

Approved

Date

Stephen R. Cloud

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Stephen R. Cloud at
Chairperson

9:07 a.m./~~p.m.~~ on Tuesday, March 5, 1985 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor
Russ Mills - Legislative Research Dept.
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

The meeting of the House Governmental Organization Committee was called to order at 9:07 a.m. by Representative Stephen R. Cloud, Chairman. The minutes of the February 28 meeting were approved. March 4 minutes were distributed.

The Chairman called the Committee's attention to an article from The Kansas City Star, dated Sunday, February 24, 1985, with attached memo. (See Attachment A) The article deals with the Board of Healing Arts and is titled, "Critics Say Kansas Too Easy on Incompetent Doctors". It is critical of some of the board's practices. Currently the board is made up of five medical doctors; three doctors of osteopathy, three chiropractors, one podiatrist and one lay person. The concept of Representative Patterson's bill, HB 2282, could be utilized if the committee would like to incorporate the Board of Healing Arts in place of the Board of Examiners in Optometry. The fact that one lay person serves on this board gives it a very low percentage of lay input. A substitute bill could be introduced and run through Ways and Means. The Board of Healing Arts would be given an adequate amount of time to appear and give its views. The Chairman asked the Committee to read the article and think about what it would like to do.

The Chairman began the overview of the Subcommittee 2 report regarding the Sunset Review of the State Treasurer and the Pooled Money Investment Board. (See Attachment B) He said he was very well pleased with the intensity of the Subcommittee review. The Subcommittee spent time going through all the current procedures of the Treasurer's office. Because of this thorough review, the Subcommittee recommends favorably one bill which continues the State Treasurer and the Pooled Money Investment Board in existence until 1993. The Chairman went through the background and activities of the department and the budgeting information. Discussion centered on compensating use taxes. Secretary Duncan and Bill Edds of the Revenue Department were invited from another committee for a few minutes of explanation. Mr. Duncan said that this is the equivalent of a sales tax from a non-resident retailer. This nexus retailer has the duty to collect and remit taxes. He cited such retailers as Penneys and AT&T. Some companies do not have nexus with the state because they do not operate in Kansas, but they sell to Kansas. Those companies have the responsibility for assessing the tax and remitting to the State of Kansas. Several ways in which this tax is collected is through the retailers, checking Port of Entry items such as machinery and contacting the owners, audits and the general public. The Chairman thanked Mr. Duncan for clarifying this item for the committee. The Chairman continued with the Subcommittee 2 report with recommendations 2 through 5 and ended the report.

Representative Roper moved the adoption of the Subcommittee 2 Report. Representative Harder gave a second to the motion. The motion carried.

Representative Aylward's bill, HB 2231, which would create a department of public safety and law enforcement was discussed. The fact that it is a rather massive bill, needing in-depth study, would make it a good subject for an interim study. Representative Hassler moved to recommend HB 2231 for interim study. Representative Sughrue gave a second to the motion. The motion carried. A letter will be drafted to the Speaker requesting this be done.

The meeting was adjourned at 9:45 a.m.

SAC

Critics say Kansas too easy on incompetent doctors

By Jenny Deam
and Eric Palmer

staff writers

The Kansas Board of Healing Arts was created a generation ago for doctors to protect the public against incompetence by policing their own ranks.

But the handling of some recent cases has raised questions about just who is being protected.

Critics contend that the 13-member board takes months, sometimes years, to review public complaints, leaving the public vulnerable against potentially bad doctors.

And even when action is taken, the outcome of disciplinary proceedings has shown an inability or unwillingness by board members to take a firm stand against their peers, say other doctors, patients and their lawyers.

Last year, four doctors out of the 4,188 practicing medical doctors, doctors of osteopathy and chiropractors in Kansas lost licenses, according to board officials.

During the two years before that, only one doctor per year lost his license.

In one 1982 case, the board decided not to discipline a well-known Wichita physician who had been sued five times for performing allegedly unnecessary rectal surgery on small children.

An expert witness from California who came to Kansas to testify at the proceedings found the outcome unsettling.

"The final verdict came down skewed in favor of protecting the doctor," Dr. David Fleisher, a pediatrician from Los Angeles, said in a recent interview.

Board members and staff deny that

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sel since 1983.

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In 1957 Kansas lawmakers created the medical regulatory board, which is composed almost entirely of doctors and is financed by doctors' license fees.

Currently it is made up of five medical doctors, three doctors of osteopathy, three chiropractors, one podiatrist and one lay person. Each member is appointed by the governor and paid \$35 for each of their bimonthly meetings, plus expenses.

During the last year an estimated 150 complaints were lodged against doctors across the state. But board officials say the vast majority of those did not warrant board action.

In the four cases in which licenses were lost, one was surrendered by a doctor already in prison after being convicted of trading drugs for homosexual acts. Another was from a doctor with a drinking problem who gave up his license on the condition his name not be made public. His license has since been reinstated.

A doctor accused of incompetence in obstetrics surrendered his license and now practices in California. The fourth case involved a resident doctor at the University of Kansas Medical Center who submitted false medical school credentials.

By comparison, in Missouri, which has more than twice as many doctors as Kansas, there were seven times as many licenses revoked or surrendered during 1983—28 out of the 8,745 practicing in the state.

And Missouri's Board of Registration for the Healing Arts currently is seeking to restrict the license of the president of

surgical records in Kansas City.

Recently he filed a multimillion-dollar suit against Shawnee Mission Medical Center in an attempt to get his privileges there reinstated. He contends the action against him by the hospital was arbitrary and damaged his reputation.

Mr. Strole said the board began reviewing the Sifers case two years ago when it learned malpractice suits had been filed. He said it will still be several months before a decision is rendered on whether there is "probable cause" to call a license revocation hearing.

The board already has required Dr. Sifers to get a psychological and neurological evaluation. The Mayo Clinic in Minnesota gave him a clean bill of health, Mr. Strole said.

The board also has sent pathology reports on some of Dr. Sifers' patients to other doctors for review.

But Mr. Strole said that because Dr. Sifers is no longer doing mastectomies, the case may be dropped.

Ms. McNett said, however, she questions whether the case has moved quickly enough.

"I don't feel the public is being adequately protected in this instance," she said.

Dr. Gordon Maxwell, a Salina obstetrician and gynecologist who has been on the board since 1979, disagrees.

"I'm certain from the public's viewpoint it looks like we're sitting on it, but in real terms, in legal terms, we're doing everything we can," he said.

● Dr. Richard Brownrigg, a Dodge City urologist and former mayor, was convicted last fall of shooting his ex-wife's boyfriend five times. Although Dr. Brownrigg contended he acted in

Doctors

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they cannot take a firm stand against doctors when it is appropriate.

"We are not headhunters," said Betty Jo McNett, the board's president and only lay person member. "We investigate any complaint that comes before us but we don't try to find doctors that need discipline."

"All the doctors (on the board) . . . are open-minded and fair and we do protect the public."

Board members and staff say they have taken steps, including the addition of two full-time lawyers in the last two years, to promote a more aggressive stance in disciplining bad doctors.

They concede the board has been slow in handling some cases, but say it does the best it can within the framework allowed by state lawmakers.

The discipline process is slow and "cumbersome" but is necessary to ensure due process rights for accused doctors, board officials say.

"Until we prove the case we can't say someone can't practice medicine," said Donald Strole, the board's general counsel since 1983.

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the Missouri board, said the process takes more time than he would like but that the most serious cases are always dealt with first to provide the most protection for the public.

"We have a good system in Missouri," he said. "There is no question about it. The public is protected."

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In Kansas, it is not the licenses revoked that have brought the most public comment. It is those that have not been.

For example:

● Dr. Earl Sifers, a general surgeon with offices in Merriam and Kansas City, Kan., has been sued 18 times in the last four years for malpractice. Some of those patients allege he performed unnecessary mastectomies—the surgical removal of a breast—and all claim he botched treatment after the surgery.

He has been barred from performing breast surgery at Bethany Medical Center and his surgery has been restricted at Shawnee Mission Medical Center.

Dr. Sifers has maintained in sworn testimony that he has one of the best surgical records in Kansas City.

Recently he filed a multimillion-dollar suit against Shawnee Mission Medical Center in an attempt to get his privileges there reinstated. He contends the action against him by the hospital was arbitrary and damaged his reputation.

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ka last December for a license revocation hearing, but the board voted unanimously to allow him to continue his practice. Mr. Strole said the doctor made a very favorable impression" on the board.

He defended the board's action, saying the shooting did not directly affect Dr. Brownrigg's medical practice and patients have complained.

But Dan Love, Ford County attorney, asked he questions the board's lack of action against a convicted felon. He said that during the trial he pointed to the parent conflict between shooting a child and a doctor's sworn oath of protecting human life.

Mr. Strole said the board did not see it that way.

"There was no evidence this is anything but an isolated incident," he said. Dr. Brownrigg is now appealing his conviction. Should he be imprisoned, Mr. Strole said he would urge that the doctor be allowed to continue his practice behind bars.

Dr. Clifford Jones, a Wichita general practitioner, had his license suspended because of drinking, but it was reinstated with a signed agreement by the doctor not to drink, board members decided.

He was called back before the board in March 1981 on new complaints of a drinking problem.

At that hearing, some board members said they believed Dr. Jones' speech was slurred and he appeared intoxicated.

It was decided, however, that no action would be taken that day, according to board members.

On his way home from the Topeka hearing, Dr. Jones was killed in a one-car accident on the Kansas Turnpike. Kansas Highway Patrol reports show his blood alcohol level was 0.31 percent—more than three times the legal limit of intoxication.

Dr. Maxwell defended the board's lack of action. "We don't have the power to arrest people," he said.

Dr. Medo Mirza, a Wichita pediatric surgeon, was called before the board in 1982 after five malpractice suits claiming unnecessary surgery on children were settled out of court.

It took six days of hearings over two months to hear what some call the most emotional case ever to come before the board.

On one side were parents and doctors who alleged that Dr. Mirza had performed rectal surgery after misdiagnosing a rare intestinal condition.

Dr. Van Vyff Payne of Wichita said in an interview that her 2-month-old daughter was taken to the doctor for constipation. Her daughter was diagnosed as having Hirschsprung's disease, or a lack of nerve endings in the lower portion of her

surgeries by the time she was in the first grade to correct the damage done by the original surgery by Dr. Mirza, her mother said.

On the other side were parents who said the surgeon had saved their children's lives. They believed he was being persecuted.

In the end, the board concluded there was not enough evidence to revoke the doctor's license.

But now, three years later, there has been some rethinking. Ms. McNett concedes all of the evidence may not have been presented because the board's part-time attorney was not fully prepared.

Gerald Michaud, a Wichita lawyer who specializes in malpractice cases, called the proceeding a "whitewash."

Mr. Michaud was the plaintiffs' attorney in the suits against the surgeon and said he was told by the board's appointed attorney that he could assist in its case against the doctor. He contends he had years' worth of evidence about the case that could have been presented.

But the lawyer said he was barred by the board from assisting.

Instead, the case was handled solely by Topeka lawyer Wallace Buck, the board's appointed attorney.

Mr. Buck said in a recent interview he could not recall why Mr. Michaud was not allowed to assist in the case. He said he believed the reason may have been that the presence of Mr. Michaud may have been too inflammatory.

"We weren't in there necessarily to take a doctor's license," he said. "It was to present all the evidence."

He said he believed all of the evidence was indeed presented and the outcome of the case was correct.

Mr. Strole said, however, that the board may have erred in not allowing Mr. Michaud to participate. "Michaud would be in there if I had anything to say about it," he said.

Dr. Fleisher, a clinical professor of pediatrics at the University of California at Los Angeles and pediatrician at Cedars-Sinai Medical Center, testified at the hearing about three of the five children allegedly misdiagnosed by Dr. Mirza. Following their initial surgery by Dr. Mirza, Dr. Fleisher became the children's doctor.

He said he was surprised by the board's decision not to discipline Dr. Mirza. He contended in a recent interview that the board was "working at protecting the rights of the doctor with, perhaps, not enough consideration for the vulnerability of the patients."

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Seeing a problem in disciplining the state's doctors, legislators last year approved a bill designed to bolster the board's effectiveness.

review panels to decide the merit of complaints against doctors.

But those close to the board see the new law as a mixed blessing.

On one hand they applaud the addition of a prosecutor, a position they say has been needed to aggressively handle cases. But on the other hand, the board sees the review panels as another layer in an already burdensome process.

Prior to last year, the board relied on appointed attorneys to act as prosecutor at discipline hearings. Mr. Strole said that often those attorneys were unfamiliar with the cases they were expected to handle.

In September, Topeka lawyer Larry Buening assumed duties as the board's prosecutor, becoming the board's second full-time staff attorney.

But even with that change, some say the board's problems of inaction are so deeply ingrained that the addition of one lawyer will not solve them.

Staff and board members alike criticize the addition of review panels to the discipline process.

Mr. Strole said the added step will "allow the doctor another vehicle to escape liability."

Currently, when a complaint against a doctor is lodged, it goes first to Mr. Buening and the state's lone investigator for review. By comparison, Missouri has a staff of seven investigators.

If merit is found by Mr. Buening, the complaint is forwarded to the review panel—an independent committee composed of three doctors within the same medical field. If the panel decides there should be further action, the case is sent to the board for a hearing.

"I don't feel the review committees are necessary," said Ms. McNett.

Mr. Strole said the board has recently taken steps to deal with potentially dangerous situations more quickly.

As in the Sifers case, he said the board has begun seeking agreements from doctors to limit their practice or voluntarily cease the part of their practice that is causing complaints. That way, Mr. Strole said, the public is protected but the doctor can keep his license.

Both Mr. Buening and Mr. Strole complain of a lack of cooperation from state agencies as they gather information to launch an investigation.

Mr. Strole said the state Department of Insurance repeatedly has failed to provide information about doctors who are the subject of repeated malpractice cases. He claims the insurance department, which administers the state's malpractice fund, has evidence that would be useful in investigations.

A measure was introduced this year by the state Senate's Judiciary Committee to force the insurance department to turn over documents to the board.

SUBCOMMITTEE REPORT

TO: House Governmental Organization Committee
FROM: Subcommittee II
RE: Sunset Review of the State Treasurer and the Pooled Money
Investment Board

Primary Recommendation

The Subcommittee makes the following recommendation:

1. The Committee should recommend favorably one bill which continues the State Treasurer and the Pooled Money Investment Board in existence until 1993.

Background and Subcommittee Activities

The Subcommittee held eight meetings in connection with its review of the activities of the State Treasurer and the Pooled Money Investment Board. Most of the Subcommittee's work focused on the activities of the State Treasurer's Office. In addition, the Subcommittee reviewed the Performance Audit Report, "Sunset Review of State Treasurer's Office," released in February, 1985, by the Division of Post Audit. The Subcommittee also reviewed the recommendations made by the 1980 Governor's Commission on State Investment Practices.

The State Treasurer is an elected officer who serves a four-year term and acts as chairperson of the Pooled Money Investment Board. The State Treasurer is also a member of the Committee on Surety Bonds and Insurance.

The Office of the State Treasurer accounts for all cash deposited in the state treasury, redeems warrants drawn on the state treasury, and reconciles warrants redeemed and issued. Additionally, the State Treasurer is the custodian of certain securities and investments. The securities include those pledged by banks as collateral for state monies that the banks hold on deposit, and bonds and investments owned by state agencies. Securities pledged by insurance companies to cover their reserve requirements are held in joint custody by the State Treasurer and Insurance Commissioner. The State Treasurer also acts as the chief fiscal agent for bonds issued by the state and most local units of government, collecting moneys from various municipalities prior to the date of maturity of obligations and paying obligations as they come due. The Treasurer prepares statements for each municipality and returns cancelled bonds and coupons to them. The Treasurer also distributes funds for several aid programs to counties and cities.

The State Treasurer's Office is organized into four programs to carry out its statutory duties. Administration and Fiscal Services manages the following functions:

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administrative coordination and data processing services, registration of all bond issues by municipalities and state agencies, handling of revenues from state agencies, bond and coupon redemptions for governmental bodies, and the disposition of unclaimed property. Aid to Local Units of Government is responsible for the distribution of monies from the state treasury to local units of government including local ad valorem aid, county and city revenue sharing aid, local alcoholic liquor aid, and distributions from the Special City and County Highway Fund and the County Equalization and Adjustment Fund. Financing of these latter two aid distributions is budgeted by the Department of Transportation. Local Sales and Compensating Taxes remits to local units of government moneys collected by the Department of Revenue from local sales and compensating use taxes. All expenditures in this program are classified as nonreportable as they represent transfers from the Department of Revenue. Finally, the University Bond Retirement program administers the servicing of building bonds for Board of Regents' institutions.

Budgeting information for the State Treasurer's Office is shown below:

	<u>FY 1984 Actual</u>	<u>FY 1985 Estimate</u>	<u>FY 1986 Gov. Rec.</u>
Expenditures by Program:			
Administration/Fiscal Services	\$ 1,417,864	\$ 1,524,507	\$ 1,507,671
Aid to Local Units of Govern- ment	46,078,080	49,169,689	51,665,957
University Bond Retirement	664,856	681,242	663,020
TOTAL EXPENDITURES	<u>\$48,160,800</u>	<u>\$51,375,438</u>	<u>\$53,836,648</u>
Full-Time Positions	51.0	53.0	54.0

The Pooled Money Investment Board consists of three members: the State Treasurer, who is designated by statute as chairperson of the Board, and two members appointed by the Governor, subject to confirmation by the Senate. The Board is responsible for the placement and investment of all state moneys, with the exception of retirement system funds.

Other Subcommittee Recommendations

2. The Sunset Audit Report recommended that the State Treasurer's Office should seek legislation to authorize the current procedures for notifying owners of unclaimed property. The law should allow notice to be given at particular times during the year, instead of requiring notice within 120 days after each holder report is filed.

The Subcommittee concurs with this recommendation and has requested that the full Committee introduce legislation to accomplish this change. H.B. 2527 will delete the 120-day requirement and provide that the unclaimed property notices will be published twice each year, during the months of February and August.

3. The Sunset Audit Report recommended that the State Treasurer's Office should require holders of unclaimed property to report whether

the property is interest-bearing, and the rate of interest earned at the time the property is sent to the State Treasurer. Using this information, the State Treasurer's Office should ensure that interest is paid on valid claims as required by law.

The Subcommittee was advised that the unclaimed property report forms have been revised to include information on whether the property is interest-bearing, and that this recommendation has been implemented.

4. The Sunset Audit Report recommended that the State Treasurer's Office, in cooperation with the Department of Revenue, should consider seeking legislation allowing the Department to disclose the name, address, and Social Security number of any taxpayer who owns unclaimed property reported to the State Treasurer's Office.

The Subcommittee concurs with this recommendation and has requested that the full Committee introduce legislation to implement the recommendation. H.B. 2528 would establish a mechanism whereby the State Treasurer and the Department of Revenue may compare computer listings of names of taxpayers and names of owners of unclaimed property.

5. The Subcommittee also learned that the interest rates to be paid by banks on state inactive accounts and on state time deposit, open accounts are calculated on different bases. The Subcommittee has requested that the full Committee introduce legislation to provide that the rates for inactive accounts be calculated using a procedure similar to that used for time deposit, open accounts. H.B. 2423 will accomplish this change.

H.B. 2423 changes the basis of computing the interest rate to be paid by banks on state inactive accounts from a three-month average rate on 91-day U.S. treasury bills to the average yield on such bills at their most recent public offering prior to each interest period and prior to the notification given banks by the Pooled Money Investment Board of the amount available for deposit in inactive accounts during the forthcoming interest period.

Enactment of H.B. 2423 would make the interest rate to be paid on inactive accounts much more timely by basing such rate on one of the auction rates of 91-day treasury bills in the month immediately preceding the beginning of each interest period. This is similar to the procedure now used for determining the interest rate to be paid by banks on state time deposit, open accounts.

Representative Stephen Cloud
Subcommittee Chairman

Representative Clyde Graber

Representative Clarence Love

Representative Alfred Ramirez

Representative L. V. Roper