

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Brenda Landwehr at 1:30 P.M. on March 25, 2008 in Room 526-S of the Capitol.

All members were present except:

Representative Colyer, excused
Representative Ward, excused

Committee staff present:

Norman Furse, Revisor of Statutes Office
Dianne Rosell, Revisor of Statutes Office
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Chris Haug, Committee Assistant

Conferees appearing before the committee:

Larry Buening, Executive Director Board of Healing Arts
Mark Stafford, General Counsel, Board of Healing Arts
Dan Morin, Kansas Medical Society
Jerry Slaughter, Kansas Medical Society
Steve Sutton, Deputy Administrator for the Board of EMS

Others Attending:

See Attached List.

The minutes from the meetings from February 7, 2008 through March 18, 2008 had been emailed to all committee members and staff for review before the meeting. Representative Storm moved to approve the minutes, Representative Neighbor seconded the motion. The motion carried.

Chad Austin, Kansas Hospital Association provided the handout promised in the February 20, 2008 meeting from his PowerPoint presentation on that day. (Attachment 1)

Chairperson Landwehr opened the floor to work **Sub SB 549 - Board of Pharmacy; continuous quality improvement programs and nonresident pharmacy.** Representative Flaharty moved to accept amendments to **Sub SB549** as presented, submitted by Senator Schmidt. Representative Trimmer seconded the motion. The motion carried.

Representative Neighbor moved we pass Sub SB 549 out favorably for passage, as amended. Representative Tietze seconded the motion. Representative Patton had an amendment proposal. Representative Neighbor withdrew her motion. Representative Tietze withdrew her second. Representative Patton, moved the proposed amendment 2 from Mr. Borel's testimony yesterday be adopted. Seconded by Representative Flaharty. Representative Patton explained that this goes to the issue that was raised about the discovery of facts. There was a need for confidentiality, balanced with the courts being able to have access to the facts. Sub paragraph 1 (b) in the last sentence. This is the part of the bill that makes everything confidential and privileged. It was the drafters intent to have some of the facts discoverable. There was reference to the supreme court case of Adams. Representative Patton shared language from this case. If there is a subpoena that comes in, requesting this information, the judge gives the bare bone facts and witnesses, so the plaintiff is not cut out of the process. If you are pursuing a claim on behalf of your wife or mother and you know there has been wrong doing and you know the records contain witnesses and bare bone facts as to what happen and they come back and say, "sorry that information is confidential", that would shut down the whole process. The legislature needs to make the policy. Representative Patton felt the balloon would allow the facts to be discovered and still protect the parts of the proceedings that need to be protected. Representative Tietze asked if we pass this, will it prevent any investigator in finding this information in any other way? Representative Patton said every case is different. Representative Tietze wondered if they would be able to find out by another means. Representative Patton said, "they might be". There was additional discussion about Supreme Court decisions setting a precedent. Representative Hill said the key language is in new section 1 (b). This debate was held on the floor of the Senate and the argument made by Representative Patton was also made by Senator Journey. A number of attorney's in the Senate passed this. Representative Hill will be opposing the amendment. Representative Landwehr will be opposing the amendment also. She

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felt the language in the bill had been adequately addressed. Senator Schmidt said the bill passed 39 to 1. There are several attorney's in the Senate that were satisfied with the language. She asked, from a Pharmacist view, that the amendment be rejected.

Rep. Patton said this is a public policy issue, that if not clearly addressed, will end up with each individual judge making a different conclusion. There was a motion for amendment. The motion failed. A division was requested. There were 7 ayes, 9 nays. The motion failed.

Representative Neighbor moved we pass out Sub SB549 out favorably as amended. Seconded by Representative Storm. The motion carried. Sub SB 549 passed out favorably as amended.

Sub SB491- Prescription monitoring program act. Dianne Rosell, Revisor of Statutes, stated most of the amendments are technical. The change on page 3, paragraph 3, line 30 and 31 "subject to the requirements in K.S.A. 22-2502, and amendments there to; needs to be moved to the end of paragraph 4. On page 5 the members of the task force or advisory board shall serve without compensation. On page 6 and page 7 there are several of these members of the task force appointed by private entities. The private entities nominate one person to be on the task force and then that person is nominated by the Board. The governmental entities are okay, the private ones can be changed to nominate. Also, the task force on page 7, shows expiration as on or before January 12, 2009. Per Senator Schmidt, it would be okay to sunset the task force. The revisors need to add the subsection to show the task force expires. On page 5, there was discussion about the word advisory "board". In the balloon, it needs to be "committee"

Representative Crum moved to adopt the balloon amendment. Seconded by Representative Neighbor. The motion carried.

Rep. Neighbor moved we pass out favorably Sub SB491, as amended. Seconded by Representative Crum . The Motion Carried.

Sub SB596 - Board of healing arts; cosmetic or aesthetic purpose included in the practice. Chairperson Landwehr wondered if it was necessary to do further clarification of "Surgery" and make sure we are not bringing in the acupuncture and manipulation under the definition of surgery. This starts on page 1, line 42. Dianne Rosell, Revisor of Statutes, felt the current language accomplishes this. Larry Buening, Board of Healing Arts and Mark Stafford, General Counsel, Board of Healing Arts discussed what the bill accomplishes. Mr. Stafford said their definitions of the Healing Arts and definitions of surgery focus on a purpose of the treatment as being for the diagnosis or treatment or cure of a disease, injury, ailment, deformity. Many of these surgeries are completely elective, and not for the purpose of treating a deformity or an injury or an ailment. He gave the example of the Scarification process, which is at one end of the spectrum. At the other end, are the things we commonly recognize, like facelifts that are commonly done, but don't serve a purpose to treat a disease, injury or ailment or deformity. He didn't think it was questionable that those types of things are surgeries. They require a competent, licensed professional to perform, rather than have them performed by any person who chooses to get into the business. The problems with scarification and the implanting of horns in skulls were some of the procedures that are being done that drove them to bring it to the legislature's attention. They feel that those types of procedures need to be regulated. There was discussion as to whether the definition of surgery was too broad. Sec. 3 K.S.A. 2007 Supp. 65-2872 exempts several professions from this bill. It was noted the cosmetologist should be one of the exempt professions, if they are licensed.

The amendment for the definition of surgery was offered by the Kansas Medical Society. Representative Patton felt the definition of "surgery" was too broad. Representative Patton will probably be opposing the amendment. Representative Storm said she thought the exemptions were listed. Representative Landwehr said she would probably be opposing. In the hearings, The State Board of Nursing brought up a few concerns. There was discussion about the definition of surgery being drawn from the guidelines the Kansas Medical Society worked on for standards of care for surgeries not performed in the hospital. This task force wrote up guidelines for what practitioners should do for these surgeries performed in offices. A version of that became regulation and is now in our regulations. This definition was drawn from the guidelines of the taskforce. Mr. Stafford said the definition had some deletions from what was in the guidelines. He said he thought the language on line 41 dealing with aesthetic and cosmetic are additions. Representative Patton moved to table

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Sub S596 for all the reasons we discussed. Representative Mast seconded the motion. Chairperson Landwehr asked if the table was a non-debatable discussion. Mr. Furse nodded, yes. After the vote, division was requested. There were 7 ayes, 9 nays. The motion failed.

Representative Otto wondered if we could have, “cosmetic intentionally scarring” and “chemically removing fat” inserted in, and not worry about the surgery definition. Mr. Stafford said their hope was this would cover all the things that might come up, in the future. Representative Patton agreed with Representative Otto. He said, if they are trying to address those particular procedures, just some language that says those procedures are included in the definition of surgery, would establish the public policy. Policy should be made by the legislature, not an organization. Representative Ward asked the position of the Kansas Medical Society (KMS) on the debate on the broadness of the word “surgery”. Dan Morin, said they wanted to make sure we establish consistency with the definition. Mr. Morin asked Jerry Slaughter, KMS, to speak to this issue. Mr. Slaughter said they weren’t trying to exclude anything. Surgery is not defined in the statutes. It is not intended to exclude it.

Representative Ward moved we pass out Sub SB596 as written. Representative Flahary seconded the motion. There was discussion by Representative Mast about religious groups that practice genital mutilation. Mr. Slaughter said he couldn’t answer that. Mr. Stafford pointed out on page 2 line 24-26 exempts members of churches practicing religious tenets, provided they comply with public health regulations of the state. Chair person Landwehr wanted to add the exemption of cosmetologist. Representative Ward withdrew the motion to hear the amendment on cosmetology. Representative Flaharty withdrew the second.

On page 4, line 1, insert cosmetologists, estheticians (before Electrologists). The motion was made by Representative Landwehr to accept the amendment . Representative Storm seconded the motion. There was discussion about whether the nurses issues were addressed. The nurses have an exemption on page 3 line 16 to 19. The motion carried.

Representative Ward made the motion to pass out Sub SB596 as amended. Representative Flaharty seconded the motion. The Chair was in doubt of the vote. There were 10 ayes and 6 nays. The motion carried.

Sub SB 512 - Emergency medical services, attendant’s certificate requirements. Representative Crum had an amendment. The amendment is on page 7, lines 3 through 6. It removes the sentence that reads, “The board may take disciplinary action pursuant to this section when the time for appeal has elapsed, or after the judgment of conviction is affirmed on appeal or when an order granting probation is made suspending the imposition of sentence.” A person could be convicted of a felony and still work as an EMS attendant pending appeal. It is Representative Crum’s opinion that because of the conviction, the certificate should be suspended pending the appeal, which could take some time.

The motion was made by Representative Crum. Representative Mast seconded the motion. The motion carried.

Chairperson Landwehr said there is an amendment by the Board of EMS. Both the fingerprinting issue and the openness of juvenile records issue should be looked at, as a whole, with all of the boards that brought this up this year (State Board of Nursing, The Board of Healing Arts and The Board of EMS). The chair asked the committee to look at the amendment prepared by Robert Waller, Board of EMS. There was discussion on the balloon, on the last page. The only item in the balloon needing added back in is item (h). The rest of the balloon falls under the category of the items that need to be looked at, as a whole, for all the various boards.

Chair Landwehr made a motion to add back in (h). Representative Kiegerl seconded the motion. There was Discussion about the release of non-conviction data. The arrest and non-conviction language would not be included. It is the chair’s intent to write a letter asking the LCC to do a study on the topic of fingerprinting and juvenile arrest and conviction records for the three boards, as a whole. This amendment deals with only adult convictions. Steve Sutton, Deputy Administrator for the Board of EMS made a statement about juvenile language being totally stricken. He felt the proposal before the committee, dealing with the convicted/non-convicted data, is important. Mr. Sutton mentioned a copy of a document provided to the committee’s offices of actual KBI background checks. (Attachment 2) The KBI can block out whatever we

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want them to. The non-conviction data provides much more information. The motion carried.

Representative Storm moved we pass **SB 512** out favorably as amended. Seconded by Representative Kiegerl. The motion carried.

Chairperson Landwehr said this finishes our work. The meeting adjourned at 2:55 p.m.