

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on March 21, 2007, in Room 123-S of the Capitol.

All members were present except:

Dwayne Umbarger arrived, 9:45 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Representative Mike O'Neal
Jerry Slaughter, Executive Director, Kansas Medical Society
Tom Bell, President, Kansas Hospital Association
Paul Morrison, Kansas Attorney General
Margaret Farley, Kansas Advocates for Better Care
Maren Turner, State Director, AARP
Leland Demspey, Kansas Trial Lawyers Association
Michael Hodges, Attorney
Russ Hazelwood, Attorney
Lori Robles
Terry Humphrey, Kansas Trial Lawyers Association
Mary Cockburn, Citizens Commission on Human Rights
Bill McKean

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2530–The Kansas consumer protection act does not apply to professional services by health care providers.**

Representative Mike O'Neal testified as the sponsor of the bill which is a response to the Kansas Supreme Court opinion in the case of *Williamson v. Amrani, M.D.* handed down in February 2007. The Court ruled that the Kansas Consumer Protection Act (KCPA) can apply to an action for medical negligence or malpractice. House amendments make it clear that the KCPA should not and does not apply to professional services. This bill restores Kansas law to where it was prior to the *Williamson v. Amrani, M.D.* decision and consistent with prior court decisions and consistent with the public policy of the State (Attachment 1).

Jerry Slaughter spoke in support, indicating that without this legislation there would be a dramatic increase in allegations of KCPA violations for conduct which is already covered, and more appropriately litigated, under the traditional medical malpractice tort system. The KCPA offers nothing additional in the way of protection that is not already there and will affect the physician-patient relationship, be duplicative, stimulate more litigation, drive up medical malpractice insurance premiums, and increase health care for all Kansans (Attachment 2).

Thomas Bell appeared in favor, stating Kansas already has established regulations, statutes and remedies for malpractice claims that distinguish services provided by medical health professional from supplier-consumer transactions. Kansas law should avoid reclassifying what are essentially medical malpractice claims as some other form of action. **HB 2530** underscores the importance of preventing overlap between medical-malpractice claims and consumer-protection claims (Attachment 3).

Attorney General Paul Morrison testified in opposition, providing his opinion that all physicians and health care providers are subject to the KCPA because they fall within the definition of "supplier" found in K.S.A. 50-624(j). If **HB 2530** is passed, it would eliminate important protections currently in place for Kansans. General Morrison stated concern that the Board of Healing Arts cannot provide the legal protections that his office provides to consumers. General Morrison also voiced concern that **HB 2530** does not specifically

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define who qualifies as a “health care provider” ([Attachment 4](#)).

Margaret Farley spoke as an opponent, indicating that the only way consumers can seek penalties against deceptive health care providers is through the KCPA. Ms. Farley stated concern that several facilities will no longer be accountable under KCPA including nursing homes, assisted living facilities, boarding care facilities, adult care facilities, and home health care agencies ([Attachment 5](#)).

Maren Turner spoke in opposition, stating that consumer protection laws allow an individual to bring suit in order to remedy violations of personal rights established by law. If the law does not provide a private right of action, the individual consumers must depend on federal or state officials and regulatory agencies for enforcement. In these cases the efforts and resources expended for enforcement may depend on the political climate, leaving the individual uncertain about obtaining remedies for violations of rights ([Attachment 6](#)).

Leland Dempsey appeared in opposition, relating that health care is a business in the United States. Therefore, health care providers should be held responsible for their misrepresentations to Kansas consumers. Mr. Dempsey voiced concern that **HB 2530** would provide special treatment to health care providers and absolve them from liability ([Attachment 7](#)).

Michael Hodges spoke as an opponent, stating that the KCPA is meant to provide a remedy to people who have been misled or mistreated by purveyors of services and merchandise in Kansas in the form of awarding fees and penalties. Mr. Hodges stressed that KCPA does not apply to ordinary malpractice cases. Mr. Hodges also stated concern that the term “health care provider” is not properly defined in the bill ([Attachment 8](#)).

Russ Hazelwood appeared in opposition, stating his belief that **HB 2530** is bad for Kansas consumers and bad public policy. The exemption of all “health care providers” is dangerous and unnecessary. The KCPA serves an important purpose protecting Kansas consumers against deceptive and unconscionable acts and practices and personal accountability is not a concept that should be reserved for those outside of the health care industry ([Attachment 9](#)).

Lori Robles spoke in opposition, relating her personal experience as a victim of deception by a physician and the resulting litigation ([Attachment 10](#)).

Terry Humphrey spoke in opposition, voicing concern that **HB 2530** will weaken the Kansas Consumer Protection Act and will set a precedent for other professionals or industries to request similar exemptions. There is no consumer benefit to distinguishing health care transactions from other consumer transactions. Ms. Humphrey indicated the term “health care provider” will encompass profit making entities that should be subject to the requirements of fair dealing found in the KCPA ([Attachment 11](#)).

Mary Cockburn, opponent, provided information on several cases of deception and misrepresentation by mental health providers. Ms. Cockburn stated every Kansan deserves to have every possible legal remedy available in the event they are victimized by psychiatric/mental health providers ([Attachment 12](#)).

Bill McKean appeared in opposition, stating the citizens of Kansas deserve consumer protection. Kansans need the ability to demand accountability and have recourse to the courts ([Attachment 13](#)).

Written testimony in support of **HB 2530** was submitted by:

Gary Reser ([Attachment 14](#))

Ronald R. Hein, Mental Health Credentialing Coalition ([Attachment 15](#))

Ronald R. Hein, Kansas Society of Radiologic Technologists ([Attachment 16](#))

Ronald R. Hein, Kansas Pharmacy Coalition ([Attachment 17](#))

Charles L. Wheelan, Executive Director, Kansas Association of Osteopathic Medicine ([Attachment 18](#))

Gary Robbins, Kansas Optometric Association ([Attachment 19](#))

Kevin J. Robertson, Executive Director, Kansas Association of Osteopathic Medicine ([Attachment 20](#))

Mark Brady, Kansas Society of Anesthesiologist ([Attachment 21](#))

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Robert Blanken, President, Kansas Academy of Physician Assistants ([Attachment 22](#))

Written testimony in opposition to **HB 2530** was submitted by:

Steve Dickerson, Attorney ([Attachment 23](#))

Marian Bonura ([Attachment 24](#))

Dennis Essen ([Attachment 25](#))

John Kuhn ([Attachment 26](#))

Teresa Culp ([Attachment 27](#))

Theresa Allamn ([Attachment 28](#))

Carla Thomas ([Attachment 29](#))

Brenda Kuhn ([Attachment 30](#))

William Kelly ([Attachment 31](#))

Shannon Jones, Statewide Independent Living of Kansas ([Attachment 32](#))

Don Dew ([Attachment 33](#))

Jennifer Schwartz, Kansas Association for Independent Living ([Attachment 34](#))

There being no further conferees, the hearing on **HB 2530** was closed.

The Chairman called for final action on **SB 32–Health care; medical assistance repayment; discretionary trusts**. Chairman Vratil reviewed the bill and distributed a balloon amendment based on testimony heard March 13 ([Attachment 35](#)).

Senator Bruce moved, Senator Umbarger seconded to withdraw the committee recommendation passed February 9. Motion carried.

Senator Journey moved, Senator Bruce seconded, to adopt the proposed balloon amendment. Motion carried.

Senator Journey moved, Senator Bruce seconded, to recommend **SB 32**, as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:29 A.M. The next scheduled meeting is March 22, 2007.