

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 p.m. on March 16, 2004 in Room 231-N of the Capitol.

All members were present except:
Senator Chris Steineger- absent

Committee staff present:
Ms. Emalene Correll, Legislative Research
Ms. Norm Furse, Revisor of Statutes
Mrs. Diana Lee, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:
Ms. Chris Collins, Director of Government Affairs, Kansas Medical Society
Ms. Kelli Benintendi, Associate Council, Kansas Board of Healing Arts
Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts

Others attending:
Please See Attached List.

Hearing on HB2813 - an act concerning health care records; relating to the abandonment thereof;

Upon calling the meeting to order, the Chair announced there would be two hearings, the first on HB2813

and asked Mr. Furse to review the bill. His highlights included:

- introduced in the House by the Committee on Judiciary and relates to health care records and abandonment of those records;
- this is a new section which defines health care providers for terms of this act as basically a person licensed to practice medicine and surgery or chiropractic or as a podiatrist and then it talks about corporations, other entities practicing these professions;
- in those situations where the health care provider has abandoned his/her practice or has had a license revoked or suspended, or otherwise can practice or who has died and basically abandoned the records involved, this would allow the Board of Healing Arts upon gaining knowledge that the records had been abandoned, to petition the district court for an order appointing a record's custodian,
- the records custodians' language can be found on page 2, sub sec. (e), line 11, and he or she would basically take over the records and handle them under lines 26 thru 29 the custodian would not be liable for civil action for damages or other relief as long as the custodian did not maliciously alter or destroy the health care records;
- the administrator of the health care provider's estate could petition the court to amend, modify, or dissolve the order concerning the custodian of health care records;
- nothing in the act would prevent a health care provider or their authorized representative from gaining access and copying a record created by the health care provider;
- the verbiage in this bill is unsmooth.

Mr. Furse stood before the Committee for questions. Ms. Correl asked;

- for clarification in sub sec.(b) as it reads now the health care would have to have one of these things listed in (b) happen and refuse or be unable to provide access to the record, and,
- the definition of health care providers is limited to persons licensed to practice the three branches of healing arts, etc. do we have like types of statutes in other types of provider acts?

The Chair then called upon the first of two proponents, Ms. Chris Collins, Director of Government Affairs, Kansas Medical Society, who stated in rare situations where a licensee has abandoned their practice, died intestate, without anyone to manage the estate and without anyone to manage their affairs, the Board is apparently forced to petition the district court to transfer possession of the records to another party. She stated judges have no explicit statutory authority to do so and must rely on common law equitable remedies, and the subsequent custodian of the records is: left with apparent authority over the

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physical records, a plethora of complicated statutory obligations relating to those records, and a rather significant tort exposure for failure to comply with those obligations. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The second proponent was Ms. Kelli Benintendi, Associate Council to the Kansas Board of Healing Arts, who stated that the common law establishes that patient records are the property of the entity that creates the records, but does not provide an adequate procedure for accessing records that have been abandoned. She also stated the bill not only addresses the patients' interest, but:

- 1) takes into account the due process rights of the practitioner who owns the records;
- 2) the appointment of records' custodian occurs as part of a judicial proceeding and when the owner is ready to resume the duties of ownership, the order of appointment is terminated;
- 3) protects the person who is appointed as records custodian and is:
 - A) not responsible for the content of the records;
 - B) given immunity except in cases where the custodian acts maliciously;
 - C) authorized to collect statutory fees from patients for copying.

A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

As there were no opponents, neutral, or written testimonies, the Chair asked for questions from the Committee. Questions came from Senators Journey and Salmans and Ms. Correll and Mr. Furse including: wondering what the cost of storage could end up being in five or ten years, as there was no fiscal note available; is there a provision or would there be notice to the patients as to where their records are going to be located; what property interest is contemplated in the bill by the owner (do their file cabinets go with them, refer to page 2, beginning on line 8); how would you interpret the nature of fiduciary duties (refers to line 12 on page 2); who actually owns the records; who owns the protocol (ex. lab results, testing) and what happens to labs if they are abandoned; clarification - ordinarily the records would be the property of the estate and the estate makes the provisions for access to the practice and could this not also be done as a part of settling the estate; regarding the fiscal note, it appears there would be some fiscal effects on the Board of Healing Arts, you file a petition are you contemplating that you would not do anything more before the court, you just give them this petition and you disappear or are you going to be involved in the hearing process; would there be some investigation the Board would have to do (ex. Make a presentation)?

As there were no more questions, the Chair closed the hearing.

Hearing on HB2820 - an act concerning the state board of healing arts; relating to actions taken for unprofessional conduct; expiration of licenses and registrations; creation of designations for certain licenses

The Chair then announced the hearing on HB 2820 and again called on Mr. Furse to give a brief overview of the bill. His highlights of this bill included:

- introduced by the House Committee on Health and Human Services;
- Sec. 1 relates to the podiatry law, licensed podiatrists, referring to the bottom of page 1, the change occurs where the license is cancelled for nonpayment of renewal fees, the terminology here talks about cancellation by operation of law on license and this throughout the law in various different formats;
- on page 2, language in the middle of the page makes parallel the temporary permit language to other provisions that the Board of Healing Arts licenses;
- would note in line 24, the word "permittee" should be "temporary licensee" since we are changing this designated permit to a license;
- sub (f) at the bottom of page 2, would provide for the issuance of a postgraduate permit to practice podiatry and sets out standards for that permit;
- on page 3, in line 30 and following lines, provides for designation of inactive license which is similar to

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other designations of inactive licensees of the Board of Healing Arts;

- on page 4, in line 17 in sub sec. (j) creates a designation of federally active license and this is for an individual who practices podiatry solely in the course of employment or active duty in the U.S. government or any of those departments, bureaus, or agencies, or, who in addition to such employment or assignment provides professional services as a charitable health care provider as defined in the tort claims act;
- at the bottom of page 4, provides for a person's license being revoked (they may apply for reinstatement after the expiration of three years upon showing clear and convincing evidence that they have rehabilitated or whatever would be appropriate);
- on page 5, still in the podiatry law, the following fees are inactive and this section needs to be amended to pick up these new designations of inactive license and federally active license;
- on page 6, Sec. 3 commences the statute on physician assistants (PAs), eliminating the registry language of the PA act (so all of the strike type would be elimination of current law relating to maintaining the registry of the names of physician assistants keeping other information that the Board of Healing Arts is required to do; it would insert, at the bottom of page 6 and top of page 7, that as a condition for engaging in active practice, a physician assistant must file a request to engage in active practice, signed by the PA and the physician who will be responsible for the PA. The Board is to maintain a list of names of physician assistants who may engage in the active practice in the state; subsequent language relates to physician assistants mailing addresses, reinstatement, etc.);
- at the bottom of page 7 the language creates a designation of inactive license for the physician assistant similar to the other inactive licenses of the Board;
- top of page 8, sub (f) creates a designation of federally active license for physician assistants similar to the podiatrist federally active license although there is no mention of charitable health care.
- then it sets out the fees and again the fee section in (g) picks up the designation of federally active license and inactive license and also conversion from one license category to another;
- on page 9, Sec. 4 commences sections on physical therapists (PTs), another occupational group, credentialed by the Board of Healing Arts; change on page 10, line five sub (e) increase the designation of inactive license for physical therapists;
- Sec. 5 relates to occupational therapists (OTs) and it provides that the license may be publicly or privately censured, revoked or limited, making disciplinary action language uniform throughout the Board of Healing Arts;
- on page 11, in the OT Act, the civil fine language similar to other civil fines that the Board of Healing Arts may impose is set up for the OTs;
- Sec. 6 continues the OT Act and provides for the expiration on dates published by rules and regs of the Board would allow them to phase in their expirations throughout the year;
- sub (b) talks about notifying the licensee when their license is to expire;
- sub ©) if their license is cancelled for failure to renew and may be reinstated under the conditions set out in sub ©);
- at the top of page 12, Sec. 7, is a respiratory therapy section, and again makes uniform the language relating to suspension, adds or mimics the public or privately censured license, and adds a civil fine for violations of the act, which is similar to the other language that the Board of Healing Arts administers;
- Sec. 8 on top of page 13, a physical therapist section, talking about the expiration of the date established by rules and regs which would allow the Board to review their license on a standard basis if they so desire; notifying the licensee of the expiration of their license and license cancelled for various reasons in sub ©);
- Sec. 9 at the bottom of page 13, is the section on doctors of naturopathic physicians and again inserts the language relating to limiting the license or public or privately censured if the licensee has a disciplinary action;
- it inserts the civil fine language on page 14, line 26 and subsequent lines;
- on line 40 it would allow again, licenses to expire throughout the year established by rules and regs of the Board;
- page 15, the Board would notify the register of the expiration of the license similar to the other language and this language relate to reinstatement of a license in sub sec.©) on page 15;

- the bill itself would become effective on publication in the statute book which would be July.

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He feels overall, with some other items thrown in, is an attempt to make uniform the various provisions that the Board of Healing Arts makes throughout its various licensing acts.

The Chair then called upon the only person to testify before the Committee, Mr. Larry Buening, Executive Director, Board of Healing Arts who stated while the bill is sizeable due to the length of the statutes that are being amended, the amendments proposed in this bill are primarily technical in nature and are intended to make the statutes for these various professions more similar and more easily administered by the Board. He then offered an explanation of each section of the bill. Mr. Buening also offered two attachments setting forth further amendments that the Board asks be considered for inclusion in the bill. The first is a further amendment to Section 2 and adds a statutory fee minimum for a postgraduate permit. The second, requests the inclusion of two new sections of the bill dealing with mandatory professional liability insurance for physical therapists and naturopathic doctors. A copy of his testimony and attachments are (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there was no opponent, neutral, or written testimony was offered, the Chair asked the Committee for questions or comments. Senator Haley asked regarding podiatrist fees, when there was such an increase or when this was put into the statute (referring to Sec. 2 concerning statutory fee maximums). Also, in Sec. C, the 5, 10, or \$15,000 violation for the penalties, is this a new proposal, has this been done elsewhere, or it is being done for consistency?

As there was no further discussion, the Chair closed the hearing.

Action on HB2698 - an act providing for the regulation and licensing of radiologic technologists and x-ray operators, establishing a registry of e-ray operators; granting powers and duties of the state board of healing arts, establishing a radiologic technology council and providing for the functions thereof; declaring unlawful acts and penalties.

The Chair said that when they had the hearing on this bill, they had some technical cleanup that was needed and the Board of Healing Arts had a concern about having to keep a registry, and we had already been approached with a delicate compromise, and now we are being approached with another compromise. She then asked Mr. Furse to hand out a balloon and asked him to explain and noted that all groups that care about these issues have all agreed to this balloon. Highlights of Mr. Furse's explanation included:

- change dates to make it clear when the various sections become effective, the subsidy sections would become effective 7-1-05, the bill itself would be published in the statute book effective 7-1-04; the sections that would become effective in 2004 are the two sections relating to creating an advisory council, its powers and duties, and the powers and duties of the Board to start getting set up to administer carrying out the provisions of this act; the other substantive sections would become effective on July 1, 2005;
- in accordance with the intent of the sponsors of the bill, note on page 2, line 21, there is some language current in the bill relating to July 1, 2005;
- the other changes in here are numerous but are all changes that either the Board of Healing Arts or the radiologists suggested; the primary policy one being the elimination of the registry language on page 5, lines 15 through 43 and inserting of Sec. 7 in its place, eliminating the negative registry setup for x-ray operators and they would be inserted as one of the areas of exclusion in the bill,

- on page 3, line three, it says, the following shall be exempt from the provisions of this act and the requirements of a license pursuant to this act; then go down to sub (f) where it says, any licensed PA or an unlicensed person performing radiography services who is: 1) working under the supervision of a licensed practitioner or a person designated by a hospital licensed pursuant to the hospital licensure act and 2) who has been trained on the proper use of radiographic equipment for the purpose of performing radiography

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consistent with 65-2001 et seq. (it's deleted as a register and inserted as an exclusion);
- the second item is the advisory council where it is created, it was noted that the council was made to serve at the pleasure of its appointing authority and yet in sub (b) it was to service for terms, which makes this inconsistent; it has been suggested by the Board of Healing Arts, beginning on page 6, lines 14 and 15 would delete the members appointed by the Governor shall serve at the pleasure of the Governor, and in this case, the Board and the Governor appoint members; and so this language would suggest that the members appointed by the Governor would be appointed for terms as provided in the balloon, lines 17 through 20 and it would leave members appointed by the Board serving at the pleasure of the Board.

The Chair then asked the Committee if there were questions about the balloon. Senator Barnett stated that during original testimony he noted on page 8, beginning on line 39, there was concern about disciplinary actions, was this addressed? Mr. Furse referred to page 7, on lines 32 through 36, a person whose license had been suspended language, he had suggested to the Committee that this would be more appropriately placed over on page 8 where we talk about licensure actions.

As there were no further questions on the balloon, Senator Barnett made a motion to adopt the balloon as outlined by Mr. Furse and advance the bill favorably, seconded by Senator Brungardt. The motion carried.

Adjournment

As it was going on 2:30 p.m., the Chair thanked the Committee, letting them know they were on schedule and adjourned the meeting. The time was 2:30 p.m.

The next meeting is scheduled for Wednesday, March 17, 2004.