

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

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

3:15 a.m./p.m. on January 26, 1984, 19\_\_ in room 123-S of the Capitol.

All members were present except:  
Senator Bogina

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, State Board of Healing Arts  
Jerry Slaughter, Kansas Medical Society  
Ron Todd, Assistant Commissioner of Insurance

SB 507 - Health Care Provider Insurance Availability Act

Section 3. Senator Hess said it had been suggested that a member from the insurance business be added to the Board of Governors. It was the consensus of the committee to make no amendment to this provision in subsection (b) (2).

Section 3. Motion was made by Senator Steineger to conceptually amend subsection (c) (6), leaving the "commissioner" in the section, but provide that reinsurance must be bid rather than negotiated. The motion was seconded by Senator Gaines, and after a brief discussion, carried by voice vote.

Section 3. Motion was made by Senator Gaines and seconded by Senator Talkington to conceptually amend subsection (g) by mandating reporting to the appropriate party after the Board of Governors finds the person is a material risk to the fund. The motion carried by voice vote.

There was extended discussion by committee members and conferees concerning the language in the bill.

Motion was made by Senator Steineger and seconded by Senator Gaines to amend SB 507 on page 11, subsection (e), to require District Court approval before subpoenas are issued. The motion carried by voice vote.

Motion was made by Senator Steineger to delete all reference to confidentiality of records in this bill, and make it the subject of a separate bill. The motion died for lack of a second.

There was discussion concerning Mr. Gerald Michaud's motion in Sedgwick County to release certain records of Wesley Medical Center to this committee. The Chairman said he has found the committee may have access to those records if confidentiality can be protected. Mr. Strole explained that Judge Nicholas Klein ruled the records could be given to the Board of Healing Arts, the Insurance Commissioner and the Senate Ways and Means Committee. It was decided to complete action on certain aspects of SB 507 before deciding what to do with the judge's ruling as it pertains to this committee.

Mr. Furse noted that the provisions of lines 389-390 cannot relate to other health care providers, because it is the peer review privilege section. After a brief discussion, the committee arrived at a concenses to make sure that the provision includes all appropriate licensing or disciplinary boards.

Mr. Strole referred to his suggested amendments to SB 507, and explained them to committee members. (These are amendments distributed at a previous hearing on SB 507).

Motion was made to adopt the amendments in Attachment A (suggested by Mr. Strole, with modifications suggested above. This motion was made

SB 507 - Continued

by Senator Gaines and seconded by Senator Talkington. It included a suggestion by Senator Hein to change "disciplinary administrator" to "Board of Healing Arts" in Attachment A, page 13; and a suggestion by Senator Steineger to change "shall" to "may" when referring to the Disciplinary Administrator representing the board whenever a licensee appeals a decision of the board,...  
etc., in Attachment A, line 472, page 13. The motion carried by voice vote.

Motion was made by Senator Gaines and seconded by Senator Talkington to change the title of SB 507 to correspond with amendments made in this committee. The motion carried by voice vote.

There was committee discussion concerning procedure to follow in viewing the records made available by the order of Judge Klein. Senator Hess suggested that he confer with Senators Steineger and Talkington to see how the committee could view the records confidentially under the open meetings law. The committee agreed to this procedure.

The meeting was adjourned by the Chairman.

0380 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 to 65-2844, inclusive, and amendments thereto. ~~Subject to ap-~~  
0416 ~~proval by the state board of healing arts, the disciplinary admin-~~

Prior to the filing of a petition pursuant to section 11,

After such a petition is filed, the reports and records shall be deemed public records.

In the performance of these duties, the disciplinary administrator 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 all 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

*Replaces 13*

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.

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.

Att A  
1-26-84  
3:15P.