

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by Senator Paul Hess at  
Chairperson

ON ADJOURNMENT a.m./p.m. on January 24, 1984 in room 123-S of the Capitol.

All members were present except:  
Senators Doyen and Harder

Committee staff present:  
Research Department: Mary Galligan, Lynne Holt, Carolyn Rampey  
Revisor's Office: Norman Furse  
Committee Office: Mark Skinner, Doris Fager

Conferees appearing before the committee:  
Don Strole, Attorney, Board of Healing Arts  
John Brookens, Kansas Bar Association  
Bill Abbott, Boeing  
Larry Magill, Independent Insurance Agents of Kansas  
Kathleen Sebelius, Kansas Trial Lawyers Association  
Gerald Michaud, Kansas Trial Lawyers Association

SB 507 - Health Care Providers Insurance Availability Act

Mr. Strole distributed proposed amendments to SB 507 (Attachment A). He first called attention to the suggested amendment on line 397, page 11, and explained his reason for suggesting the amendment. He then commented that his Board generally supports new sections 8, 9, 10 and 11. However, there is a suggested amendment to New Sec. 8 on line 415 concerning subpoena power. He noted that the Board now has no subpoena power prior to filing petitions; and that sometimes hospitals do not cooperate when information is requested.

There was discussion regarding the fact that, in most cases, subpoena power requires going before a district judge. Mr. Strole said he has no objection to that requirement.

Mr. Strole continued to explain his suggested amendments, noting that the suggestion on line 426, page 12, is cleanup. He was questioned concerning the amendment suggested in line 448. He noted that alternates are necessary for the review committees, so that someone is available if the committee members are not available when needed.

Mr. Strole explained the remaining suggested amendments on Attachment A and Attachment B. There was extended discussion regarding malpractice actions and taking away of licenses by the Board of Healing Arts. Following the discussion, Senator Hess asked Mr. Strole to get together with the Revisor's office regarding the suggested amendments.

Mr. Brookens said he would like to read the amendments when they are drafted. He said the Kansas Bar Association strongly urges enactment of SB 507.

Mr. Brookens reminded the committee that the fund in question was created for two purposes. One was to protect the public. He said it may well be that Section 3, Subsection (g) may cause the health care provider to end up with too little coverage. When asked by Senator Hess if he felt a physician terminated from participation in the Health Care Stabilization Fund should be required to carry equal coverage under another insurer, Mr. Brookens answered that it would be most helpful if subsection (g) is left in SB 507. However, the Kansas Bar Association takes the view that subsection (g) probably should be deleted. If the committee feels the fund is in such financial straits that it can't cover those people in question, mandatory coverage should be required.

SB 507 - Continued

Continuing the conversation regarding subsection (g), Senator Hess suggested that, if that provision is deleted, it is going to be difficult for the Board to protect the integrity of the fund. Mr. Brookens responded that if there are that many people who have a significant health care liability, that problem should be dealt with.

Senator Talkington suggested making a provision for higher coverage rate for the person who is terminated, and have them reported to the disciplinary administrator. He added that might take care of the disciplinary action.

Mr. Brookens said his Association feels that subpoena power is absolutely necessary.

Mr. Strole said he agrees with Senator Talkington that there should be an amendment to subsection (g) that termination of a physician from the fund be reported to the Board of Healing Arts. He reminded the committee that there is a four year statute of limitations for people filing malpractice actions, and having some kind of insurance to cover such actions would be a good idea. He said the fund may be hurt more if the license is removed, and it shouldn't be assumed the problem is solved if the license is taken away. There are still four years where people can file malpractice suits.

There was a brief discussion concerning the problem noted by Mr. Strole.

Mr. Abbott read from his prepared statement (Attachment C). There were no questions following his presentation.

Mr. Magill noted that the Independent Insurance Agents of Kansas applaud the efforts of the Commissioner of Insurance regarding SB 507. He distributed his remarks (Attachment D) and read from those remarks.

The Chairman asked if previous conferees had comments concerning Mr. Strole's suggested amendments. Mr. Slaughter said the Medical Society had no problem with them.

Ms. Sebelius stated that the Kansas Trial Lawyers Association was not involved in the compromises or suggestions for SB 507; but added that this is not a negative statement. She called attention to New Section 7 regarding the peer review committee, stating that similar provisions have never been approved by either House of the Legislature.

Ms. Sebelius noted that there is not a parallel between the proposed disciplinary board in SB 507 and that used by lawyers, because lawyers are not disciplined for malpractice--only for ethical misconduct. She then introduced Mr. Michaud.

Mr. Michaud indicated that, in general, the Kansas Trial Lawyers support SB 507. One objection concerns peer review matters. He stressed that problems with the health care stabilization fund are not the fault of the Insurance Commissioner, but of all those involved in establishing the fund and putting a cap on it of \$10 million.

Mr. Michaud said his association supports the concept of allowing the Insurance Commissioner to pay more than \$300,000 for a health care provider. He noted this limitation has never been tested in Kansas, but he thinks it is unconstitutional. In subsection (e) on page 6, line 219, Mr. Michaud suggested the need for making it clear that the health care providers' responsibility over \$3 million continues. He said Commissioner Bell agrees with this suggestion.

SB 507 - Continued

Mr. Michaud noted the concern of some conferees about the public being the loser in the event a doctor is terminated from the fund. He said he shares that concern, but feels the bill as written is correct. He stressed that the fund should not be required to insure people and continue to pay judgments for a few doctors. He suggested that perhaps the effect of termination from the fund for the small percentage of doctors involved in these judgments might have the effect that they cannot practice.

Mr. Michaud stated that the bill should clearly state the necessity for people terminated from the fund to have some amount of insurance to practice medicine in the state of Kansas.

Mr. Michaud said that the matter of the peer review committee's records being confidential is almost a moral issue with him. Senator Hess reminded him that previous conferees had insisted the confidentiality is necessary in order to be candid in the discussions during the committee's sessions and the ability to teach residents. He said testimony had also been given that 46 other states do not allow these records to be opened, including the Federal Government at Veterans' Administration facilities. Mr. Michaud said his best response to those statements would be for the committee to read the recent Supreme Court opinion in a malpractice suit, and to read Judge Clark's ruling. Better yet, Mr. Michaud said he would like to persuade the Judge to let the committee see certain documents involved in that ruling.

Mr. Michaud referred to the above case, and noted he was involved, but in spite of his asking the hospital involved to do something about the problem, the case goes on and on and has been a big expense to the fund.

There was discussion concerning the liability of the fund for current suits after an individual is terminated from the fund. It was the general opinion of those present that the fund is liable for paying those judgments. Mr. Michaud stressed that it is imperative to take care of the future problem of these suits continuing to occur.

Mr. Michaud stressed that courts should not have their authority to look at records taken away from them, and SB 507 would do that if it is not amended.

Senator Steineger noted that it is the law of this state that no lawyer can look at records until a judge has reviewed them and made a decision as to whether the lawyer can see them. Mr. Michaud agreed, but said the Kansas Hospital Association has indicated their first priority is to overturn a recent decision allowing such access.

No action was taken on SB 507, pending action by Judge Clark on committee access to certain hospital records in the recent court case.

INTRODUCTION OF BILL

Senator Talkington said the Forestry, Fish and Game Commission needs budget authority to purchase tracts of land in southeastern Kansas. One option expires February 1; therefore, budget authority is needed immediately in order to purchase land before the expiration date. Motion was made by Senator Talkington and seconded by Senator Gaines to introduce a bill allowing the above purchases, and that the bill be referred to Committee of the Whole. The motion carried by roll call vote.

The meeting was adjourned by the Chairman.

From the desk of:  
**DONALD G. STROLE, General Counsel**  
**KANSAS BOARD OF HEALING ARTS**

January 20, 1984

Attached: Proposed amendments of the Board  
to SB 507, which I will present  
as testimony on January 24.

Amend K.S.A. 65-2838 as follows:

65-2838. Same; jurisdiction of proceedings; filing petition; stipulations; temporary suspension and temporary limitation of licenses; hearing; limitations. The board shall have jurisdiction of the proceedings to revoke, suspend or limit the license of any licensee practicing under this act. The petition for the revocation, suspension or limitation of a license may be filed ~~(a) By the attorney general in all cases; (b) by the county or district attorney of the county in which the licensee resides or has practiced; or (c) by a regularly employed attorney of the board.~~ *by the disciplinary administrator.* Said petition shall be filed in the office of the Secretary of the board.

Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be finding upon the board and the licensee entering into such stipulation, and the board may enter its finding of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may revoke, suspend or limit the license of the licensee entering into such stipulation.

The board may temporarily suspend or temporarily limit the license of any licensee, without notice or hearing, if the board determines that there is cause to believe that grounds exist under K.S.A. 1979 Supp. 65-2836 and amendments thereto, for the revocation, suspension or limitation of the license of a licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the board shall institute proceedings for a hearing and, notwithstanding any provision of the Kansas Healing Arts Act to the contrary, such hearing shall be held no later than fifteen (15) days from the date of such temporary suspension or temporary limitation of the license.

A continuance of the hearing shall be granted by the secretary of the board upon the written request of the licensee, and such a continuance shall not exceed thirty (30) days. A temporary suspension or temporary limitation order by the board shall take effect when served in person upon the licensee.

In no case shall a temporary suspension or temporary limitation of a license under this section be in effect for a period of time in excess of ninety (90) days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the board has revoked, suspended or limited the license of the licensee after notice and hearing as otherwise provided in the Kansas Healing Arts Act.

History: K.S.A. 65-2838; L. 1976, ch. 273, & 16; L. 1978, ch. 250, & 1; L. 1979. ch. 198, & 5; July 1.

K.S.A. 65-2839 and K.S.A. 65-2840 should be repealed.

AAA 1-24-84

3 p.m.



0454 any, as the person whose conduct is being reviewed. Members of  
 0455 the state board of healing arts shall not be eligible to act as  
 0456 members of the review committee. Members of the review  
 0457 committee who are licensees of the state board of healing arts  
 0458 ~~shall~~ be selected from names submitted by the state professional  
 0459 association for the branch of healing arts involved. The members  
 0460 of such review committees attending meetings of such commit-  
 0461 tees shall be paid compensation, subsistence allowances, mile-  
 0462 age and expenses as provided by K.S.A. 75-3223 and amend-  
 0463 ments thereto.

0464 New Sec. 11. If the review committee recommends the mat-  
 0465 ter be referred for hearing, the disciplinary administrator shall  
 0466 institute formal proceedings by filing a petition as set forth in  
 0467 K.S.A. 65-2841 and amendments thereto. Prior to the time the  
 0468 petition is filed, all information in the possession of the discipli-  
 0469 nary administrator or review committee regarding the matter  
 0470 shall be confidential and not subject to subpoena. The discipli-  
 0471 nary administrator shall prepare and prosecute all complaints  
 0472 that proceed to hearing before the state board of healing arts. All  
 0473 witnesses at such hearing shall be sworn and all proceedings and  
 0474 testimony shall be reported, either by stenographic means or  
 0475 electronic recording.

0476 Sec. 12. K.S.A. 40-3402, 40-3408 and 40-3415 and K.S.A.  
 0477 1983 Supp. 40-3403 and 40-3404 are hereby repealed.

0478 Sec. 13. This act shall take effect and be in force from and  
 0479 after its publication in the statute book.

may

The disciplinary administrator shall ensure that no conflict of interest exists by reason of geography, personal or professional relationship, or otherwise, between any of the review committee members and the person whose conduct is being reviewed.

The Disciplinary Administrator shall represent the board whenever a licensee appeals a decision of the board pursuant to K.S.A. 65-2848, unless the Disciplinary Administrator is also appealing some aspect of the decision, in which case the board shall appoint special counsel to represent it in the appeal.

# **BOEING**

## **BOEING MILITARY AIRPLANE COMPANY**

A Division of The Boeing Company  
Wichita, Kansas 67210 • Seattle, Washington 98124

January 23, 1984

Senate Ways & Means Committee  
State House  
Topeka, Kansas

Mr. Chairman:  
Members of the Committee:

My name is Bill Abbott; I am the Public Affairs Manager for the Boeing Military Airplane Company in Wichita.

I am appearing today in support of the medical peer review portion of S.B. 507. We do not feel that the other sections of S.B. 507 have a direct impact on our company so we will not speak to them. We do, however, support a statute to protect the confidentiality of findings and reports made by a medical peer review committee as provided in S.B. 507.

The practice of medicine, insofar as our Company's medical insurance programs are concerned, has been altered thru the cooperative efforts of our health care community as directed by a peer review committee.

In 1979, our Company and those who provide our group medical insurance, commenced work with the Sedgwick County Medical Foundation to develop a medical peer review committee. That organization became operational in our four (4) public hospitals October 1, 1980.

From the original medical peer review committee concept, it was recognized a confidentiality statement was required. The nature of the data to be gathered, reviewed and how the findings were to be used, created the need for limiting access to the committee. It was agreed the Foundation would control all data, and that they were to use the information for educational purposes.

As a result of the peer review committee findings and actions, some changes have occurred in our health care delivery system. For example, inpatient hospital confinements are rarely used for extraction of teeth or for D&C's as these procedures are now considered more appropriately accomplished on an outpatient basis. The Foundation has also consulted with member physicians relative to their practice patterns. This approach has resulted in patients being released earlier; and, in some cases, eliminated the need for hospitalization.


AH C 1-24-84  
3 p.m.

Senate Ways & Means Committee  
January 23, 1984  
Page 2

These changes have been made thru efforts initiated by the medical peer review committee. It was necessary they oversee the collection, review and use of specific medical history. It is necessary such findings and records have statutory immunity from legal processes if we are going to have the medical profession direct changes required in the health care industry that will assure continued quality health care provided at the appropriate setting and at costs we can afford.

We respectfully request passage of S.B. 507 with a strong provision protecting the confidentiality of the peer review committees.

Respectfully,



William T. Abbott



Testimony on SB 507  
Before the Senate Ways & Means Committee  
By: Larry W. Magill, Jr., Executive Vice President  
Independent Insurance Agents of Kansas

Thank you for the opportunity to appear in support of SB 507. Our members are the principal suppliers of medical malpractice insurance and as such, we are concerned with the health of the state's medical malpractice fund. We applaud the effort of the Kansas Insurance Department and the various health care providers who made a number of difficult decisions to reach this compromise on a very complex issue.

SB 507 addresses all of the major concerns we have had with the Health Care Stabilization Fund. We would have preferred a lower "cap" but this is still a dramatic and logical "first step." It should allow development of a private sector excess medical malpractice market in Kansas and yet avoids an "avalanche" of providers seeking excess coverage.

Hopefully, in the future we will find that a need no longer exists for state provided medical malpractice insurance. With reserves built up to cover the Fund's accrual liabilities under SB 507, the option of terminating the fund's continued operation for future coverage will be feasible.

We would like to ask the committee to consider adding an insurance person to the board of governors. This person could be an extremely useful resource since one of the board's major responsibilities is to perform an underwriting function. We realize that the board is already large and represents a compromise on representation among health care providers. This is why the suggestion for only one insurance industry representative. The industry has valuable expertise to offer the board and certainly has a significant interest in the subject.

We appreciate your consideration of our request and the opportunity to address this committee.

AHD 1-24-84  
3 p.m.

records or proceedings of the board of governors.

0381 (d) Subsection (c) of this section shall not apply to proceed-  
0382 ings in which a health care provider contests the revocation,  
0383 denial, restriction or termination of staff privileges or the license,  
0384 registration, certification or other authorization to practice of the  
0385 health care provider.

0386 (e) Nothing in this section shall limit the authority, which  
0387 may otherwise be provided by law, of the commissioner of  
0388 insurance, the state board of healing arts or other health care  
0389 provider licensing or disciplinary boards of this state to require a  
0390 peer review committee to report to it any disciplinary action or  
0391 recommendation of such committee, or to transfer to it records of  
0392 such committee's proceedings or actions to restrict or revoke the  
0393 license, registration, certification or other authorization to prac-  
0394 tice of a health care provider or to terminate the liability of the  
0395 fund for all claims against a specific health care provider for  
0396 damages for death or personal injury pursuant to subsection (g) of  
0397 K.S.A. 40-3403 and amendments thereto. Reports and records so  
0398 furnished shall not be subject to discovery, subpoena or other  
0399 means of legal compulsion and their release to any persons or  
0400 entity will not be admissible in evidence in any judicial or  
0401 administrative proceeding except to the parties in any judicial or  
0402 administrative proceeding arising out of the recommendation of  
0403 the peer review committee, the commissioner of insurance, the  
0404 state board of healing arts or other health care provider licensing  
0405 or disciplinary board.

0406 New Sec. 8. The state board of healing arts shall appoint a  
0407 disciplinary administrator, who shall not otherwise be an attor-  
0408 ney for the board, with duties as set out in act. The disciplinary  
0409 administrator shall be an attorney admitted to practice law in the  
0410 state of Kansas. The disciplinary administrator shall have the  
0411 power and the duty to investigate or cause to be investigated all  
0412 matters involving professional incompetency, unprofessional  
0413 conduct or any other matter which may result in revocation,  
0414 suspension or limitation of a license pursuant to K.S.A. 65-2836  
0415 65-2844, inclusive, and amendments thereto. Subject to ap-  
0416 proval by the state board of healing arts, the disciplinary admin-

In the performance of these duties, the disciplinary adminis-  
trator shall be authorized to compel by subpoena the production  
of any information pertinent to an investigation.

0417 istrator shall employ clerical and other staff necessary to carry  
 0418 out the duties of the disciplinary administrator. The state board  
 0419 of healing arts may adopt rules and regulations necessary to  
 0420 allow the disciplinary administrator to properly perform the  
 0421 functions of such position under this act.

0422 New Sec. 9. On the conclusion of an investigation, unless  
 0423 the disciplinary administrator determines the complaint to be  
 0424 unfounded, the disciplinary administrator shall present matters  
 0425 involving alleged professional incompetency or unprofessional  
 0426 conduct to a review committee appointed pursuant to section 10.  
 0427 The disciplinary administrator shall recommend to the review  
 0428 committee informal admonition of the practitioner concerned or  
 0429 prosecution of formal charges at a hearing. If informal admoni-  
 0430 tion is recommended by the review committee the same shall be  
 0431 performed by the disciplinary administrator without further pro-  
 0432 ceedings. The review committee shall have the power to sub-  
 0433 poena witnesses and information for appearance and presenta-  
 0434 tion before the committee. Disposition of the matter shall be  
 0435 made by a majority vote of the review committee unless the  
 0436 committee directs further investigation. A complaint shall not be  
 0437 referred for hearing unless the review committee finds by ma-  
 0438 jority vote that there is probable cause to believe there has been  
 0439 conduct which, pursuant to K.S.A. 65-2836 to 65-2844, inclusive,  
 0440 and amendments thereto may result in revocation, suspension or  
 0441 limitation of a license. The members of the review committee  
 0442 shall not participate as a witness or otherwise in any hearing  
 0443 regarding the matter.

0444 New Sec. 10. Review committees shall be established and  
 0445 appointed by the state board of healing arts for each branch of the  
 0446 healing arts as necessary to implement the provisions of this act.  
 0447 Each review committee shall be composed of three members.  
 0448 Two members shall serve for a period of two years, one of whom  
 0449 shall be a lay person representing the public and one of whom  
 0450 shall be a member of the same branch of the healing arts as the  
 0451 person whose conduct is being reviewed. The third member of  
 0452 the review committee shall be appointed on an *ad hoc* basis, and  
 0453 shall be of the same branch of the healing arts and specialty, if

or any other matter which may result in revocation, sus-  
 pension or limitation of a license pursuant to K.S.A.  
 65-2836 to K.S.A. 65-2844, inclusive, and amendments thereto.

and their designated alternates

all  
 members

0454 any, as the person whose conduct is being reviewed. Members of  
0455 the state board of healing arts shall not be eligible to act as  
0456 members of the review committee. Members of the review  
0457 committee who are licensees of the state board of healing arts  
0458 shall be selected from names submitted by the state professional  
0459 association for the branch of healing arts involved. The members  
0460 of such review committees attending meetings of such commit-  
0461 tees shall be paid compensation, subsistence allowances, mile-  
0462 age and expenses as provided by K.S.A. 75-3223 and amend-  
0463 ments thereto.

0464 New Sec. 11. If the review committee recommends the mat-  
0465 ter be referred for hearing, the disciplinary administrator shall  
0466 institute formal proceedings by filing a petition as set forth in  
0467 K.S.A. 65-2841 and amendments thereto. Prior to the time the  
0468 petition is filed, all information in the possession of the discipli-  
0469 nary administrator or review committee regarding the matter  
0470 shall be confidential and not subject to subpoena. The discipli-  
0471 nary administrator shall prepare and prosecute all complaints  
0472 that proceed to hearing before the state board of healing arts. All  
0473 witnesses at such hearing shall be sworn and all proceedings and  
0474 testimony shall be reported, either by stenographic means or  
0475 electronic recording.

0476 Sec. 12. K.S.A. 40-3402, 40-3408 and 40-3415 and K.S.A.  
0477 1983 Supp. 40-3403 and 40-3404 are hereby repealed.

0478 Sec. 13. This act shall take effect and be in force from and  
0479 after its publication in the statute book.

may

The disciplinary administrator shall ensure that no conflict of interest exists by reason of geography, personal or professional relationship, or otherwise, between any of the review committee members and the person whose conduct is being reviewed.