

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at
Chairperson

1:48 ~~xxx~~ p.m. on January 27, 1983 in room 531N of the Capitol.

All members were present except:

Committee staff present:

Norm Furse - Revisor
Julian Efird - Legislative
Research

Conferees appearing before the committee:

Nick Kramer - Legislative Post Audit
Dr. Lois Sabetta - Kansas State Board of Nursing

The Chairman welcomed the visitors to the committee hearings and introduced Nick Kramer from the Division of Post Audit.

The audit centered its review around 4 questions: need for state regulation, protection afforded by regulation, protection of the public, and alternative methods for better protection. Complaints against nurses were reviewed and it was concluded that regulations of nurses was necessary. It was also concluded that regulation of mental health technicians should be continued. The number of complaints received against Kansas nurses was compared with those of surrounding states and Kansas was by far the lowest averaging 1 for every 1,200 licensed nurses. Copies of the report were distributed (Exhibit A) and Post Audit answered questions from members of the committee.

Lynelle King from the Kansas State Nurses' Association then introduced Dr. Lois Sabetta who responded to the Post Audit Report. Folders were distributed to the committee and Dr. Sabetta commented on the Board's goals and objectives and disciplinary matters. (Exhibit B) She recommended that Senate Bill 44 be reported favorably for passage and answered questions from the committee.

Inasmuch as a shortage of time was a factor in the discussion, the chairman announced that Senate Bill 44 would be rescheduled again at a later date .

Senator Gaar made the motion to approve the minutes from the last meeting. It was seconded by Senator Francisco. Motion carried.

The meeting was adjourned at 2:31 p.m. by the chairman

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: Jan. 27, 1983

NAME	ADDRESS	COMPANY/ORGANIZATION
Nick Kramer	816 SW Polk - Topeka	Legislative Post Audit
Glenn Deak	Topeka	Legislative Post Audit
John Chapp	2221 Omaha	KSBW
Janda McDonald	Topeka	KSNB
Nickie Stein	Topeka	KSNB
William S Davis	W. W. Field	WSTH & E
Mary Spangler	W. W. Field	KSBW
John Peaver	Topeka, KS	KSBW
Bonnie Howard	Topeka, KS	KSBW
Tracy Cook	Topeka, KS	Self
Dr. Lora Stabell	503 Kansas Ave	KSBW
Pat Diamond	Hutchinson	KS Bd President
Florence Lee	Hutchinson	KSNB Leg. Ch. District
Marylyn Huber	Topeka	Registered Nurse
Lynelle King	"	Ks State Nurses' Assn.
Elizabeth W. Carlson	503 Kansas Ave Topeka	Bldg of Healing Arts
Pam Cook	238 Bay #401 Topeka	WUNS
Janet Clark	135 Com. Dr. Topeka	M.N.T.
Patte Martin	Horton, KS.	Registered Nurse.
Sally Roblin	Topeka	Ks Opt Assn
Ray R. Dale	P.O. Box 5368 Topeka	Kansas Hospital Assn.
Ken Schattemeyer	Topeka, KS	KS Pharmacists Assn
Michele Hinds	Topeka, KS	Legislative Intern
Ed. Wilburson	Topeka	Budget Div.
Carolyn M. Mendenhall	Topeka	KSNB
Nancy Stone	2223 Belle	Stromont Vail RMC

**BOARD OF NURSING
PRESENTATION**

Mr. Chairman, Members of the Committee,

This audit was conducted at the direction of the Legislative Post Audit Committee to fulfill the requirements of the Kansas Sunset Law. The Sunset Law abolishes the Board of Nursing on July 1, 1983, unless it is continued by an act of the Legislature.

In performing this audit, we centered our review around 4 questions:

First--Is there a need for State regulation of nurses and mental health technicians?

Second--Is the protection afforded by regulation worth the cost to regulate?

Third--Does the current regulation as administered by the Board adequately protect the public?

Fourth--Are there alternative methods of regulation which would provide better protection?

In my presentation, I'll summarize the main findings of the audit and I'll highlight our recommendations for improving the Board's regulatory practices.

Nursing practice encompasses a variety of health services and involves direct contact with patients. Because of the technical knowledge and the independent judgment which is often required, the potential for harm to the public from improper nursing care appears significant.

As evidence of harm which could come to patients, we examined the complaints against nurses which were received by the Board in the last two fiscal years. Of the 45 complaints received during this period, 36 (or 80%) were drug-related. These included numerous cases of nurses being drug-impaired while on duty. In several cases, narcotics intended for patient use were stolen from hospital supplies and replaced with saline solution. Clearly, in this kind of situation, harm to the public can occur.

In 35 of these cases, the Board determined that potential violations of law had occurred, and that a hearing should be held. During fiscal years 1981 and 1982, 23 hearings were completed. The Board invoked its power of license revocation in 8 of the 23 cases. Four licensees had their licenses suspended for a stated period of time, and in 6 cases, the Board restricted the scope of the licensees' practice.

Based on our review of these complaints, we concluded that harm to the public could occur. In addition, the seriousness of the Board's disciplinary actions further evidenced the potential for harm, even with regulation. For these reasons, we concluded that regulation of nurses was necessary.

In the review of mental health technicians, the need for regulation was not as clear cut. Currently, only three other states license mental health technicians and no complaints have been received since inception of the licensure in 1974.

However, we found contrasting evidence which indicated that regulation was necessary and beneficial. Like nurses, mental health technicians work closely with patients, some of whom are typically vulnerable. We found instances where potential violations of the mental health licensure act occurred which resulted in disciplinary actions by the employer. Although these problems were not reported to the Board, they illustrate how harm could come to the public from improper care. Also, we concluded that mental health licensure encourages further training and provides a career ladder for mental health technicians. For these reasons, we concluded that regulation of mental health technicians should be continued.

Our recommendations in this area are as follows:

1. The Legislature should re-establish regulation over nurses and mental health technicians.
2. In re-establishing this regulation, the Legislature should consider placing the regulatory functions under one of the following:

- a. The Board of Nursing
- b. A new board for all health-related state-licensed occupations
- c. A new occupational licensing agency for all state-licensed occupations

In the second area of review, we questioned whether the regulation of nurses and mental health technicians was worth its cost. We found that the board's operations were funded almost entirely by fees to licensees, totaling about \$430,000. By comparing these fees and continuing education costs to average salaries, we determined that the cost of regulation was minimal and did not significantly increase the public's cost for health care services.

The third major phase of review sought to determine whether the current regulatory activities of the Board adequately protect the public, and whether improvements in this regulation could be made.

In general, we found that the examination and licensing functions were carried out satisfactorily by the Board. However, we found that the Board's procedures for receiving, handling, and investigating complaints were in need of improvement.

As a part of our review we compared the number of complaints received against nurses in Kansas with those of the surrounding states. For

the most recent one-year period, Kansas was the lowest by far, receiving approximately 1 complaint for every 1,200 licensed nurses. In comparison, the average ratio in the surrounding states was almost 3 times as high, at 1 complaint for every 418 licensed nurses.

The reason for this difference can be attributed to several factors.

First, our survey of hospital administrators indicated some confusion as to what constitutes incompetent actions which should be reported. Usually, these occurrences are handled in-house by the institution. We noted that other states provide greater emphasis in this area, conducting workshops and seminars on potential violations which should be reported and how they are to be reported. The Board of Nursing began actively conducting such informational efforts when the position of nursing practice specialist was established in July of 1982. We recommend that the Board continue and increase its efforts by disseminating information to licensees and health care providers about complaint reporting procedures and potential violations of the law.

It should be noted, however, that some institutions may be reluctant to report violations because of potential damage to the reputation of the institution. Although Board regulations require nurses to notify the Board of violations which they are aware of, regulations do not require employers to report violations. Further, the Board does not have such regulations

concerning licensed mental health technicians. For this reason we recommend that employers be required to report all dismissals and disciplinary actions to the Board.

The Board's policies concerning complaints have at times been too restrictive, investigating only sworn, written complaints. This policy has varied according to the interpretations of the statutes by the attorneys assigned to the Board by the Attorney General's office. We believe that the law gives the Board the authority to investigate all valid complaints and to initiate complaints on its own, if necessary. We recommend that the Board adopt this policy, thereby investigating all valid complaints in a consistent manner. In addition, we recommend that the Board take steps to reduce the burden on complainants, by discontinuing the requirement of filing a signed affidavit.

Besides a need to encourage reporting of all valid complaints, we determined that improvement is needed in the Board's procedures for filing and documenting complaints. All complaints received were not properly maintained in a central file and individual complaint files were often incomplete. We believe that the Board needs to improve its procedures in this area in order to properly carry out its statutory responsibility. This should include assigning a case number to all complaints, maintaining a central file, and retaining all relevant documentation for each case.

As part of the audit, we reviewed the laws and regulations which apply to nurses and mental health technicians. This review revealed a number of areas which may warrant legislative attention.

1. One of the statutory licensing requirements for nurses and mental health technicians is that they be of good moral character. We feel that this requirement is vague and subject to differing interpretations, and should be revised.
2. The Mental Health Technicians' Licensure Act requires a two-thirds majority vote of the Board to take disciplinary action against a licensee. We recommend that a simple majority requirement be substituted.
3. We recommend that licensure of mental health technicians be changed from annual to biennial to reduce administrative costs.
4. To improve protection of the public by ensuring competent practitioners, we recommend that a continuing education requirement, similar to that required of nurses, be implemented for mental health technicians.
5. The nurse practice act makes it unlawful for anyone other than a licensed nurse to administer medications. To comply with the

intent of the legislature, we recommend that an exclusion for licensed mental health technicians be included in the act, so that they will not be in violation of the law.

The executive director, Dr. Scibetta, responded to the audit report on behalf of the Board. Her comments indicated agreement with all of the recommendations.



KANSAS STATE BOARD OF NURSING

BOX 1098, 503 KANSAS AVENUE, SUITE 330
TOPEKA, KANSAS 66601

Telephone 913/296-4929

TO: The Honorable Ben E. Vidricksen, Chairman, and members of the
Governmental Organizational Committee

FROM: Dr. Lois Rich Scibetta, ^{LR} Ph.D., R.N., Executive Administrator

DATE: January 27, 1983

RE: Sunset Audit Report - Board of Nursing

Mr. Chairman, members of the Committee, ladies and gentlemen, my name is Dr. Lois Rich Scibetta, and I am the Executive Administrator of the State Board of Nursing. It is my privilege to respond to this report on behalf of the Board.

First, I would like to take this opportunity to thank this Committee for introducing Senate Bill 44 to continue the Board of Nursing. We believe the Board has acted responsibly over time in regard to protection of the public through disciplinary hearings, and licensure procedures designed to protect the public health, safety and welfare. We recommend the passage of S.B. 44.

The Board of Nursing was established in 1913, in order to protect the public through the licensure and regulation of Registered Nurses, and later added Licensed Practical Nurses, and most recently, Mental Health Technicians. To accomplish these responsibilities, the Board approves all educational programs preparing our licensees, approves continuing education programs, conducts licensure examinations twice annually for each licensure category, and holds disciplinary hearings regarding infractions of the Nurse Practice Act, and the Licensed Mental Health Technician Act. The absence of regulation would result in serious harm to the public, endangering their health and safety.

In our judgement the Board, as constituted, meets the public trust by providing the most economical, efficient and effective method of regulation of Nurses and Mental Health Technicians. We believe the Board of Nursing should be reinstated as it is, under a separate autonomous Board.

Generally the methods employed by the Board are not restrictive, nor has the cost of operating the Board been excessive. We believe that the administrative processes followed are designed first and foremost to protect the public.

EX. B

We learned a great deal through the process of this audit review and appreciated the courtesy, conscientiousness and suggestions made by the audit team, Nick Kramer, Dale Culver and Glenn Deck. In direct response to the report, we also believe that there is room for improvement. As noted in the report, the Board does not disagree with the findings in general, or the specific recommendations made. I would however, like to respond briefly to two issues raised, the reporting of disciplinary matters and communication.

In regard to disciplinary matters, the filing of complaints, (b) page S-4, we do not believe that the required sworn complaint is restrictive. All of the surrounding jurisdictions require a written, signed complaint. (See survey attached) I would like to give a brief description of this survey. This survey was conducted to compare our procedures with those used in the surrounding states. Kentucky was added because its size and responsibilities are similar to Kansas. They do not license Mental Health Technicians. (Please find attached a copy of the complaint packet sent to those who contact us.) The Board does initiate complaints on its own if deemed appropriate and upon advice from legal counsel.

Improved communication regarding the functions and responsibilities, dissemination of information, etc. was discussed on page 23 and 26 of the Audit Report. Board efforts along these lines include a request in the 1984 Budget for funds for an informational bulletin. Previous requests have been denied. Problems could be avoided if accurate information is disseminated. The Board has recently completed a six-hour videotape series about the Board of Nursing. The task was completed with the cooperation of Johnson County Community College, and is available for continuing education. A half-hour summary videotape is available if the Committee would like to review it. I would be happy to make these tapes available to this Committee.

In summary, the Board of Nursing found the Sunset Audit Review most helpful. We believe the other recommendations, and legislative changes suggested in the report would facilitate a smoother operation, particularly the issues related to Mental Health Technicians. Mandatory reporting, as suggested, would result in the filing of more complaints, and would strengthen the Board operation.

I will be happy to answer any questions which the Committee may have.

Thank you.



KANSAS STATE BOARD OF NURSING

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GOALS AND OBJECTIVES: 1982-83

- 1) Continue to increase the emphasis on nursing practice, by the following means:
 - a. Provide on-site consultation re: The Nurse Practice Act upon request.
 - b. Monitor professional nursing practice, and investigate complaints.
 - c. Establish qualifications for nursing service directors collaboratively with nursing service and nursing education.
 - d. Plan and participate in informational workshops.
- 2) Continue to monitor education programs. (Diploma, A.D., B.S., LPN, LMHT, ARNP, C.E.)
 - a. Evaluate reports, required by the Board, from each school; i.e., quarterly reports.
 - b. Review Licensed Mental Health Technician examination — validate rewrite as needed.
- 3) Participate in state-wide planning for nursing by offering direction and leadership.
- 4) Complete input for Sunset Review, respond to report.
 - a. Update the Nurse Practice Act - Rules and Regulations.
- 5) Continue to develop guidelines for distinction between levels of nursing practice, Professional nursing function (AD, R.N., B.S.) and Practical nursing function.
- 6) Initiate and support legislation that will enhance nursing practice.
 - a. The Board will continue efforts for certification for Advanced Nursing Practice
- 7) Continue evaluation of Articulation programs, on all levels.

8) Evaluate and act on changes recommended by Task Force study committee regarding mandatory Continuing Education.

9) Licensing:

Will establish a policy for licensure of the Canadian Nurse, based on recommendations of the National Council of State Boards of Nursing.

10) Interpret role of Board of Nursing to various groups and community organizations.

KANSAS STATE BOARD OF NURSING
DISCIPLINARY SURVEY

BY: Dr. Lois Rich Scibetta
January, 1983

	MISSOURI	NEBRASKA	OKLAHOMA	COLORADO	KENTUCKY	KANSAS
Board Structure	Separate	Umbrella	Separate	Umbrella	Separate	Separate
Groups Regulated	RN and LPN	RN and LPN	RN and LPN	RN, LPN, Pys. Aide	RN and LPN	RN, LPN, LMHT
Financial Support	Fees	Fees	Fees	Fees	Fees	Fees
# Licenses Per Year	60,000	23,225	29,000	45,000	33,000	31,417
# Complaints Per Year Ratio	76 1 per 789	23 (1980) 1 per 1,009	52 1 per 558	100 1 per 450	90 1 per 366	21 1 per 1,496
Disciplinary Action Funding	Fees	Fees	Fees	Fees	Fees	Fees
Investigation Done By	Investigators	Nurse * ¹	Nurse	Investigators	Nurse	Nurse
Investigation Funding	Fees	Fees	Fees	Fees	Fees	Fees
Reporting Mandatory	No	Yes	No	Yes	Yes	No
Length of Complaint Process	6 Months * ²	3-6 Months * ³	6 Months * ⁴	6 Months - 1 Year	3-6 Months * ⁵	5-8 Months
Written Complaint Required	Yes	Yes	Yes	Yes	Yes	Yes
Legal Services By	Attorney General	Own Attorney	Own Attorney	Attorney General	Attorney General	Attorney General
Legal Services Funding	Fees	Fees	Fees	Fees	Fees	Fees

*1 Drug related cases are investigated by drug investigators from the Bureau of Examinations under which the Board operates.

*2 Cases took 2 years until this last year, Attorney now allowed to spend 60-70% of time on Board of Nursing

*3 Very few cases go to hearing, most are handled in voluntary conferences.

*4 Narcotic Bureau handles excessive drug cases, not Board of Nursing

*5 Hearings conducted in front of 3 member panel rather than total Board. Has speeded up handling of cases.

Additional Comments:

Oklahoma pays 10% of fees to general fund

Colorado uses investigators from the central investigation department. Some of the investigators are nurses.



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Telephone 913/296-4929

Dr. Lois Rich Scibetta, R.N.
January, 1983

SUMMARY OF TELEPHONE SURVEY REGARDING DISCIPLINARY MATTERS:

A telephone survey was conducted in the Kansas border states and Kentucky, which is very similar to Kansas. The major focus of this survey was disciplinary matters, procedures, funding, legal services and investigations. Of the five Boards surveyed, three were autonomous, separate Boards, two were umbrella type Boards. Kansas figures are also included for comparison. (Fiscal 1982 figures were used). In all five states reviewed, fees supported the disciplinary matters.

All states included required a signed complaint. In three of the five states (Kentucky, Nebraska, Colorado), reporting was mandatory. In Missouri, the Hospital Association and other health related organizations strongly support the filing of complaints. Two states (Missouri and Colorado) reported that investigators were used, and one state (Nebraska) reported that drug related cases were investigated by the drug division of the Bureau of Examinations.

In three of the states (Kentucky, Missouri, Colorado) legal services were provided by the Attorney General's office, and two (Nebraska and Oklahoma) employed their own attorney. The state of Missouri reported that an attorney was assigned sixty to seventy (60-70) percent time to the Board of Nursing, reducing the time of the complaint process. The length of the complaint process varied from 3 months to 2 years. In Kentucky, a three member hearing panel speeded the processing. In Nebraska, very few cases go to hearing, most are handled on a voluntary conference basis. Since an attorney has been assigned sixty to seventy (60-70) percent time to the Missouri Board, they have been able to reduce the time required from 2 years to 6 months.

The ratio of reporting has been lower for Kansas. However, the reporting has improved. Since August 1980, increased emphasis has been placed on this regulatory function. In August 1980, the cases heard by the Board since 1948, a period of 32 years, totaled 55. (Each case brought to hearing is assigned a case number). Since August 1980, 63 cases were added, 8 rehearings, 55 new, resulting in a 100 percent increase in a two and one-half year period. This was due to increased Board emphasis on nursing practice, and better reporting. In the 1982 legislative sessions the specifics of unprofessional conduct were delineated. This legislation has served to improve reporting.



KANSAS STATE BOARD OF NURSING

BOX 1098, 503 KANSAS AVENUE, SUITE 330
TOPEKA, KANSAS 66601

Telephone 913/296-4929

Dear

The Board has received your complaint regarding one of our licensees. We share your concern about this matter and would like to begin our official investigation of the charges as soon as possible. In order to do so, it will be necessary for you to fill out the enclosed Affidavit and Complaint, with as much detailed accuracy, and as completely as possible. Please have your signature notarized and return the form to this office.

Once the official complaint form has been received, I will make an appointment with you to review the matter. The results of the investigation are then shared with the entire Board and legal counsel. A determination is then made regarding the evidence as to whether or not to proceed with an official hearing. The defendant and the complaintant have the right to have an attorney and/or witnesses present at the hearing. If sufficient evidence of unprofessional conduct is established, a license may be revoked. The decision however rests entirely with the Board of Nursing.

Please find enclosed for your information, a copy of the regulations defining unprofessional conduct. Immunity from liability in civil actions for reporting alleged malpractice incidents is offered in K.S.A. 65-1127.

The Kansas State Board of Nursing is appointed by the Governor to protect the citizens of the state from unscrupulous and/or unsafe practitioners. Thank you for bringing this matter to our attention.

Sincerely,

Bonnie Howard

Bonnie Howard, R.N., M.A.
Nursing Practice Specialist

can
Enclosures

THE KANSAS STATE BOARD OF NURSING
AFFIDAVIT AND COMPLAINT

I, _____
(name and position title)
employed at _____
(agency name, address and phone number)

_____ of lawful age and being first duly sworn states:

1. I wish to file the Affidavit and Complaint with the Kansas State Board of Nursing, and believe that _____
(name and license number, if known)
may have violated section(s) of the Kansas law regarding nursing.
2. That the date of the alleged incident(s) is on or about: _____
3. The facts on which the complaint is based are as follows: (Additional pages, if any, are attached hereto and incorporated by reference).

(Signature of Complainant)

STATE OF _____, COUNTY OF _____, SS

_____, being first duly sworn, states that he/she has read the foregoing Affidavit and Complaint and knows the contents thereof; and that the same is true and correct to the best of his/her own knowledge, information and belief.

(Signature of Complainant)

Subscribed and sworn to before me on this _____ day of _____, 19__.

My Commission Expires:

Notary Public

LAWS AND ADMINISTRATIVE
REGULATIONS RELATING TO

Registration of Nurses
and Nursing Education

REVISED EDITION 1982

KANSAS
STATE BOARD OF NURSING
Box 1098
503 Kansas Avenue, Suite 330
Topeka, Kansas 66601

65-1127. Immunity from liability in civil actions for reporting, communicating and investigating certain information concerning alleged malpractice incidents and other information; conditions. (a) No person reporting to the board of nursing under oath and in good faith any information such person may have relating to alleged incidents of malpractice or the qualifications, fitness or character of a person licensed to practice professional nursing or licensed to practice practical nursing shall be subject to a civil action for damages as a result of reporting such information.

(b) Any state, regional or local association of registered professional nurses or licensed practical nurses and the individual members of any committee thereof, which in good faith investigates or communicates information pertaining to the alleged incidents of malpractice or the qualifications, fitness or character of any licensee or registrant to the board of nursing or to any committee or agent thereof, shall be immune from liability in any civil action, that is based upon such information or transmittal of information if the investigation and communication was made in good faith and did not represent as true any matter not reasonably believed to be true. [L. 1976, ch. 261, § 4; July 1.]

60-3-109. (Authorized by K.S.A. 65-1113 *et seq.*, 74-1106 *et seq.*; proposed regulation modified and approved by legislature (1975 HB 2597); effective May 1, 1975; effective February 15, 1977; revoked May 1, 1982.)

60-3-110. Standards for revocation, suspension, or limitation of nursing licensure. (a) Unprofessional conduct, as provided by K.S.A. 65-1120(a)(6) shall include the following:

(1) Performing acts beyond the authorized scope of the level of nursing for which the individual is licensed;

(2) Assuming duties and responsibilities within the practice of nursing without adequate preparation or when competency has not been maintained;

(3) Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient;

(4) Inaccurately recording, falsifying, or altering a patient's or agency's record;

(5) Committing any act of verbally or physically abusing patients;

(6) Assigning or delegating unqualified persons to perform functions of licensed nurses contrary to the Kansas Nurse Practice Act or to the detriment of patient safety;

(7) Violating the confidentiality of information or knowledge concerning the patient;

(8) Willfully or negligently failing to take appropriate action in safeguarding a patient or the public from incompetent practice performed by a registered professional nurse or a licensed practical nurse. "Appropriate action" may include reporting to the Board; and

(9) Diverting drugs, supplies, or property of patients or agency.

(b) A violation of any one or more of the above provisions shall be sufficient cause to suspend, revoke, or refuse to renew a license. (Authorized by K.S.A. 74-1106(c)(2) and K.S.A. 65-1129; implementing K.S.A. 65-1120; effective May 1, 1982.)