

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 January 28, 2008 in Room 526-S of the Capitol.

All members were present.

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 Kansas State Board of Healing Arts

Others Attending:

See Attached List.

The minutes of the January 23rd meeting were reviewed. Representative Neighbor moved that the minutes be approved and Representative Storm seconded. The motion carried.

Representative Storm made a motion to introduce a bill on Cosmetology on Body Art, specifically adding regulations on Tanning and the number of hours required for the Aesthetician license. Vice Chairperson Mast seconded the motion. The motion carried.

Representative Hill made a motion for the Kansas Dental Board to change the licenser for Continuing Education requirement from 12 to 24 months. Representative Neighbor seconded the motion and the motion carried.

Representative Hill made another motion for the Kansas Dental Board for license reciprocity to Dentist and Hygienist. Representative Neighbor seconded the motion and the motion carried.

Larry Buening, Executive Director of the Kansas State Board of Healing Arts, made a presentation on a case currently going on in Sedgwick County. The presentation is attached as (Attachment 1).

Chairperson Landwehr asked about page 2 of the report. She wanted to know which committee reviewed? Mr. Buening stated it was the Osteopathic committee.

Representative Storm asked why in 2003, if there were complaints regarding 4 physicians, why did Schneider come to the top? Were the other 3 investigated? Mr. Buening said the complaint was with the Schneider Clinic. Investigation into this may have revealed the other complaints. He can provide feedback.

Chairperson Landwehr asked where were the complaints coming from? Mr. Buening said complaints come in on a complaint form. Letters come in as letters and petitions also come in.

Representative Neighbor asked, "how many repeated instances of neglect have to take place?" Mr. Buening stated that it depended on the severity of the situation. Once a review committee reviews, it goes to a disciplinary committee. They look at the totality and make a decision as to whether there are repeated instances and whether disciplinary action is required.

Representative Colyer asked a question about the process. He wondered if there was an emergency process where they can be suspended. Mr. Buening said there was. Representative Colyer asked what it takes to trigger the emergency process. Mr. Buening said it depended on the circumstances. The fact that there was a petition for malpractice may or may not have any indication of a violation of the Healing Arts Act. I think statistics have shown, over the years, that only 1 in 4 petitions for malpractice that have been filed against physicians have resulted in payout to the plaintiff in the case. Representative Colyer asked who makes the decision whether this is an emergency procedure or a standard disciplinary case?

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Mr. Bruening said the disciplinary panel or the board members themselves. They try to prioritize the cases based on the allegations and the entire history before that. When the disciplinary panel authorizes a case they would also state whether it would be an emergency case or not.

Chairperson Landwehr wanted clarification of that statement by asking, "what does it take to declare a disciplinary action in an emergency case? Mr. Buening stated it would take a violation of the Healing Arts Act. There are sixty some grounds of disciplinary action, it would need to indicate an imminent danger to public health. Chairperson Landwehr wanted to know how many repeated violations on standard of care would it take? Mr. Buening stated it depends on the persons past history and types of cases, were they similar or not similar situations. Again, the board is provided with all of that information and they make that determination.

Representative Flaharty wondered how frequently complaints come? She wondered if you had been practicing for a long time whether it would be probable to have a complaint after a long period of time. Mr. Buening said it is not probable but it certainly was not unusual.

Representative Rhoades asked whether it was common to find have 8 or 9 complaints within a three year period, as in this case. Mr. Buening said it was not.

Representative Crum wondered why the Schneider case did not qualify for an emergency suspension of his license, with the grounds that you have spelled out here in this report. Mr. Buening said it wasn't until we received the complaint in March of 05 and August of 05 that we had our 2nd and 3rd instance. I don't know of a case in which there has been an eminent danger determined on standard of care issues based upon three instances. Representative Crum stated that when the information was brought in from the Federal people involved it seemed to stall your process a little bit because Federal agencies were involved also. At that point wouldn't that have raised a red flag that you needed to stop this physician from continuing to practice temporarily until it could be found out how much of a danger he was to the patients he served. Mr. Buening said that he thought that was a fair statement and in hindsight today, yes.

Representative Morrison asked, "who oversees the board?" Mr. Buening said the board was appointed by the governor. Who oversees your actions and your work. Mr. Buening said as far taking actions the legislative post audit does reviews and the court systems get involved any time there is an appeal of the action. Representative Morrison asked if an appeal had ever been overturned. Mr. Buening said there was a case where the district court did overturn the board action but I think eventually it was resolved. Rep. Morrison said we have an inspector general now who oversees the health policy and authority and its work. It looks for capricious behavior and oversees in that way. Do they come in and randomly review your records. Mr. Buening stated, "no".

Representative Neighbor's asked for a clarification of page 3. Should that be May 05 or 06? Mr. Buening clarified it should be May 06.

Chairperson Landwehr asked to go back to the differing of opinions between the Board of Healing Arts and the US Attorney. As long as the Board of Healing Arts has been in place, I'm surprised that if a state or federal agency asked to hold off on a case that I thought should proceed forward that something wasn't asked for, in writing. I'm surprised that you guys didn't do that. That was actually a request from the US Attorney's office. Mr. Buening did not have a response to that. Chair Landwehr asked if this was the first time this has ever popped up in the boards history. Kelly Stephens, Litigation Counselor for the Board got up and spoke. Kelly stated that they had worked extensively with the US Attorney's office on cases over the years. These cases are not frequent. They come up about once a year and then we work with them very closely. She said she thought they had developed a very good working relationship with them, over the years. Maybe, I was incorrect about that. We worked with them a few years ago on another case where they had a criminal indictment pending and we had a parallel investigation going on and the federal government worked to come to a resolution while their matter was pending as a condition of that individuals release, pending their trial that we were also involved with. We monitored that person's practice while they were on release from the federal government, so we've had a working relationships from time to time. I think that case was Herbert Daniels, M.D. I can answer your question. I did not ask for the US Attorney's request to be in writing. In hindsight, yes I should have. But, I can

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very clearly state that she made that request to me, and there were 3 other individuals present. Assistant US Attorney, Connie Tredway was who asked us to hold off on our case until she was able to indict him.

Chair Landwehr said she can understand the hindsight thing and building relationships of trust, but I also understand when you are dealing with legal matters everything needs to be in writing and that is why I'm surprised that the Board of Healing Arts was somewhat lax in that. Ms. Stephen's said to give you a little perspective, at the time that agreement was made, we were under an order to produce documents to opposing counsel regarding anything pertaining to the matter. A letter from the US Attorney's office could have been produced to the opposing counsel at that time. Again, their criminal investigation was on-going and I think there was a concern about compromising their case. Chair Landwehr said she could understand that. But she still couldn't understand why an agency wouldn't ask for something in writing. Ms. Stephen's agreed. At the exact same time this was happening we were trying to work up additional cases against Dr. Schneider to strengthen the case and we knew we would potentially have to request a stay to amend our petition. The agreement to stay the proceedings was based on our need to add the additional cases. At that time, unfortunately it got extended way beyond my comfort zone as well and that's where we are today. Chair Landwehr asked how many complaints, reports, etc. prior to this meeting with the US Attorney's office. Ms. Stephen's said she didn't deal with the investigative process. Once those cases are completed and they come to me for prosecution that is when I begin my work. My best recollection is that in April of 2006 we brought 10 investigation cases to the Osteopathic Review committee. The exact date was April 26. Our next disciplinary panel was scheduled for May 19, 2006. I'm going to try to explain it without getting into client-privileged information. We start looking for an expert once we get the case. The Osteopathic community in Kansas is actually very small and it's difficult to find someone who don't know each other or who have not worked with each other before. And it's also true for pain-management. It's a very small area of practice. We were also preparing the cases for the disciplinary panel and they reviewed those on May 19, 2006 and we filed our action on May 30, 2006.

Representative Otto asked if physician assistants operate under the board of healing arts? Mr. Buening said they are licensed by us and are regulated by us. Can it be possible for a physician's assistant to operate under a physician in jail. Mr. Buening said no, that is not possible. They cannot be available within 30 minutes.

Representative Colyer asked for clarification, in 2007 the Board of Healing Arts was relying on the Feds to indict and that is why there is was no action in 2007 by the board? Mr. Buening stated that was correct. Ms. Stephen's stated they had contact with the US Attorneys office. Rep. Colyer asked if there was ever a discussion with the Osteopathic board that they needed to have an emergency evaluation of his license. Ms. Stephen's stated that yes, those discussions took place.

Chairperson Landwehr reiterated that an emergency proceeding should have taken place by the Board of Healing Arts prior to December 2006. Mr. Buening said in hindsight, things would probably been done differently.

Representative Mast mentioned a physician in Western Kansas that had past instances of inappropriate sexual contact. Do people in the community have a way to be informed ahead of the time they are charged, when they are involved with misconduct? Mr. Buening said if the Board has taken any action against a physician, it is published on our own website the actual action. You can go back as far as 1998. Representative Mast wondered why this particular case in Western Kansas was marked confidential. Mr. Buening said if the records relate to drug and alcohol or psychiatric issues, then we would show these as non-disclose able. Representative Mast questioned whether he would go on a sexual predator list and Mr. Buening did not know. Representative Mast asked what the difference was between censor and limitations. Mr. Buening stated our statute is number **KSA 65-2836**. A censor is a finding that there was a violation of the Healing Arts Act and they are censored for that comment. It is a serious thing, it is reported to the federal data bank. A limitation limits the license of the individual to some respect. Such as prescribing certain substances. Suspension is a temporary thing that lasts for a certain amount of time and then comes off. A revocation is a much more permanent action. Although an individual can come back after 3 years and seek reinstatement of that license. One other provision not in the statute that

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allows us to impose an administrative fine.

Representative Storm wanted to picture the procedures correctly, if a person is censored or have a limitation and want to appeal who do they appeal to? Mr. Buening said the appeals are with the district court. Representative Storm wondered if most of the time the Board of Healing Arts operated away from the court. Mr. Buening said, "yes".

Chairperson Landwehr adjourned the meeting at 2:35 p.m. The next meeting will be January 29, 2008.