

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~p.m.~~ on March 2, 1984 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Pomeroy, Burke, Feleciano, Gaar, Gaines, Hein, Winter, Hess, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Matt Lynch, Kansas Judicial Council
Wayne Stratton, Kansas Hospital Association & Kansas Medical Society

The chairman explained Senate Bills 734, 741 and 742 scheduled for today were introduced at the request of the Kansas Judicial Council.

Senate Bill 734 - Corporate fiduciary's appointment as guardian.

Randy Hearrell explained the bill. Following committee discussion, Senator Burke moved to report the bill favorably; Senator Werts seconded the motion, and the motion carried.

Senate Bill 741 - Subpoena of business records.

Matt Lynch explained this bill originally was requested by the hospital association, and it applies to any business.

Wayne Stratton stated the organizations he is representing generally support the provisions of the bill. It should offer a simplified method of producing business records with corresponding savings for attorneys, litigants, hospitals and physicians. A copy of his testimony is attached (See Attachment No. 1). Following committee discussion, Senator Hein moved to amend the bill on page 3, line 146, strike "commission" and insert "appointment". Senator Gaines seconded the motion, and the motion carried. Senator Gaines moved to report the bill favorably as amended; Senator Feleciano seconded the motion, and the motion carried.

Senate Bill 742 - Physician-patient privilege.

Matt Lynch explained the bill.

Wayne Stratton testified this bill grafts onto the physician-patient privilege a prohibition against disclosure of medical and hospital records. While, for the most part, this represents the general policy followed by health care providers, we believe there may be some significant problems with it as written which require further study. A copy of his testimony is attached (See Attachment No. 1).

Committee discussion was held with Matt Lynch, when the Judicial Council studied the subject, and if Mr. Stratton was asked to present testimony then. Mr. Lynch explained they talked with him only recently. Mr. Lynch also explained the study committee's opinion of Subsection (h) of the bill. The committee took no action on the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 2, 1984

Senate Bill 759 - Definition of 'restricted mail' for purpose of code of civil procedure.

The chairman noted he received a letter from Judge Rogg from Wichita requesting the legislation. Following staff explanation of the bill, Senator Steineger moved to report the bill favorably; Senator Gaines seconded the motion, and the motion carried.

Senate Bill 758 - Admission of evidence of reimbursement by collateral source.
Senate Bill 760 - Admissibility of evidence of settlement in action for damages.

Following committee discussion, Senator Gaines moved to refer the bills to the Kansas Judicial Council for study. Senator Feleciano seconded the motion, and the motion carried. The consensus of the committee was not to include Senate Bill 757 in the study.

Senate Bill 782 - Penalties for desecrating cemetery property.

The chairman reviewed the bill. Senator Steineger moved to report the bill favorably; Senator Hein seconded the motion. Following committee discussion, Senator Hess made a substitute motion to amend the bill in line 32 by providing the conviction be a class A misdemeanor and strike Subsection (d). Senator Gaar seconded the motion, and the motion carried. Senator Hess moved to report the bill favorably as amended; Senator Werts seconded the motion, and the motion carried.

Senate Bill 681 - Grandparents' visitation rights.

Following considerable committee discussion, Senator Gaar moved to amend the bill by prohibiting the courts the authority where there is an intact marriage. Senator Burke seconded the motion. With three members voting in favor of the motion, and four against, the motion failed. No further action was taken on the bill.

Senator Hein moved that the minutes of February 13, 1984, be approved; Senator Winter seconded the motion, and the motion carried.

The meeting adjourned.

3-2-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
JES Southard	Lawrence Attorney General	Budget
John Spurgeon	Lawrence	Judicial Council
Kathy Hamell	Topeka	Dd of Health & Al
Don Stroh	Topeka	Judicial Council
Matt Lynch	Topeka	KHA
Pete Stroh	Topeka	KHA
Jim	"	KBA
Jim O'Brien	"	KCBAA
Cynthia Robinson	K.C.	Ks Action for Children
Lynna Langford	Topeka	KDOA
J.P. Wenzel	Topeka	Ks Assn of Prof Psychologists
John Peterson	Topeka	Assoc. Credit Bur.
Walt Scott	"	

3-2-87

W.S.

Attach. #1

STATEMENT CONCERNING SENATE BILLS 741 AND 742

The Kansas Hospital Association and the Kansas Medical Society generally support the provisions of S.B. 741. It should offer a simplified method of producing business records with corresponding savings for attorneys, litigants, hospitals and physicians.

S.B. 742 grafts onto the physician-patient privilege a prohibition against disclosure of medical and hospital records. While for the most part this represents the general policy followed by health care providers, we believe there may be some significant problems with it as written which require further study.

Cases in litigation present no real problem. I assume health care providers will refuse to provide the records unless a written authorization or court order is secured.

Difficulties may be anticipated, however, in several areas. Many times there will be no court proceeding to allow a court to authorize release of records. Hospitals have traditionally allowed the next-of-kin to review medical records of a decedent without the necessity of the appointment of an administrator. However, this would not be permitted by S.B. 742.

Moreover, there are many statutes which obligate health care providers to report such things as child abuse, communicable diseases, gunshot and knife wounds, blood alcohol tests, parents of victims of sexual assault, medical malpractice screening panels and Workers' Compensation claims. Traditionally, records have been available to licensing agencies, peer review committees and groups, hospitals' liability insurance carriers, and for other similar purposes.

On the other hand, certain statutes prohibit disclosure even with the authorization of the patient in certain circumstances.

We have briefly reviewed the acts of other states; some states have no legislation, a number have physician-patient privilege statutes, and some states have rather elaborate statutes governing the release of medical records. We are concerned that a blanket prohibition against disclosure will create problems in areas such as:

1. Requests and subpoenas by boards, commissions or administrative agencies;
2. Search warrants;
3. When transmittal of information is necessary to other health care providers for purposes of diagnosis or treatment of a patient;

Attch. 1

4. To insurers, employers, HMOs and others to obtain payment for health care services;
5. To various peer review organizations and health care providers, both within and without the institution;
6. Release for governmental and privately sponsored studies on morbidity and mortality;
7. For release to the county coroner;
8. For release to accrediting and licensing agencies;
9. To employers who provide the health care.

The foregoing are examples of areas in which we feel that further study may be warranted. The Kansas Medical Records Administrators Association constantly deals with these issues. Because of the potential implications involved in such legislation, we would suggest that this matter be studied further with input from such interested parties.