

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 14, 2008
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Donald Betts
Senator Karin Brownlee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Joe Patton
Representative Jan Pauls
Representative Mark Treaster
Representative Ed Trimmer

Member Absent

Representative Arlen Siegfroid

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Jill Shelley, 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

Betty Rose, Kansas State Board of Technical Professions
Don Rathbone, Kansas State Board of Technical Professions
George Barbee, Kansas State Board of Technical Professions
Lindsey Douglas, Hein Law Firm
Ron Gaches, Kansas State Public Employees
Diane L. Bellquist, Kansas Board of Healing Arts

Mark Stafford, Kansas Board of Healing Arts
Larry Buening, Kansas Board of Healing Arts
Scott Heidner, ACEL, Kansas
Kathy Sachs, Secretary of State's Office
Deletria Nash, Kansas Insurance Department
Adrian Serene, Office of the State Bank Commissioner
Kevin Glendening, Office of the State Bank Commissioner
John Kiefhaber, Kansas Chiropractic Association
Julie Holmes, Kansas Insurance Department
Steve O'Neil, Kansas Insurance Department
Richard Howard, Kansas Department of Health and Environment
Shari Albrecht, Kansas Department of Health and Environment

Morning Session

Chairperson Carl Holmes called the meeting to order at 9:10 a.m. on January 14, 2008.

Chairperson Holmes welcomed Donald Rathbone to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions ([Attachment 1](#)). KAR 66-6-1, seals and signatures; KAR 66-6-4, professional conduct; and KAR 66-10-1, architect experience of a character satisfactory to the Board.

Mr. Rathbone stated that the biggest change in the proposed rules and regulations was the use of the digital signature by the Board. He stated the Board has acquired a software package to provide security that notifies the Board if a signature on the document has been altered. A question from Committee members concerning the deletion of KAR 66-6-1(e) noted that the deletion of the requirement to retain copies was not addressed in KAR 66-6-4. The term "owner" and who may retain copies need to be clarified, since it does not correspond with the definition in the statute. Mr. Rathbone stated that this would be taken back to the Board and it would review this section. The Committee suggested that the Economic Statement be amended to include the cost of the security software. After answering all questions from the Committee, the Chairperson thanked Mr. Rathbone for his appearance.

Chairperson Holmes recognized Ron Gaches, Kansas Society of Professional Engineers (KSPE), to address the rules and regulations noticed for hearing by the Kansas State Board of Technical Professions ([Attachment 2](#)). Mr. Gaches stated that KSPE is fully supportive of these regulations and was instrumental in bringing the issue of electronic signatures to the attention of the Board of Technical Professions.

Randy Forbes, General Counsel for the Kansas Pharmacy Board, was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-7-21, institutional drug rooms.

Mr. Forbes stated that this regulation had come before the Committee previously and, because of the suggestions made by this Committee, the Board made several changes to the rule and regulation. Mr. Forbes stated that all jails had received a letter notifying them about the proposed rule and regulation concerning institutional drug rooms and that there are more institutional drug rooms than were registered with the Kansas Pharmacy Board. A Committee member questioned whether the additional institutional drug rooms also had been contacted about registering

with the Board of Pharmacy. Mr. Forbes stated that this had not been done but agreed that it should probably should be done. The Committee also noted that the number of institutional drug rooms should be included in the Economic Impact Statement. Chairperson Holmes thanked Mr. Forbes for his presentation before the Committee.

Chairperson Holmes introduced Kevin Glendening, Deputy Bank Commissioner, to speak to the proposed rule and regulation noticed for hearing by the Office of the State Bank Commissioner. KAR 17-25-1, registration, renewal, and amendment fees.

A question was raised by a member of the Committee about the reason for the large increase from \$100.00 to \$500.00 for initial registration. Mr. Glendening stated that the agency did not anticipate any new registrations, but it had 32 credit service organizations that would renew their application for an increase of \$6,200.00. The Committee recommended that this amount be included in the Economic Impact Statement. The Committee was concerned that the increased costs would be passed on to the credit service organization consumers. Mr. Glendening stated that he did not believe this would happen. After responding to all Committee members' questions, Mr. Glendening was thanked by the Chairperson for his presentation before the Committee.

The Chairperson ask the Committee to review two sets of minutes: November 19, 2007, and December 10, 2007. Senator Brownlee noted that on the November minutes on page 8 , there was a typographical error. *Senator Steineger moved the minutes of November 19 be approved as corrected and the December minutes be approved as presented. Senator Schmidt seconded the motion. Motion Carried.*

Larry Buening, Executive Director, Board of Healing Arts, was introduced by the Chairperson to address the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-29-7, fees; KAR 100-54-4, fees; and KAR100-55-4, fees.

Mr. Buening explained that the fees in KAR 100-29-7 were being reduced because the cost of the exam is no longer included in the application fee, but rather paid by the applicant directly when the exam is taken. There were no questions from Committee members. The Chairperson thanked Mr. Buening for appearing before the Committee.

Mark Stafford was recognized by the Chairperson to speak to the other proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-22-8, revoked; and KAR 100-22-8a, phosphatidylcholine and sodium deoxycholate.

Mr. Stafford noted that on September 13, 2007, the Shawnee County District Court issued a temporary order partially staying the enforcement of KAR 100-22-8 and, as a condition of the temporary order, imposed the limitations that the temporary regulation had established. The temporary order remanded the matter to the Board for further hearings. Mr. Stafford stated KAR 200-22-8a is the replacement rule and regulation which addresses the court findings. A Committee member noted that on page 2, (D) the patient should be directed to report any side effects to the doctor; in order for paragraph (3) page 4 to be carried out by the physician. Mr. Stafford stated that they would review these items. Mr. Stafford answered other general questions from the Committee concerning what other states are doing. After responding to all questions, Chairperson Holmes thanked Mr. Stafford.

After further discussion by the Committee, *it was moved by Senator Brownlee that a bill be prepared that would ban the use of phosphatidylcholine and sodium deoxycholate in the state of Kansas. Senator Schmidt seconded the motion. Motion Carried.* The bill will be introduced in the Senate. Mr. Wilke stated that, with the Committee's consent, he would check with the Board of Healing Arts because of its expertise on the subject.

Chairperson Holmes introduced Shari Albrecht to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-32-1 and KAR 28-32-2, revoked; KAR 28-32-4 through 28-32-5, revoked; KAR 28-32-6 through 28-32-7, revoked; KAR 28-32-8, definitions; KAR 28-32-9, agency certification; KAR 28-32-10, operator certification; KAR 28-32-11, EBAT device certification; KAR 28-32-12, certified operator instruction and continuing education requirements; KAR 28-32-13, records and reports; and KAR 28-32-14, preliminary breath-screening test devices.

Ms. Albrecht stated that the proposed new regulations update those for preliminary breath screening devices. They propose to adopt new breath alcohol testing regulations that better correlate to the technological changes in breath testing that have occurred in the 20 years since the existing regulations were first adopted. Another regulatory change shifts the operator certificate from a one-year certificate to a two-year certificate, thus reducing the staff time required to issue certifications.

Staff noted that KAR 28-32-13 imposes retention period requirements and there is no statutory authorization for keeping and retaining such records. The Committee recommended that if a bill comes up this Session concerning driving under the influence (DUI), the bill be amended to include the record keeping and retention of records as required in KAR 28-32-13. Chairperson Holmes suggested a letter be sent from the Committee to the Chairperson and Vice-Chairperson of the House and Senate Judiciary Committees who handle the DUI issue, asking them to consider amending a DUI bill by adding the record-keeping provision. The Committee had several questions concerning the standard to evaluate the accuracy of the device and what the parameters are on a breath sample of an individual to determine the presence or absence of alcohol. After responding to all Committee questions, Ms. Albrecht was thanked by the Chairperson for appearing before the Committee.

Deletria Nash, Assistant General Counsel, Kansas Insurance Department, was introduced by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department ([Attachment 3](#)). KAR 40-4-41, utilization review organizations; standards; and the revocation of KAR 40-4-41a through KAR 40-4-41j.

Ms. Nash stated that the proposed change will integrate all of the requirements that are included in the Utilization Review Organization (URO) series by adopting, by reference, the Department's Policy and Procedure Relating to Health Utilization Management Standards dated August 23, 2007. The Policy and Procedure is an adaptation of URAC Health Utilization Management Accreditation, Version 5.0, which provides Core Standards, Version 2.0, and Health Utilization Management Standards for Utilization Review Organizations.

In answer to a question from staff, Ms. Nash stated that the document was available to the public on its website. Staff noted that the document available on the website was not the August 23, 2007 document but a previously dated document. Ms. Nash stated that she would check on this. There were no further questions from the Committee, and Chairperson Holmes thanked the conferee for her presentation before the Committee.

Mr. Wilke reviewed the proposed bill numbered 7rs1711, that the Committee had requested on the Rules and Regulations Filing Act; pertaining to adoption of substantial changes in rules and regulations ([Attachment 4](#)). It was suggested that the words "if any" be inserted on page 2, next to the last line after "proposed change." After a discussion by the Committee, *Senator Vicki Schmidt moved to have the bill filed as amended in the House by the House Federal and State Affairs Committee. Senator Brownlee seconded the motion. The motion carried.*

A copy of the letter sent to the Kansas Department of Commerce with the Committee's comments on the proposed rules and regulations heard at the December meeting was provided by staff to all Committee members (Attachment 5). Chairperson Holmes recognized Aaron Davis, Boxing Commissioner, to address the concerns of the Committee addressed in the letter (Attachment 6).

Committee members questioned the conferee concerning allowing officials who were not yet certified by the American Boxing Commission (ABC) to officiate matches. The Committee members had concerns that the State Commission had no minimum standard requirements set forth in the regulation that officials must meet before they would be allowed to work. Mr. Davis said the State Athletic Commission would draw up some written guidelines to follow. The Committee also suggested the agency set a two-year limit for officials to work toward obtaining their ABC certification or the Kansas license would be revoked. Representative Burroughs, a member of the State Athletic Commission, brought a concern before the Committee about using only the ABC certification, since other states recognize different organizations. The Committee suggested Representative Burroughs research these other organizations and see whether any other entities should be added. Two Committee members had some questions about amateur boxing matches that had been cancelled because they were not approved by the State Athletic Commission. These were cancelled at the last minute and had been advertised as fund-raising events for local organizations. Mr. Davis stated that these were cancelled because the sponsoring organization had not been recognized by the Athletic Commission. The Committee suggested that in the future a format be provided to promoters with a guideline to follow when planning an event by a local agency. This could include who needs to be contacted; what items need to be completed prior to the event; and their timeline. Representative Burroughs addressed the Committee, giving an overview of the Commission from its beginning and the intent of the Commission in regulating mixed martial arts. The Commission provided the Committee with a copy of the FY 2008 budget which included the amount paid to each staff member to date and the proposed budget for FY 2009.

The Chairperson recessed the meeting until 3:00 p.m. after the House and Senate had adjourned.

Afternoon Session

Senator Vicki Schmidt, the 2008 Chairperson, reconvened the meeting at 3:15 p.m. Mr. Aaron Davis continued his presentation answering Committee questions concerning the Athletic Commission's rules and regulations. The Committee requested that the Commission request a letter from the Department of Revenue setting out Revenue's standards for dealing with complimentary tickets for tax purposes and, when that letter is received, a copy be sent to this Committee. Staff noted that in response to the athletic tax on professional wrestling, the statute specifically applies to regulated sports events; this does not include professional wrestling events. The Committee noted that this may be something that needs to be clarified in the statute. Merrill Befort, an attorney with the Department of Commerce, stated that the Commission has used the terms "taxes" and "fees" interchangeably, and since the Department of Revenue has stated that the Commission does not have the authority to collect taxes, the Commission was planning on making some revisions to this section to clarify the term "regulated sports" and "professional wrestling events." A Committee member suggested that random testing be done for steroids, drugs, and alcohol. The Committee noted that if a promoter refuses to have his fighter tested, then a suspension could be issued. Representative Burroughs stated that these would be taken back to the Commission and it would get back to the Committee with its recommendation. The Chairperson suggested that when the Commission has completed the statutory changes that it also allow Mr. Wilke and Mr. Gilliland to

review. Ms. Befort stated that she would do this. Chairperson Schmidt thanked Mr. Davis, Ms. Befort, and Representative Burroughs for their presentations before the Committee.

The Chairperson noted that Mr. Gilliland distributed a copy of the *Critical Analysis of the State and Federal Definitions of "Commercial Motor Vehicle" by the Kansas Corporation Commission* for each Committee member, as directed by House Substitute for SB 357 ([Attachment 7](#)).

Mr. Wilke passed out drafts of two bills, "7rs1586" ([Attachment 8](#)) and "tempredraft 1586" ([Attachment 9](#)), for the Committee's review. Mr. Wilke stated that 7rs1586 was drafted at the request of Senator Brownlee with the idea that the grant of authority be changed regarding rules and regulations by the Kansas Lottery Commission. Mr. Wilke stated that "tempredraft 1586" amended paragraph (2) on page 3 by changing the date which temporary rules and regulations would continue to be effective until revised; and deleted paragraph (3) on page 3, which stated temporary rules and regulations adopted by the Commission during the period of April 19, 2007, and ending June 30, 2008 shall expire December 31, 2009. After discussion by the members, it was the recommendation of the Committee that both bills be sent to Representative Siegfried as Chairman of the House Federal and State Affairs Committee without recommendation from the Committee, and let him decide whether either of them would be appropriate and should be filed for consideration by the 2008 Legislature.

The next meeting will be in February, and Chairperson Vicki Schmidt requested that Mr. Gilliland canvass all members concerning their availability on a Friday and get back to the Chairperson. The meeting was adjourned at 4:40 p.m. by the Chairperson.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations definitions; agency certification; operator certification; EBAT device certification; certified operator instruction and continuing education requirements; records and reports; preliminary breath-screening test devices; and revocations and had the following comment.

KAR 28-32-13. The Committee questions the statutory authority for the agency to require the maintenance of these types of records. In addition, the Committee questions the agency's authority to require the quarterly reports. Further, the Committee intends to correspond with the chairpersons, vice-chairpersons, and ranking minority members of the House and Senate Judiciary Committees pointing out this Committee's concern.

Kansas State Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning seals and signatures; professional conduct; and architect experience of a character satisfactory to the Board and had the following comments.

KAR 66-6-4. The Committee is concerned that the "owner" of any drawings or other products of the licensed professional would be the person who paid for the service. The Committee suggests that the Board consider a definition for the term "owner."

Request. The Committee requests that the agency review its economic impact statement and consider the inclusion of actual dollar estimates of the impact of this set of regulations.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning institutional drug rooms and had the following comments.

KAR 68-7-21. The Committee believes that if the agency did contact each institution which has or may have an "institutional drug room" about this proposed regulation, that it also is possible to ensure that each entity with an "institutional drug room" is properly registered. Please inform the Committee as to whether this has been accomplished.

Comment. The Committee believes that the notice of handicapped parking is misleading. From reading the hearing notice one might think that "Sunnyside Avenue" is somewhere close to the address of the agency. Please clarify that handicapped parking is available close to the location of the actual hearing.

State Bank Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registration, renewal, and amendment fees and had the following comment.

Comment. The Committee is concerned that this fee increase will be passed on to consumers. The Committee requests the Commissioner contact affected entities, determine from them how the increased fees will affect amounts paid by consumers, and include that information in the Economic Impact Statement.

State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees (physical therapists and physical therapy assistants); fees (respiratory therapists); and fees (occupational therapists) and phosphatidylcholine and sodium deoxycholate and revocation and had the following comments.

KAR 100-22-8a. In subsection (d)(3)(D), the Committee requests that the information given to the patient include symptoms of side effects that require immediate physician attention.

Request. The Committee requests that the agency review and revise the fiscal note to include potential costs to the agency and consumers.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning utilization review organizations, standards; and revocations and had the following comments.

KAR 40-4-41. The Committee is concerned that the most recent version of the document being adopted is not the one available to the public via the Internet. Please check the agency website to ensure that the proper version of the document is available to the public.

Comment. The Committee is concerned that any changes in health utilization management standards will no longer be reviewed by any legislative entity, but rather those changes will be made in a document adopted by reference.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Jill Shelley

Approved by Committee on:

February 15, 2008

(date)