

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 4, 2010  
Room 535-N—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Representative John Faber  
Representative Steve Huebert  
Representative Joe Patton  
Representative Jan Pauls  
Representative Ed Trimmer

#### Members Absent

Senator Chris Steineger  
Representative Shirley Palmer

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Kenneth Wilke, Office of the Revisor of Statutes  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Others Present

Phyllis Gilmore, Behavioral Sciences Regulatory Board  
Marsha Schrempp, Behavioral Sciences Regulatory Board  
Leslie Allen, Behavioral Sciences Regulatory Board  
Sharon L. Stueve, Behavioral Sciences Regulatory Board  
J. P. Small, Kansas Department of Transportation  
Danielle Marten, Kansas Department of Transportation

Marla Rhoden, Kansas Department of Health and Environment  
Susan Vogel, Kansas Department of Health and Environment  
Sean Miller, Capitol Strategies  
John Kiefhaber, Kansas Chiropractic Association  
Herb Holmberg, Kansas Department of Labor  
Darren Root, Kansas Department of Labor  
Betty Wright, Kansas Dental Board  
Peggy Hanna, Kansas Department of Administration  
Jo Remp, Kansas Department of Administration  
Shelly King, Kansas Department of Administration  
Cheryl Magathan, Kansas Real Estate Appraisal Board  
Berend Koops, Hein Law Firm  
Kathleen Selzler Lippert, Kansas Board of Healing Arts

### **Morning Session**

Chairperson Holmes ask for action on the minutes for the November 16, 2009, meeting of the Committee. *A motion was made by Senator V. Schmidt to approve the minutes as presented. Senator Ostmeyer seconded the motion. The motion passed.*

The Chairperson asked Raney Gilliland, Kansas Legislative Research Department (KLRD), to review the two letters that were distributed to all Committee members. Mr. Gilliland explained that the Committee requested a letter be sent to the Attorney General asking for input on the regulation promulgated by the Board of Veterinary Examiners after the November meeting (Attachment 1). The Office of the Attorney General replied by the letter dated December 14, 2009, stating that a standard for pain management is within the Board's very broad statutory authority (Attachment 2).

Chairperson Holmes welcomed Phyllis Gilmore, Executive Director, and Sharon Stueve, Behavioral Sciences Regulatory Board, to speak to the proposed rule and regulation noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-3, fees.

Ms. Stueve stated that this rule and regulation was being proposed to address a budget shortfall in the agency. This rule and regulation introduces an original license fee for all levels of social work licenses. Presently, licensees only are required to pay an application fee. The additional fee would generate a total of \$91,100 over one year. The Behavioral Sciences Regulatory Board would receive \$72,880 and \$18,220 would go to the state. In response to a question about excess amounts being swept into the State General Fund, Ms. Gilmore stated that the amount would not be received by the agency at one time, but would be received throughout the year.

Betty Wright, Executive Secretary, Kansas Dental Board, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board. KAR 71-5-1, KAR 71-5-2, KAR 71-5-3, KAR 71-5-4, KAR 71-5-5, and KAR 71-5-6 are REVOKED. KAR 71-5-7, definitions; KAR 71-5-8, applicability of regulations; KAR 71-5-9, general requirements; KAR 71-5-10, level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; KAR 71-5-11, level II permit: parenteral conscious sedation; KAR 71-5-12, level III permit: deep sedation and general anesthesia; and KAR 71-5-13, grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.

Ms. Wright stated that rules and regulations KAR 71-5-7 through 13 came before the Committee at the July meeting. After reviewing them at the public hearing, the Board members realized that KAR 71-5-9 was not what the Board intended, and it is being amended.

Committee members questioned how often inspections were performed throughout the state. Ms. Wright stated that in some locations it may be every three years, especially those in Western Kansas. Others are done annually. In response to a question concerning whether the Board could impose penalties, Ms. Wright stated that the penalties for violations are included in the statute.

Marla Rhoden, Director, Kansas Department of Health and Environment (KDHE), was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the KDHE, Health Occupations Credentialing. KAR 28-61-1, definitions; KAR 28-61-2, qualifications for licensure; KAR 28-61-5, license renewal; and KAR 28-61-8, assistants.

Ms. Rhoden stated that these rules and regulations had not been reviewed for some time and the Department had some questions concerning what assistants could and could not perform. It was suggested by the Committee that in KAR 28-61-5, page 6, (c) a more general reference to electronic training devices be used to avoid amending the rules and regulations as new equipment is developed. Ms. Rhoden responded to all questions of a general nature from Committee members.

Chairperson Holmes recognized Jonathan Small, Special Counsel, Department of Transportation (KDOT), to address the proposed rules and regulations noticed for hearing by KDOT. KAR 36-42-1, definitions; KAR 36-42-2, application and supporting documents; KAR 36-42-3, intermodal transportation project; eligibility; KAR 36-42-4, fund use; KAR 36-42-5, financial assistance agreement requirements; KAR 36-42-6, interest rate and servicing fees; KAR 36-42-7, repayment of financial assistance; KAR 36-42-8, approved project statements; and KAR 36-42-9, approved project costs; accounting requirement.

Mr. Small stated that these rules and regulations are being introduced to implement and administer the intermodal transportation revolving fund program.

In KAR 36-42-1, page 1, the definitions need to be rearranged in alphabetical order. Mr. Small stated that this would be done. Mr. Small responded to all questions of a general nature raised by Committee members.

Chairperson Holmes recognized Ken Wilke, Office of the Revisor of Statutes, to review the proposed bill concerning certain entities licensed by the Department of Social and Rehabilitation Services (SRS) requiring a criminal history background check on certain employees and applicants for employment (Attachment 3). This bill was requested by Senator Brownlee after the November 16 hearing. Mr. Wilke stated that there may need to be some amendments made since the rules and regulations that this bill cover have not been adopted at this time. Mr. Wilke stated that the bill does not make a distinction between those who might be hired for clerical or secretarial work and those who are providing services to persons. A question was raised by a Committee member as to who would be paying for these background checks. Mr. Wilke stated that it would be the entity that was licensed by SRS.

It was recommended that the bill be amended to include the contractor personnel, as well as Community Developmental Disability Organization personnel, and the charge for the background checks be billed to the contractor. The Committee recommended that the bill be clarified so that it does not cover clerical help. A Committee member requested that on page 3 (e) line three the word "only" be inserted after "the fund shall be used."

The Committee requested that Mr. Wilke redraft the bill with the changes requested by the Committee and have Senator Brownlee review it before filing. *Senator Brownlee moved that the bill be introduced in the Senate after making the changes requested by the Committee. The motion was seconded by Senator Schmidt. The motion passed.*

Chairperson Holmes welcomed Peggy Hanna, Department of Administration, to speak to the proposed rules and regulations noticed for hearing by the Department of Administration. KAR 1-16-8, use of privately owned or operated conveyance, limitations; reimbursement for transportation and subsistence expenses; KAR 1-16-15, reduced allowances; KAR 1-16-18, subsistence allowance; KAR 1-16-18a, designated high-cost geographic areas; and KAR 1-16-20, miscellaneous expense definition.

Ms. Hanna stated that the State of Kansas is implementing an integrated financial management system. As a part of the implementation, the state is reviewing business processes, policies, regulations, and statutes. The decision was made to not customize the software application to accommodate current processes because of the extra expense. The current methodology uses a calculation based on a travel day divided into quarters, with each quarter day having a specific reimbursable amount set by Department of Administration policy. This is based on the allowance of \$9.50 for a quarter and a total of \$38 per day. This change was proposed so that there is no change in the total amount of travel subsistence per day; rather, the daily amount of \$38 will be divided into three meal allowances.

A concern was raised by the Committee that reimbursement should be standardized between agencies within the state and not at the discretion of each agency. A staff member had a question concerning the term in KAR 1-16-8, (1) line 7 "used the fastest public transportation available" and that this should be clarified. A question was raised concerning the statement that no taxi or terminal expenses shall be allowed at the destination. A Committee member questioned why, in KAR 1-16-15, it is necessary to have prior approval for an agency to pay reduced meal allowances or lodging expense. The Committee suggested that the language of the rules and regulations be clarified especially where the use of double negatives may make it confusing. An example is in KAR 1-16-15, (3) "the agency shall be authorized to not pay any subsistence for this travel." It was suggested that it read "the agency shall not pay any subsistence for this travel." It was the Committee's suggestion that since the agency was reviewing the rules and regulations, a thorough review should be conducted at this time. The Committee requested that staff send copies of the proposed KAR 1-16-15 to the chairpersons, vice-chairpersons, and ranking minority members of the Senate Ways and Means and House Appropriation committees; and to the Speaker of the House, Senate President, and the House and Senate Minority Leaders for their information and review during the 2010 Legislative Session.

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

### **Afternoon Session**

Chairperson Holmes reconvened the meeting at 1:30 p.m. and welcomed Herb Holmberg and Darren Root, Kansas Department of Labor, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Labor. KAR 49-55-1, applicability; KAR 49-55-2, definitions; KAR 49-55-3, approved inspector certification program; KAR 49-55-4, inspection certification; KAR 49-55-5, nondestructive testing of amusement rides; KAR 49-55-6, record retention; KAR 49-55-7, location of evidence of inspection; KAR 49-55-8, procedure for selection of

an amusement ride for records audit; KAR 49-55-9, location of safety instructions; KAR 49-55-10, reporting of amusement ride locations; KAR 49-55-11 49-55-11, submitting reports and other documents; and KAR 49-55-12, violations; reporting violations to the attorney general, county attorney, or district attorney.

Mr. Holmberg stated that the proposed rules and regulations apply to all permanent amusement rides and temporary amusement rides within the state. Owners and operators of amusement rides will be required to maintain amusement ride inspection-related records and operator training certificates. Owners and operators of covered amusement rides will be required to comply with any requests of inspection by the Kansas Department of Labor of these amusement ride records. The proposed regulations do not apply to “home owned amusement rides” as defined in the statute. These rules and regulations are the result of legislation passed during the 2009 Legislative Session.

Staff noted that the term “home owned, not for profit entity” was not defined anywhere. Staff called attention to the fact that the terms were not consistent when referring to “basic, advanced, or senior level” in KAR 49-55-3, and referred to as “level one, or higher, certification” in KAR 49-55-4. Mr. Holmberg stated that they would look at these. A Committee member suggested that in KAR 49-55-6, a clarification be made as to the location of the records and length of time they are to be kept. It was suggested that an alternate location be designated. A Committee member stated that the economic impact statement did not show the cost to the regulated community. Mr. Root stated that this will be corrected and a copy will be furnished to the Committee. Several Committee members expressed concern that these rules and regulations would be harmful to home-owned, not-for-profit amusement rides in their districts. Mr. Root stated that they would be looking at each of these situations individually and work with them on a case-by-case basis. The Committee suggested that a copy of an economic statement prepared by the Board of Healing Arts be provided to the Department of Labor to give it guidelines on what information is required.

Cheryl Magathan, Kansas Real Estate Appraisal Board, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-2-1, Licensed classification; education requirements; KAR 117-2-2, licensed classification; appraisal experience requirement; KAR 117-3-1, general classification; education requirements; KAR 117-3-2, general classification; appraisal experience requirement; KAR 117-4-1, residential classification; education requirements; KAR 117-4-2, residential classification; appraisal experience requirement; and KAR 117-8-1, uniform standards of professional appraisal practice.

Ms. Magathan stated that these proposed rules and regulations were the result of an audit which found that the state was not in compliance and that real property appraisal experience must take place on an improved property. Staff suggested that language be clarified referencing where the six hours of experience shall take place for property appraisal on an improved property. The Committee suggested that the economic impact statement be changed to show whether the regulation is mandated by federal law.

Chairperson Holmes recognized Kathleen Selzler Lippert, Interim Executive Director, Kansas Board of Healing Arts, to address the proposed rules and regulations noticed for hearing by the Kansas Board of Healing Arts. KAR 100-29-1, applications; KAR 100-55-1, application; KAR 100-72-2, application; KAR 100-73-2, application; KAR 100-55-7, continuing education; license renewal; KAR 100-11-1, amount.

In response to questions from the Committee concerning why the Board was accepting a nondriver identification number and not a driver’s license identification number, Ms. Selzler Lippert stated that this Committee had requested that the nondriver identification number be included on a

previous set of rules and regulations that came before the Committee. The Committee recommended that the driver's license identification number should be included in these rules and regulations since it is in the statute, and would not have to come back before the Committee. The Committee requested that the Board check the statute to see what they are required to provide to SRS for child support enforcement purposes and to the Kansas Department of Revenue's Director of Taxation on licensure fees.

The Committee expressed appreciation to the Board for the economic impact statements that were included in all the rules and regulations.

The Chairman adjourned the meeting at 3:30 p.m.

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

**Kansas Behavioral Sciences Regulatory Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees (social work). After discussion, the Committee had no comment.

**Kansas Dental Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; applicability of regulations; general requirements; Level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; Level II permit: parenteral conscious sedation; Level III permit: deep sedation and general anesthesia; grounds for refusal to issue permit or for revocation, suspension, or limitation of permit; and revocations. After discussion, the Committee had no comment.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; qualifications for licensure; license renewal; and assistants. After discussion, the Committee had the following comment.

KAR 28-61-5. In subsection (f)(6)(C), the Committee suggests that the agency look for or develop technology neutral language so that it will not be necessary to update this language to adapt to new technological devices in the future.

**Kansas Department of Transportation.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application and supporting documents; intermodal transportation project, eligibility; fund use; financial assistance agreement, requirements; interest rate and servicing fees; repayment of financial assistance; approved project statements; and approved project costs, accounting requirement. After discussion, the Committee had the following comment.

KAR 36-42-1. Please place the defined terms in alphabetical order.

**Kansas Department of Administration.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning use of privately owned or operated conveyance, limitations, reimbursement for transportation and subsistence expenses;

reduced allowances; subsistence allowance; designated high-cost geographic areas; and miscellaneous expense definition. After discussion, the Committee had the following comments.

KAR 1-16-15. The Committee found the language in this rule and regulation to be confusing and not well written. The Committee believes that the use of language such as in paragraph (b)(1) could be rewritten to make the language clearer.

Concern. The Committee is concerned that rules and regulations for allowances will not be interpreted uniformly among state agencies. The Committee believes that there may be a more financially prudent way to reimburse state employees completing their jobs which require travel, such as to reimburse employees for actual expenses, rather than to provide set allowances. The Committee is providing copies of this concern to the chairpersons and ranking minority members of the House Appropriations and Senate Ways and Means committees. Additionally, copies are being sent to the President of the Senate and to the Speaker of the House.

**Kansas Department of Labor.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applicability; definitions; approved inspector certification program; inspection certification; nondestructive testing of amusement rides; record retention; location of evidence of inspection; procedure for selection of an amusement ride for records audit; location of safety instructions; reporting of amusement ride locations; submitting reports and other documents; and violations, reporting violations to the attorney general, county attorney, or district attorney. After discussion, the Committee had the following comments.

KAR 49-55-3. The Committee believes that the agency should use consistent language in the regulation and in KAR 49-55-4 with respect to the description of levels of certification.

KAR 49-55-6. The Committee believes that this regulation should be rewritten in order to provide for an alternative location for the records to be housed other than at the location of the amusement ride's operation.

Economic Impact. The Committee is providing the agency with a copy of an economic impact statement from the Board of Healing Arts as an example of the type of economic impact statement which should be developed.

**Kansas Real Estate Appraisal Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning licensed classification, education requirements; licensed classification, appraisal experience requirement; general classification, education requirements; general classification, appraisal experience requirement; residential classification, education requirements; residential classification, appraisal experience requirement; and uniform standards of professional appraisal practice. After discussion, the Committee had the following comments.

KAR 117-4-2. Please clarify the language in paragraph (a)(2) so that is clear that the required experience includes a minimum of six hours of improved property appraisal experience.

Economic Impact Statement. The Committee believes that if the rules and regulations were developed as a result of a federal audit, this information should be included in the Economic Impact Statement.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (radiologic technologists). After discussion, the Committee had the following comment.

KAR 100-73-2. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines whether child support payments are due when it is provided information on an applicant that does not contain a Social Security number.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (respiratory therapists). After discussion, the Committee had the following comment.

KAR 100-55-1. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines whether child support payments are due when it is provided information on an applicant that does not contain a Social Security number.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (naturopathic doctors). After discussion, the Committee had the following comment.

KAR 100-72-2. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines whether the applicant has an arrearage in child support payments when it is provided information on an applicant that does not contain a Social Security number.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applications (physical therapists). After discussion, the Committee had the following comment.

KAR 100-29-1. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines the applicant has an arrearage in child support payments when it is provided information on an applicant that does not contain a Social Security number.



**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education, license renewal (respiratory therapists). After discussion, the Committee had no comment.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount (fees) and fees. After discussion, the Committee had the following comment.

Economic Impact Statement. The Committee commends the agency on the outstanding job it did constructing this Economic Impact Statement.

Prepared by Judy Glasgow  
Edited by Raney Gilliland and Sharon Wenger

Approved by Committee on:

February 26, 2010  
(Date)