

## **MINUTES**

### **JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

January 7, 2016  
Room 152-S—Statehouse

#### **Members Present**

Representative Sharon Schwartz, Chairperson  
Senator Tom Hawk  
Senator Garrett Love  
Senator Ralph Ostmeyer  
Representative John Carmichael (replacing Representative Winn for this meeting)  
Representative Steve Huebert  
Representative Charles Macheers (replacing Representative Lunn for this meeting)  
Representative Janice Pauls  
Representative Ed Trimmer  
Representative Jim Ward

#### **Members Absent**

Senator Vicki Schmidt, Vice-chairperson  
Senator Oletha Faust-Goudeau  
Representative Jerry Lunn  
Representative Valdenia Winn

#### **Staff Present**

Jill Shelley, Kansas Legislative Research Department  
Joanna Dolan, Kansas Legislative Research Department  
Whitney Howard, Kansas Legislative Research Department  
Natalie Scott, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Jenna Seematter, Office of Revisor of Statutes  
Shirley Jepson, Committee Assistant

#### **Conferees**

Cheryl Magathan, Kansas Real Estate Appraisal Board  
Kelli Stevens, General Counsel, Board of Healing Arts  
Curt Shreckengast, Deputy Director, Board of Emergency Medical Services  
Michael Duenes, Litigation Counsel, Kansas Corporation Commission  
Mike Hoeme, Director, Transportation Division, Kansas Corporation Commission  
Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing  
Patsy Congrove, Administrator of Charitable Gaming, Kansas Department of Revenue

## **Other Attendees**

[See attached list.](#)

## **Morning Session**

The meeting was called to order at 10:05 a.m. by Chairperson Sharon Schwartz. Chairperson Schwartz stated that two substitute members are participating today only, in place of absent Committee members as follows:

- Representative John Carmichael replacing Representative Valdenia Winn; and
- Representative Charles Macheers replacing Representative Jerry Lunn.

## **Approval of Minutes**

A Committee member noted the reference to Chairperson Schwartz's anniversary should be to her 56<sup>th</sup> anniversary as opposed to 50<sup>th</sup> anniversary, as stated.

*Representative Pauls moved for approval of the minutes of November 16, 2015, as corrected. Motion seconded by Senator Ostmeyer. Motion carried.*

In response to a question from the Committee regarding information requested by the Committee from the Kansas Department of Health and Environment, Division of Health Care Finance during the November Committee meeting regarding ventilators, staff will check to see if the information has been received.

## **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Real Estate Appraisal Board**

KAR 117-8-3, uniform standards of professional practice, adoption by reference.

Cheryl Magathan, Kansas Real Estate Appraisal Board, appeared before the Committee to address the proposed rule and regulation. Ms. Magathan explained the rule and regulation adopts by reference the current edition of the Uniform Standards of Professional Appraisal Practice.

In response to a question from the Committee, Ms. Magathan stated adopting the Standards by reference is a normal practice and the agency has received no negative responses regarding the proposed rule and regulation.

## **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Healing Arts**

KAR 100-28a-1a, definitions; KAR 100-28a-6, scope of practice; KAR 100-28a-9, active practice request form, content; KAR 100-28a-9a, active practice request form, requirements; KAR 100-28a-10, supervising

physician; KAR 100-28a-11, duty to communicate, emergency medical conditions; KAR 100-28-a-12, substitute supervising physician; KAR 100-28a-13, prescription-only drugs; KAR 100-28-a-14, different practice location; KAR 100-28a-15, licensure, cancellation; KAR 100-28a-17, number of physician assistants supervised, limitation for different practice location.

Kelli Stevens, General Counsel, Board of Healing Arts, appeared before the Committee to address the proposed rules and regulations ([Attachment 1](#)). Ms. Stevens indicated the proposed rules and regulations implement changes to the Physician Assistant Licensure Act (PA Act) enacted during the 2014 and 2015 Legislative Sessions. Ms. Stevens noted temporary rules and regulations will become effective on January 11, 2016. A public hearing will be held on February 11, 2016, to address the permanent rules and regulations. Ms. Stevens indicated the agency has not received any public comment to date.

The Committee expressed concern that the regulations may put more authority in the PA's hands than previously authorized, noting the need to keep the patients safe. Ms. Stevens said agency officials think the new rules and regulations provide a higher degree of accountability. The Committee also noted the importance of PAs in the rural areas of the state where the number of doctors is limited. Committee members requested a copy of the form PAs will use to report information about their work relationships with physicians.

#### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services**

KAR 109-1-1, definitions; KAR 109-2-1, ambulance service operator; KAR 109-2-2, application for ambulance service permit and ambulance license, permit renewal and license renewal; KAR 109-2-6, types of ambulance services and staffing; KAR 109-2-7, revocation (was ground ambulance staffing); KAR 109-2-8, standards for ground ambulances and equipment; KAR 109-2-11, standards for air ambulances and equipment; KAR 109-7-1, schedule of fees.

Curt Shreckengaust, Deputy Director, Board of Emergency Medical Services, appeared before the Committee to address the proposed rules and regulations. Mr. Shreckengaust noted these rules and regulations specify the standards for all air and ground ambulances with revisions reflecting changes in terminology for ambulance types. Mr. Shreckengaust explained that simplifying the terminology may be helpful with ambulance service staffing problems.

#### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Corporation Commission**

KAR 82-4-1, definitions; KAR 82-4-2a, authority of agents, employees, or representatives authorized by commission; KAR 82-4-3h, driving of commercial motor vehicles; KAR 82-4-3i, parts and accessories necessary for safe operation; KAR 82-4-3j, inspection, repair, and maintenance; KAR 82-4-3k, transportation of hazardous materials, driving and parking rules; KAR 82-4-3n, minimum levels of financial responsibility for motor carriers; KAR 82-4-3o, imminent hazard; KAR 82-4-8a,

revocation (was accessories and equipment); KAR 82-4-20, transportation of hazardous materials by motor vehicles.

Michael Duenes, Litigation Counsel, Kansas Corporation Commission (KCC), appeared before the Committee to address the proposed rules and regulations. Mr. Duenes explained the proposed amendments include edits to reflect minor grammatical and form corrections and recent updates to the Federal Motor Carrier Safety Administration (FMCSA) regulations. In addition, the rules and regulations provide an explanation of “gross combination weight rating” and a definition of “medical waiver.” KAR 82-4-2a adds a new section authorizing various “out-of-service” enforcement actions by KCC agents, employees, or representatives. Other amendments reflect the addition of a new subsection (d) authorizing various “out of service” enforcement actions by KCC agents, employees, or representatives and ensures compatibility with the federal regulations. Mr. Duenes noted that if the proposed amendments are not adopted, the KCC will become non-compliant with the Federal Motor Carrier Safety Regulations, which would carry a monetary consequence to the state.

Responding to a question from the Committee regarding declaring a vehicle “out of service,” Mike Hoeme, Director, Transportation Division, KCC, reported KCC officials have the authority to declare a vehicle “out-of-service,” an authority consistent with federal regulations. Responding to another question, Mr. Hoeme indicated KCC officials who are authorized to place a vehicle out of service have been certified like Kansas Highway Patrol troopers with similar authority but KCC officials may place a vehicle out of service only at a port of entry or the motor carrier’s place of business.

Staff noted several inconsistencies in the language of the document and offered to work with KCC on the proposed changes.

### **Review and Comment on rules and regulations noticed for hearing by the Kansas State Board of Nursing**

KAR 60-2-101, requirements for initial approval; KAR 60-3-102, duplicate of initial license; KAR 60-3-103, change of name; KAR 60-3-110, unprofessional conduct; KAR 60-3-113, reporting of certain misdemeanor convictions by the licensee; KAR 60-7-102, duplicate of initial license; KAR 60-7-106, unprofessional conduct; KAR 60-9-105, definitions; KAR 60-9-106, continuing nursing education for license renewal; KAR 60-17-102, requirements for initial approval.

Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, appeared before the Committee to address the proposed rules and regulations. Committee members expressed concern with some terminology used in the document: “deterioration through the aging process.” Staff confirmed that this language has been used in statute.

The meeting was recessed at 12:00 noon.

### **Afternoon Session**

The meeting reconvened at 1:40 p.m.

## **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture**

KAR 4-5-1, revocation (was definitions); KAR 4-5-2, revocation (was classification); KAR 4-5-4, agricultural liming material testing.

Staff reported no representative of the Department of Agriculture was able to testify before the Committee at this meeting and will review its proposed rules and regulations at a later date.

Staff also noted the rules and regulations pertaining to legislation enacted during the 2015 Legislative Session concerning the euthanizing of cats and dogs were to be promulgated by December 31, 2015. Staff has visited with the chief counsel for the Department of Agriculture and been told the rules and regulations are in process and the agency will present these rules and regulations to the Committee at its next meeting.

## **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Revenue**

KAR 92-23-9, revocation (was persons conducting bingo games); KAR 92-23-10, revocation (was verification of winners); KAR 92-23-11, revocation (was handing of hard cards); KAR 92-23-12, revocation (was communication of numbers needed to win prohibited); KAR 92-23-13, revocation (was display of numbered objects used in conducting games); KAR 92-23-14, revocation (was schedule of bingo games); KAR 92-23-15, revocation (was bingo trust accounts); KAR 92-23-16, revocation (was cashing of prize checks); KAR 92-23-17, revocation (was bond required for bingo distributors); KAR 92-23-18, revocation (was due date of tax return by bingo distributors); KAR 92-23-19, revocation (was bingo, persons selling refreshments or performing janitor work); KAR 92-23-20, revocation (was bingo, house rules); KAR 92-23-21, revocation (was bingo, reduction in value of prizes); KAR 92-23-22, revocation (was bingo, limitations on number of games and daily prize limit); KAR 92-23-23, revocation (was bingo, procedure for correction if wrong number called); KAR 92-23-25, revocation (was bingo, multiple winners); KAR 92-23-30, revocation (was bingo, instant bingo); KAR 92-23-31, revocation (was bingo, use of hard cards commencing July 1, 2003); KAR 92-23-37, revocation (was bingo, sufficiency of notice to licensee); KAR 92-23-38, revocation (was bingo, books and records, inspection and preservation); KAR 92-23-38a, revocation (was disputed bingo game); KAR 92-23-39, revocation (was bingo, filing of returns, notice, hearings, and revocation); KAR 92-23-40, revocation (was advertising); KAR 92-23-41, definitions, persons conducting games of bingo, restrictions; KAR 92-23-42, bond required for distributors; KAR 92-23-43, bingo trust bank accounts; KAR 92-23-44, schedule of games of bingo; KAR 92-23-45, handling of reusable bingo cards; KAR 92-23-46, bingo, house rules; KAR 92-23-47, display of numbered objects used in conducting games of bingo; KAR 92-23-48, bingo, procedure for correction if wrong number called; KAR 92-23-49, bingo, persons selling refreshments or performing janitorial work; KAR 92-23-50, communication of numbers needed to win prohibited; KAR 92-23-51, disputed game of bingo; KAR 92-23-52, bingo, multiple

winners; KAR 92-23-53, verification of winners; KAR 92-23-54, bingo, reduction in value of prizes; KAR 92-23-55, cashing of prize checks; KAR 92-23-56, bingo, instant bingo; KAR 92-23-57, bingo, records, inspection, preservation; KAR 92-23-58, bingo, filing of returns, notice, hearings, license; KAR 92-23-59, due date of tax return by distributors.

Patsy Congrove, Administrator of Charitable Gaming, Department of Revenue, appeared before the Committee to address the proposed rules and regulations. A document prepared by Kansas Legislative Research Department (KLRD) staff was distributed to the Committee; the document consolidated and explained the proposed changes to the bingo rules and regulations ([Attachment 2](#)).

Committee members expressed their appreciation for the explanatory document produced by KLRD staff.

## **COMMITTEE DISCUSSION AND COMMENTS**

### **Real Estate Appraisal Board**

After discussion, the Committee had no comments.

### **Board of Healing Arts**

After discussion, the Committee had the following comments.

KAR 100-28a-17. The Committee is concerned with the proposal to have no limit on the number of physician assistants under one physician's supervision at the main practice location, despite the requirements of KAR 100-28a-9 and KAR 100-29a-10. The Committee suggests consideration of a limit on the number of physician assistants under one supervising physician. The Committee notes physician assistants provide valuable services to the residents of Kansas and are vital to providing health care, especially in rural areas underserved by physicians.

### **Board of Emergency Medical Services**

After discussion, the Committee had the following comment.

The Committee thanks the Board for simplifying ambulance types and its efforts to enable ambulance coverage throughout the state.

### **Kansas Corporation Commission**

After discussion, the Committee had the following comments.

KAR 82-4-2a. The Committee requests the agency update the statutory supplement references to 2015, rather than 2014.

KAR 82-4-3i. The Committee suggests review of the definitions in paragraph (a)(1)(B) for consistency of phrasing and punctuation. For example, the definition of “manufactured home” in (a)(1)(B)(iii) begins with the term that is to be defined (‘Manufactured home means....’), while the definition of “reflective material” in (a)(1)(B)(v) provides only a definition (‘A material conforming...’). Also, the quotation marks at the end of paragraph (a)(1)(B)(iii) appear to be unnecessary. Additionally, the Committee requests review of the omission of any reference to standards for the sound level meter mentioned in paragraph (a)(1)(W).

KAR 82-4-3j. The Committee suggests the agency correct “82-4-3j” in paragraph (a)(1) to “82-4-3f.”

## **Board of Nursing**

After discussion, the Committee had the following comments.

KAR 60-3-110 and 60-7-106. The Committee requests the agency, with the assistance of the Office of the Attorney General, review the use of the phrase “deterioration through the aging process” in these rules and regulations. The Committee notes this language is present in several statutes, including KSA 65-4924, which has not been amended since its enactment in 1986. The Committee suggests protection of the public can be achieved through the review of “physical or mental disability or condition” and the phrase “deterioration through the aging process” may be unnecessary.

KAR 60-9-106. Paragraph (c)(3) contains both “individual offering approval” and “IOA.” Because both are defined in KAR 60-9-105(m), the Committee suggests either “individual offering approval” or “IOA” be used in KAR 60-9-106(c)(3).

## **Department of Revenue**

After discussion, the Committee had the following comments.

The Committee thanks those responsible for providing a comparison between the former rules and regulations for bingo and those proposed in this set of rules and regulations, and for the review of the substantive changes.

KAR 92-23-50. The Committee suggests highlighting information on this rule and regulation, a prohibition on communication of bingo numbers needed to win, in any handbook provided to those who offer games of bingo, and suggests that it would be beneficial if this and other basic rules for bingo games were read aloud at the beginning of bingo sessions.

## **Adjournment**

The meeting was adjourned at 2:10 p.m. The next meeting of the Committee is “on call of the Chair.”

Prepared by Shirley Jepson  
Edited by Jill Shelley, Joanna Dolan, and  
Whitney Howard

Approved by the Committee on:

January 8, 2016

(Date)