

Approved _____ Date 2-7-85

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at _____
Chairperson

1:30 a/m//p.m. on January 31, 1985 in room 423-S of the Capitol.

All members were present except:

Rep. Bill Bryant, excused

Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norm Furse, Revisor
Sue Hill, Secy. to Committee

Conferees appearing before the committee:

Representative Susan Roenbaugh-114th District
Mr. David Litwin, Kansas Chamber of Commerce

Visitor's register, (see Attachment No.1.)

Chairman called meeting to order and introduced Rep. Roenbaugh.

Rep. Roenbaugh distributed hand-out to committee, (see Attachment No. 2.), in regard to request for introduction of a bill that would speak to granting a full Kansas License for Doctor Primitiva Coronado to continue the practice of medicine at Larned State Hospital. Because of her weakened eyesight, Dr. Coronado has not been able to do the extensive reading and studying of basic science in order to take the complete FLEX examination again. Dr. Coronado is highly respected and it is felt the termination of her license would be a serious detriment to the service of Larned State Hospital, and its patients. In light of these special circumstances, Rep. Roenbaugh requests this bill. Letters and memos in Attachment No. 2. speak in detail regarding this bill request.

Rep. Friedeman moved this bill be introduced, motion seconded by Rep. Neufeld, motion carried.

Chair asked wishes of committee in regard to minutes of previous meetings. Motion by Rep. Blumenthal the minutes of January 24, 28, 29th be approved as written. Motion seconded by Rep. Harder, motion carried.

HB 2018

Mr. David Litwin was introduced. He commented on HB 2018. One of the concerns is whether or not a person has the "impairment", or whether or not people think the person has the "impairment". The definition question is a big issue here. Further, a concern is the exclusion of alcohol addiction, drug addition, or contagious diseases references. He stated he feels, if we are going to protect these persons in a responsible way, then we should proceed in a slower and more prudent manner. Further, he referred to specific sections, i.e., Sec. 2, (j), the definition of "handicap", and then when you look at pg. 15, Sec. 7, (h), and Sec. 8, he says they are in contrast, and he feels perhaps it is an error.

After answering questions from some committee members, he said that with some of the changes discussed, the bill does go towards responding to the concerns of his Board. There was further questioning in regard to the exclusion of alcoholics or drug abusers, i.e., the degrees and durations of use is different.

Hearings closed on HB 2018

Norm Furse Revisor, then directed attention to several technical aspects of HB 2018. See (Attachment No. 3.), for details. He went over some points that have been raised on HB 2018.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 1:30 a.m./p.m. on January 31, 19 85

He stated it is important for committee to remember the Civil Rights Act is not just these few sections that have been amended, but is an Act that also creates the Civil Rights Commission that provides for hearings appeals. The Interim study was not related to those aspects. There was a question in regard to Model Statute. The Interim Committee didn't look at the Model Statute because they weren't looking at the whole Civil Rights act. He called attention to the Model Statute (in Attachment 3) and the definitions therein. Further, he said is important to remember the Civil Rights Act is a whole body of law that creates a whole governmental entity. Further there is a statute that excludes alcoholism and drug abusers, and there a number of Civil Rights Acts on the Federal level. We had testimony this week that the major enforcement agency was the Dept. of Justice---that is not true. There are several major enforcement agencies on the Federal level. The primary enforcements is through the office of Federal Contract Compliance Programs of the U.S. Dept. of Labor. He then cited what Sections are handled by which specific enforcements. The bottom line for this committees consideration in regard to the alcoholism and drug abusers, is a policy decision, whether or not you want to include, or exclude those persons. You are not subject to any Federal mandate whether it is in or out.

Another point that was stated in testimony earlier by a conferee was that a particular class of persons being considered in HB 2018 would have no rights outside this act, and Mr. Furse said he was sure the committee understood this is just not the case. They have the same rights as everyone as a United States Citizen, and a Citizen of Kansas, plus what the Civil Rights Act does is creates protected classes of people, and that is what HB 2018 would do for these particular people.

Mr. Furse then indicated the attachment and explanation of same would be good reference for committee, and he cited several portions of this Model Statute, and explanations.

There were some questions from committee members.

Chairman thanked Mr. Furse for the clarification, and for the extra research he did in regard to his comments this date.

Chair asked committee to carefully consider HB 2018, as this bill will make a material change towards the residents of Kansas, especially the handicapped residents. The bill will have action taken later, perhaps next Thursday, February 7th.

Meeting adjourned.

STATE OF KANSAS
JOHN CARLIN, GOVERNOR



SOCIAL AND REHABILITATION SERVICES

STATE OFFICE BUILDING
TOPEKA, KANSAS 66612
ROBERT C. HARDER, SECRETARY

*Attn. #2
1-31-85*

LARNED STATE HOSPITAL

LARNED, KANSAS 67550

G. W. GETZ, M. D.
ACTING SUPERINTENDENT

(316) 285-2131

January 2, 1985

Honorable Susan Roenbaugh
Representative of the 114th District
State Capital Building
Topeka, Kansas 66612

Re: Primitiva C. Coronado, M.D.
Licensure

Dear Mrs. Roenbaugh:

I am sending you a copy of a memo from Dr. Benjamin Artiles regarding Dr. Primitiva Coronado whose Kansas fellowship license expires next March. Dr. Coronado is an exceptionally fine physician and psychiatrist, and her leaving would be a serious problem for our Children's Unit.

In my opinion Dr. Coronado deserves a full Kansas license. Because of her weakened eyesight, she has not been able to do the extensive reading and studying of basic science in order to take the complete FLEX examination again for Kansas. In light of her special circumstances and her demonstrated clinical excellence, both Dr. Artiles, who is her supervisor, and I are asking that consideration be given to having full Kansas licensure granted by the legislature. For your convenience I am enclosing a copy of the bill that granted dental licensure to Dr. Samuel Duvall a few years ago.

I greatly appreciate your interest in this matter and will be glad to work further with you in any way that would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "G. W. Getz, M.D.", written over a printed name.


G. W. Getz, M.D.
Acting Superintendent

GWG:ms
Enclosures - 2

*Attn. #2
1-31-85*

M E M O R A N D U M
LARNED STATE HOSPITAL

TO: G. W. Getz, M.D.
Acting Superintendent

FROM: B. H. Artiles, M.D. 
Asssitant Clinical Director
Psychiatric Services

DATE: January 2, 1984

SUBJECT: Primitiva C. Coronado, M.D.

Dr. Coronado has been in the employment of Larned State Hospital since March 14, 1983 serving as the psychiatrist in charge of our Children's Unit. Dr. Coronado has proven to be an exceptionally valuable physician. She started her duties by making excellent contributions to the development of the new program for the unit then being formulated. Her consistent dedication and her reliability have continued to be a great asset to the functioning of her department.

Dr. Coronado's character has been shown to be above reproach. She is highly praised by her fellow workers in the Children's Unit who frequently express their appreciation for her personal assets of leadership and careful attention to the provision of high quality of professional care to our patients. In the strict professional sense, I consider Dr. Coronado to be one of our best prepared physicians. Her aptitude as a diagnostician and therapist are really excellent and are clearly reflected in the progress of the patients under her charge.

Dr. Coronado obtained a medical degree from the University of Santo Tomas in Manila, Philippines in March of 1955 and served an internship at the University of Santo Tomas Hospital. She then practiced medicine in her country for the next 18 years, coming to the United States in October of 1973.

In December of 1981, Dr. Coronado was granted a waiver on the requirement for the Basic Science test by the State of California in consideration of her years of experience as a practicing physician. She took and passed the FLEX tests on Clinical Science and Clinical Competence with an average of 76.69. In July of 1984 she took and passed the oral and clinical examinations, thus completing the requirements of the State of California and was issued a license as a physician and surgeon by the Board of Medical Quality Assurance of the State of California with the license number A41091.

In the meantime Dr. Coronado went through psychiatric training at the Traverse City Regional Psychiatric Hospital in Traverse City, Michigan, graduating from the program in February of 1983.

In March of 1983 Dr. Coronado was issued a Fellowship License by the Kansas State Board of Healing Arts with the number FL-124, which is not renewable and will expire in March of 1985. The termination of her license would be, in my opinion, a serious detriment to the service of our hospital and its patients, especially to the psychiatrically ill children in Western Kansas she has served so well for almost two years. Although licensed in the State of California, Dr. Coronado is very interested in remaining in Kansas were she allowed to practice her profession in this state. In consideration of Dr. Coronado's proven professional capacity, dedication to the welfare of our patients, extensive experience, and superior character, I believe all efforts should be made to facilitate her permanence in Kansas and her continued assistance to our patients.

BHA:rd

tended to repeal any existing provisions of state law relating to discrimination, it is intended to take precedence over any conflicting state law. Therefore, other state laws which may conflict should be checked for consistency.

Section 3. Civil Rights

It is the public policy of this state to assure equal opportunities to all individuals, to foster their employment in accordance with their fullest capacities and protect their right to be free from discrimination based upon race, color, religion, national origin, disability, age, marital status, sex or use of adaptive devices. This right is declared to be a civil right and shall include, but not be limited to:

- (1) Obtaining and holding employment without such discrimination;
- (2) Engaging in real estate transactions without such discrimination;
- (3) Utilizing any of the public accommodations without such discrimination;
- (4) Utilizing available educational institutions without such discrimination;
- (5) Utilizing public services and assistance without such discrimination;
- (6) Obtaining credit and insurance without such discrimination.

COMMENT. The section specifies certain rights and prohibits certain discriminatory actions, thereby helping to achieve the stated goal of the act and the public policy of the state. The right to assurance of equal opportunity and protection from discrimination are given the status of civil rights and are enforceable through the substantive and procedural provisions of the act.

Section 4. Definitions

As used in this act:

(1) "Person" means one or more individuals, partnerships, associations, unincorporated organizations, corporations, cooperatives, labor unions or organizations, legal representatives, trustees and receivers, agents or any group of persons, the state of (name of state) or any political or civil subdivision or instrumentality thereof.

COMMENT. The term is defined to include the widest application of the word. As used in the act, it gives broad application to provisions prohibiting discrimination by "any person," except where more specific provisions are necessary, e.g. section 5 on employment discrimination. Review and enforcement provisions allow a "person who has a substantial personal interest" and a "person aggrieved" certain rights which are also intended to be broadly applied.

(2) "Discriminate" or "discrimination" means to segregate or unreasonably differentiate in treatment, whether intended or unintended or to act in a manner fair in form but discriminatory in

operation based upon race, color, religion, national origin, disability, age, marital status, sex or use of adaptive devices.

COMMENT. The act outlaws certain acts of discrimination on specified bases. The definition of these terms focuses upon behavior or actions and their result, rather than upon motive or intent. If through discrimination in employment, for example, a person is denied a job, it is irrelevant whether the employer's intentions were deliberate or benign for the result is the same for those discriminated against. The action is still prohibited even if unintended. Motive or intent is, of course, a legitimate consideration in fashioning relief and in considering the assessment of any penalty therefor.

(3) "Age" means over forty (40) years of age.

COMMENT. This term is defined in accordance with federal provisions on age discrimination contained in the Age Discrimination Act, 29 U.S.C. §631 (1976).

(4) "Marital status" means the state of being married, single, divorced, widowed or separated.

COMMENT. None necessary.

(5) "National origin" means both national origin and ancestry.

COMMENT. None necessary.

(6) "Religion" is defined to include all aspects of religious observances, practices, and beliefs.

COMMENT. None necessary.

(7) "Disability" means any condition or characteristic that renders a person a disabled person as defined in subsection 8 of this section.

(8) "Disabled person" means any person who:

(a) Has a physical or mental impairment which substantially limits one or more major life activities;

(b) Has a history of, or has been misclassified as having an impairment which substantially limits one or more major life activities;

(c) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by others as constituting such a limitation;

(d) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(e) Has none of the impairments defined in this subsection but is treated by others as having such an impairment;

(i) "Physical or mental impairment" means:

[a] Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special

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sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(b) Any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

COMMENT. This definition is based upon the definition of handicapped person contained in section 706(6) of the Rehabilitation Act of 1973 as amended² and the Department of Health, Education and Welfare regulations.³ To be covered a person must either have a disability which substantially impairs one or more major life activities, have a record of such disability or be treated by others as if the person had a disability. Most persons covered by the act will be in the first category.

There are some existing statutes which have been criticized for their vagueness.⁴ The definition of physical or mental impairment in the act is quite specific without being so specific in its listings as to leave out disabling conditions which should be covered. This impairment must substantially limit major life activities. Thus, to come within the terms of the statute a limitation does not constitute a handicap unless it is severe enough to have a substantial impact on such things as sight, communication, mobility, learning or working. The act is not intended to cover minor impairments which are not handicapping, nor does it cover conditions arising from cultural, environmental, or economic disadvantages. There must be a physical or mental basis.

Note that section 706(6) has been interpreted by the United States Attorney General in a legal opinion to the HEW Secretary to include alcoholism and drug addiction since they are generally believed to be diseases, though it is uncertain whether they are mental or physical.⁵ Since both conditions may substantially impair major life activities, persons with alcoholism or drug addiction may be protected by this act, if qualified, as that term is used in various portions of the act. Thus, as with any other disability, these conditions can be taken into account as they affect eligibility for employment or services.

Persons are also considered disabled if they have a record of a disability. This category in-

² 29 U.S.C. §706(6) (1976).

³ 45 C.F.R. §84.3(j) (1977).

⁴ See discussion in Review of State Legislation, Protected Class *supra*.

⁵ Analysis of Final Regulation, §504, 45 C.F.R. pt. 84 (1977).

cludes persons who had a disability at one time but are no longer disabled or those who have been misclassified as having an impairment. Common examples of the first category include mental illness and cancer, while a common example of the second category is persons who have been misclassified as mentally retarded. Although persons in these two categories would normally be covered by paragraphs (8)(c), (8)(d), or (8)(e) as well, respondents are likely to allege as a defense to a complaint that a complainant is not covered by the act. Thus, the effort may be made to preclude consideration of the merits of a complaint. This section protects against the success of such an argument.

A person may also come within the definition of disabled if that person is treated as if he or she is disabled, whether or not the person has a physical or mental impairment. Included are persons who have an impairment but are not substantially limited in any major life activity and those who have no history of such disability, but are treated as if they are disabled. Examples include a person who has controlled epilepsy or mild cerebral palsy and is not precluded in any way from engaging in major life activities, but is refused employment because an employer considers them disabled and unable to work. Such persons are ordinarily considered disabled but do not technically come within the first two paragraphs. Others not ordinarily considered disabled such as those with disfiguring scars, and those who have no impairment at all are included, if treated as if disabled. Thus, the act covers discrimination in the eye of the beholder, whether or not it is factually based.⁶ The act is concerned with behavior which has a discriminatory effect, not intent.

This section, of course, decides only an initial question of membership in a protected class. There are still several major issues to be decided before a violation of the act can be found, including whether or not the complainant is a "qualified individual" within the meaning of the act and whether the discrimination occurred on the basis of a prohibited criterion.

(9) "Use of adaptive device" means the utilization of any item to compensate for a physical or mental impairment, including, but not limited to, braces or other supports, wheel chairs, talking boards, hearing aids, corrective lenses, or seeing eye dogs.

COMMENT. This category is added to more traditional bases for discrimination to prevent a kind of "secondary discrimination." A common example is the refusal to serve a blind person in a restaurant because that person has a guide dog.⁷

⁶ See Wright, *supra* note 4, at 70.

⁷ Some States have prohibited discrimination because of seeing eye dogs. See e.g. LA. REV. STAT. ANN. §46:1951-1953 (West Supp. 1978); NEB. REV. STAT. §§20-129 to 131 (1977); N.C. GEN. STAT. §168 (1976); S.C. CODE §§43-33-10 to -70 (1976).