a full-time position which is needed at this time. In response to a question from a Committee member, Ms. Michaelis stated that the increased fees would generate approximately \$19,800, of which \$16,500 would be available to the agency. The Committee noted that the e-mail address should be included in the notice and also the statement that e-mail comments would be accepted by the agency. Chairperson Schmidt thanked Ms. Michaelis for her presentation before the Committee.

Ken Wilke, Revisor of Statutes' Office, reviewed the bill draft that the Committee had requested concerning facilities for the treatment of alcoholism and intoxication (Attachment 5). After discussion, it was the consensus of the Committee that the bill be prefiled and introduced in the Senate.

Chairperson Schmidt called upon Randy Forbes to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-5-16, ratio of pharmacy technicians to pharmacists.

Mr. Forbes reviewed the changes in the rule and regulations before the Committee. The Committee noted that the e-mail address of the agency should be included in the notice and also information that indicates e-mail comments would be accepted by the agency. There were no questions concerning this regulation and Chairperson Schmidt thanked Mr. Forbes for his presentation before the Committee.

A copy of the letter was distributed to Committee members from Mr. Forbes concerning the proposed rules and regulations noticed for hearing concerning the proposed Cancer Drug Repository regulations reviewed at the October Committee meeting (Attachment 6). After discussion, Committee

members expressed concern that there is still a conflict with the Pharmacy Act on how the drugs can be dispensed and that additional legislation may be necessary to carry out the intent of the Legislature. A Committee member did call Mr. Forbes' attention to the form to be completed, "Cancer Drug Repository Program Donation, Transfer and Destruction Record," and noted that the explanation under the heading needs to be clarified as to what the form covers. Also, the large "A" in "As" above the signature-donor block should be changed to a small "a."

Deletria L. Nash, Staff Attorney, was recognized by the Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 7). KAR 40-4-29a, same; renewability of individual hospital, medical, or surgical expense policy; KAR 40-4-41, utilization review organizations; application; definitions; KAR 40-4-41c, utilization review organizations; written procedures; KAR 40-4-41d, utilization review organizations; appeal procedures; KAR 40-7-1, revoked; and KAR 40-7-24, agencies; agents; employees.

Staff noted in KAR 40-4-41c, page 2, reference is made to KSA 60-206 and later to KSA 60-206(a) and stated that the same reference should be used in both instances. Committee members also had questions on KAR 40-5-41d (a), regarding the stated 180 days to initiate the appeal process. The Committee recommended that the agency should reference the time period as 180 days, without additional qualifications. Ms. Nash stated that she would take this concern back to the Department. The Committee asked that the regulations be checked to see if 2006 H. Sub. for SB 522 had been taken into account with these changes. Staff noted that in KAR 40-7-24, the history section should be amended by adding KSA 40-241. A Committee member stated that the economic impact statements which included the statement that "the economic impact . . . is justified" should be changed to reflect a more accurate amount that is to be incurred. Ms. Nash stated that in the future this would be corrected. After responding to Committee members' questions, Chairperson Schmidt thanked Ms. Nash for appearing before the Committee.

The Committee discussed meetings held during the Legislative Session and it was suggested that meetings be held on a Friday afternoon instead of over the lunch periods.

The Chairperson announced that there would be no December meeting and that the next meeting would be on the first day of the Legislative Session, January 8, 2007, at 9:00 a.m.

The meeting was adjourned at 3:30 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 definitions; transfer of title presumption; possession and use presumption; definitions; transfer of title presumption; and possession and use presumption and had the following comments.

KAR 93-7-1. In subsection (b), consider including additional language which would make it clearer what is meant by the term, "fair and valuable consideration" and how this consideration is determined (*i.e.*, criteria). Please amend the same defined term in KAR 93-8-1, if determined appropriate.

KAR 93-7-2. Consider clarification of the term "title." Does the term mean a certificate of some type or does the term have a broader meaning? If the term has a broader meaning, then this regulation and KAR 93-8-2 should be clarified.

KAR 93-7-3 and KAR 93-8-3. It appears that in both of these regulations, the date of July 30, 2006 should actually be June 30, 2006.

Comment. Please include in your public notice your website address where the regulations may be found. In addition, your notice should include language which makes it clear that comments on the regulations may be made via e-mail prior to the date of your public hearing.

**Kansas Board of Pharmacy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning ratio of pharmacy technicians to pharmacists and had the following comment.

Comment. Please include in your notice of public hearing information which indicates that comments may be made via e-mail prior to the public hearing.

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning importation and possession of certain wildlife, prohibition, permit requirement, and restrictions and had the following comment.

The Committee wishes to thank the agency for the inclusion of both a website where rules and regulations can be found and also that it makes the public aware that comments on rules and regulations may be made via e-mail in your public notice for hearing.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervision and direction, adequacy, and had the following comment.

Comment. Please include in your notice of hearing language which makes it clear that comments on the regulations may be received by e-mail prior to the public hearing.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for the certification of live plants, plants and plant products, bees, bee-keeping equipment, and regulated articles; definitions; egg containers, requirements for marking and labeling; and license fee, and had the following comment.

Comment. Please include in your notice of hearing language which makes it clear that comments on the regulations may be received by e-mail prior to the public hearing.

**State Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; excavator requirements; operator requirements; notification center requirements; and violation of act, enforcement procedures, and had the following comment.

Comment. Please include in your notice of hearing language which makes it clear that comments on the regulations may be received by e-mail prior to the public hearing.

**Kansas State Board of Regents.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; scope; categories of admission; qualifications required for the admission of an applicant with 24 or more transferable credit hours; qualifications required for the admission of a Kansas resident who is under the age of 21; qualifications required for the admission of a Kansas resident who is 21 or older; qualifications required for the admission of a nonresident; the 10 percent exception window; admission policies for state educational institutions; methods for state educational institutions to use when evaluating qualifications for admission; requirements for the qualified admission pre-college curriculum; establishment of a qualified admission pre-college curriculum by an accredited high school in Kansas; content requirements for qualified admission computer technology courses; content requirements for qualified admission English courses; content requirements for qualified admission mathematics courses; content requirements for qualified admission natural science courses; content requirements for qualified admission social science courses; functional equivalents of the qualified admission pre-college curriculum, residents; and functional equivalents of the qualified admission pre-college curriculum, nonresidents, and had the following comments.

KAR 88-29-8. The Committee questions the application of the current “10 percent exception window” and students qualifying under this exception. Please provide the Committee with information regarding the criteria used to determine which students are qualifying under this exception and any available reports or data summaries available. The Committee would like to know the ratio, if data are available, of student athletes to non-athletes who qualify under the 10 percent rule. Also, when the total number of eligible students constitutes a much higher percentage, such as 20 percent, does a policy exist which contains criteria to determine which of the eligible students will be chosen under the 10 percent rule; *i.e.*, are the eligible students ultimately chosen for academic skills or athletic skills, or are other factors used?

KAR 88-29-9. The Committee is concerned about the apparent lack of uniformity in the interpretation of Kansas residency requirements and the variance of the interpretation of such policy from school to school. Please comment on the current residency policy or policies in place at the Regents’ institutions and the uniformity (or lack thereof) of interpretation of such residency policy.

Comment. The Committee noted a number of errors in both numbering and the use of “and” where the term “or” was appropriate throughout the proposed regulations. The Committee requests that the agency consult with the Department of Administration to correct these errors.

**Kansas State Board of Technical Professions.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning professional



conduct; examination standards acceptable to the board for reciprocity applicants; engineering experience of a character that is satisfactory to the board; surveying experience required of an applicant who is a graduate of an approved land surveying curriculum; and admission requirements for fundamentals of engineering examination, and had the following comments.

KAR 66-6-4. The Committee believes that the phrase “judgment is overruled” needs to be clarified. Is “overruled” the correct term? If so, overruled by whom?

KAR 66-11-2. The Committee believes that the beginning phrase of the subsection should require the applicant to provide documentation showing that the applicant meets one of the requirements in subsection (b).

Comment. Please include in your notice of public hearing information which indicates that comments may be made via e-mail prior to the public hearing.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; prohibition of unauthorized injection; prohibited class V wells; closure of class V motor vehicle waste disposal wells (MVWDW) and large-capacity cesspools; inventory and assessment of class V injection wells; and revocations, and had the following comment.

Comment. The Committee wishes to thank the agency for the inclusion of both a website where rules and regulations can be found and also that it makes the public aware that comments on rules and regulations may be made via e-mail in your notice for public hearing.

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of physician services and revocation and had the following comments.

Comment. The Committee wishes to thank the agency for the inclusion of both a website where rules and regulations can be found and also that it makes the public aware that comments on rules and regulations may be made via e-mail in your notice for public hearing.

Request. Please make the changes to the Economic Impact Statement discussed before the Committee.

**Kansas State Board of Mortuary Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions and definition of unprofessional or dishonorable conduct, and had the following comments.

KAR 63-1-1. The Committee believes that in the history section of this regulation reference should be made to KSA 74-1704 as an authorizing statute. In addition, the Committee believes that in subsection (i)(3) the word “and” should be “or.”

**Kansas State Historical Society.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees and had the following comments.

Comment. Please include in your notice to the public your website address where the regulations may be found. In addition, in your notice, please include language which makes it clear that comments on the regulations may be made via e-mail prior to the public hearing.

**Kansas Insurance Department.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning same, renewability of individual hospital, medical, or surgical expense policy; utilization review organizations, application, definitions; utilization review organizations, written procedures; utilization review organizations, appeal procedures; agencies, agents, employees; and revocation, and had the following comments.

KAR 40-4-41. The Committee believes that the Economic Impact Statement on this regulation is incomplete and needs to be more specific.

KAR 40-4-41c. In subsection (B), the two statutory citations should be identical.

KAR 40-4-41d. The 180-day time frame, excluding Saturdays and Sundays, as proposed by the regulation, would result in a very long period of time. Please review the actual time frame to determine whether it is the time frame that was intended.

KAR 40-7-24. Please reference KSA 40-241 as an authorizing and implementing statute in the history section of this regulation.

Question. Did the agency consider the impact of newly enacted legislation when developing these regulations? Were the reviewing agencies aware that new legislation (2006 House Sub. for SB 522) was enacted during the review period of these regulations?

Prepared by Judy Glasgow  
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

January 4, 2007

(date)