

## MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 P.M. on March 18, 2008 in Room 136-N of the Capitol.

Committee members absent: Senator Phil Journey- excused

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department  
Mrs. Terri Weber, Kansas Legislative Research Department  
Ms. Nobuko Folmsbee, Revisor of Statutes Office  
Ms. Renae Jefferies, Revisor of Statutes Office  
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Mr. Larry Buening, Executive Director,  
Kansas Board of Healing Arts  
Mr. Jerry Slaughter, Executive Director,  
Kansas Medical Society

Other in attendance: Please see attached Guest List

### Handouts

The Chair called the meeting to order stating that yesterday the Committee asked KHPA for an opinion on **SCR1618** for yesterday's hearing and before you is a revised copy of Dr. Nielsen's testimony signed and neutral, so we might go back one more time and ask. The Chair said she would call Dr. Nielsen and ask her opinion of the bill. A copy of the revised testimony is (Attachment 1) attached.

### Hearing on HB2620 - an act concurring the State Board of Healing Arts, relating to a non-disciplinary resolution; fingerprinting and criminal history records checks.

The Chair then said that yesterday the Committee heard the overview from staff on **HB2620** and today they would be having a hearing on the bill but will not be working it today. She then called on the first of two proponent conferees, Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts, who stated that this bill originated at the Special Committee on Judiciary following discussions with the Board on how it had addressed or intended to address recommendations identified in the Legislative Post Audit Report issued October 2006, with the Board adopting Policy Statement No.07-02 indicating the Board's intention to pursue legislation to allow alternatives to discipline. He also gave a history of the three Sections of the bill, then stated as of January 22, 2007, 34 state medical boards have the authority to do criminal background checks, with 28 of these requiring fingerprints and a national FBI check, however, Kansas is one of the six states that is limited only to have the authority to do a state background check - K.S.A. 65-2839 a ©. He indicated that this statute is not broad enough to meet FBI requirements for statutory authorization requirements by Federal law in order for the criminal background check to be performed by that organization. And lastly, he said the Board held a special meeting to discuss legislative issues, specifically **HB2620**, with the KMS presenting their amendments and after discussing and modifications, an agreement was reached where the Board approved the recommended amendments that will be presented by KMS. A copy of his testimony and attachment are (Attachment 2) attached.

The Chair asked for questions from the Committee of Mr. Buening, which came from Senators Barnett, Wagle, and Brungardt ranging including:

- clarification, you are not currently authorized to take fingerprints?
- clarification, do you run everyone through a background check?

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- the field of information would be much more valuable if it had to do violations by the licensee in their field practice in other jurisdictions, do you now have that information?

- part of it talks about standard of care, now we are talking about criminal backgrounds?

The Chair then called on Mr. Jerry Slaughter, Executive Director, Kansas Medical Society (KMS), who stated that they would be offering some additional amendments to address issues that have been raised by this committee during hearings on the Board's conduct of certain investigations in recent months:

- regarding the Committee's concern regarding the Board's inability to act until a pattern of substandard conduct occurs, KMS's amendment would authorize the Board to take either a non-disciplinary resolution approach or, in those rare instances that are more egregious, the Board could formally discipline a licensee on a single occasion that if continued would reasonably be expected to prosecute professional incompetency or unprofessional conduct.

The Chair recognized Senator Schmidt who asked Mr. Slaughter:

- are you saying that if a physician is sued for malpractice that under this amendment you have offered, the Board would have every right to take your license away with one malpractice case before the malpractice is adjudicated?

- it could not be on the filing of the case?

- in response to Mr. Slaughter saying if this was fairly egregious, this would give them the ability to look further and possibly take action, the question was asked, does the Board not have that now?

- unless it was gross negligence, they would have to have cases filed for the same thing?

- in the cases where a physician settles out of court because they consider it a nuisance, then their license could be in jeopardy with that?

- in response to Mr. Slaughter saying they were hopeful that the Board will be prudent about this and not overreact and Kansas would be in the vast minority of the states to allow action after one single occasion, the response was, "but that is almost speculation that something else is going to disastrously happen from one mistake."

As there was no further questions or discussion. Mr. Slaughter continued his testimony.

- regarding the Committee's concerns about improper sexual contact with patients, and other conduct which exploits the physician-patient relationship, KMS suggested two amendments that they felt, are designed to strengthen certain provisions of K.S.A. 65-2837 and were adapted recommendations from the *Report of the special Committee on Professional Conduct and Ethics* (2000) of the Federation of State Medical Boards

- in (b) (16) they added language addressing sexual boundary issues relating to patient surrogates.

- in (b)(33) their amendment addresses exploitative conduct which violates physician-patient relationship

The third amendment addresses concerns raised regarding the Board not currently having on staff, a trained medical professional to assist with the evaluation/assessment of complaints and conduct, or to assist with timely communications with complaints. KMS is suggesting an amendment, found at K.S.A. 65-2878, that will give the Board the authority to contract with one or more physicians, chiropractors, or other professionals as needed.

- the final amendment, in Section 3, relating to the list of graduated sanctions being developed by the Board

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to assist with achieving consistency in its disciplinary actions, stating while KMS does not oppose the development of the sanctions grid, they would oppose requiring the Board to be bound by a rigid sanctions grid when it decides cases.

Mr Slaughter completed his testimony by stating:

- the Board receives no taxpayer support.
- licensees of the Board fully fund agency operations but over the past several years, and most recently in FY 2005, the legislature has swept over \$1 million of the Board's funds into the state general fund, which are dollars which were not available for the additional staff requested by the Board to upgrade its investigatory and disciplinary staffs.
- strongly urges the legislature to repay the swept funds to the Board to mitigate the increase in licensure fees that is a virtual certainty to continue to fund agency operations at current levels.

A copy of Mr. Slaughters testimony including the proposed amendments which amends KSA 652836 and 65-2837 and to Section 3 and attachments are (Attachment 2) attached.

The Chair thanked Mr. Slaughter for taking the time to follow the hearings, paying attention to all of the testimony, offering positive solutions and networking with the Board. She then asked for questions from the Committee which came from Senators Barnett, Schmidt, Palmer, and Wagle including:

- re: 6528-78, to contract with one or more persons who are licensed to practice, could the Board do that now or does it require a statute?
- as we heard testimony, part of the problem was that the legislature had swept funds and the Board did not have the resources, are these reactions a result of the need for change in legislation or is part of what is being proposed related to what Mr. Slaughter just described (funds not there adequately to staff and investigate these cases)?
- concerns with 6528-36 regarding testimony stating as long as the Board is made up of peers, you would have some level of comfort with this. The testimony was given previously that suggested that the Board be made up of all consumers and no medical professionals, so would it be possible to place something in this amendment that says as long as the Board is made up of medical professionals?
- is there a statute where there is a time line?
- do you get a chance to look at the policy statement 07-02 and does this address some of these concerns?

### **Adjournment**

As it was going on Senate session time, neutral testimony regarding some transparency issues and the way they address it in Colorado had not yet been given, and written testimony had not been presented. The Chair asked if all of the conferees could return next Monday, March 25, 2008. to continue the hearing. The Chair then recognized Senator Palmer who asked as a result of this hearing, if Monday, Mr. Buening could provide recommendations he might have regarding their staff, ex. how they might be more efficient? The meeting was adjourned. The time was 2:35 p.m.

The next meeting is scheduled for March 25, 2008.