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Date

Feb 25, 87

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Vice-Chairman, Frank Buehler at
Chairperson

1:30 a.m./p.m. on February 16, 1987 in room 423-S of the Capitol.

All members were present except:

Chairman Littlejohn, excused
Representative O'Neal, absent

Committee staff present:

Bill Wolff, Research
Norman Furse, Revisor
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Representative Neufeld
Stan Teasley, Executive Director of Ks. Commission on Veteran's Affairs

Vice-Chairman Buehler called meeting to order, and welcomed Close Up Students from Olathe North High School. They are in attendance this date because of interest in HCR 5013.

Chair requested staff briefing begin on HB 2135 AND HCR 5013.

Mr. Furse, Revisor, briefed committee on HB 2135, referring to the definition of "License", as an embalmer's license, funeral director's license or assistant funeral director's license. This act he said, would combine two current sections of statutes into a new section that relates to revocation of suspension of said licenses. He outlined the bill section by section, then answered questions, i.e., yes, if the licensed persons do not report to Board after they have been cited for being unfit to practice, their license could be revoked or suspended.

Please see (Attachments No.1-A,B,C), for details. These hand-outs were prepared by Mack Smith, Ks. Board of Mortuary Arts.

Briefings began on HCR 5013:

This legislation, Mr. Furse said, would establish a Task Force to study sexually transmitted diseases. He detailed the bill section by section. A nineteen member committee would be appointed to this study. He answered questions, i.e., yes, it might be well to specify language to include educational units, but he felt that group would be already covered. Yes, there would be a fiscal note because of meetings being held. No fiscal note available this date.

Vice-Chairman noted the Speaker of the House had asked that this committee proceed with hearings on HCR 5013. There was discussion that Secy. of Health and Environment had announced a Task Force would be appointed to study Aids and other sexually transmitted diseases, but action on HCR 5013 will proceed within this committee.

Hearings began on HB 2205:

Representative Neufeld as sponsor of HB 2205 spoke in support, saying there is a specific situation at the Soldier's Home where a patient had been formerly convicted of a bad-check charge, (20 years ago). His physical condition now dictates that he needs medical care and it is more feasible to keep him at the Soldier's Home than to care for him elsewhere. This legislation will speak to this particular problem and others that might occur in the future. He answered questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 a.m. p.m. on February 16, 1987.

Hearings continue on HB 2205:-

Mr. Stan Teasley, Executive Director of Kansas Commission on Veteran's Affairs, stated they are the parent agent for the Kansas Soldier's Home. He spoke in support of HB 2205, and offered technical amendments, Page 1, line 23, Page 2, Line 75, to change language to read, "Kansas Commission on Veteran's Affairs". Page 2, to delete language on line 62. He answered questions, i.e., citing some specific cases in which years ago persons had been convicted of felons and had nothing on a criminal record since, and were now considered to be rehabilitated. Admittance of such individuals would be done on a case by case basis and he stated there would probably be very few other situations like this.

Vice-Chairman called attention to HB 2096. If any committee member still has concerns about provisions in HB 2096 that was killed in committee on February 12, 1987, they might wish to check with Representative Neufeld who is in the process of drafting a committee bill to deal with several concerns in HB 2096.

Announcement was made that the Kansas State Board of Nursing, and Kansas Board of Healing Arts have been invited to answer questions by committee members on HB 2166 next week before action is taken on that bill.

Vice-Chair asked wishes in regard to minutes. Rep. Harder moved the minutes of February 12, 1987 be approved as written, seconded by Rep. Cribbs, motion carried.

Meeting adjourned at 2:10 p.m.

1711a. Denial, suspension or revocation of embalmer's license; grounds; procedure. The board may refuse to issue or to renew, or, after notice and hearing, may at any time suspend or revoke any embalmer's license for any one or more of the following causes:

- (a) Fraud or misrepresentation in obtaining or attempting to obtain an embalmer's license;
- (b) paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business;
- (c) solicitation of business by a licensee or by anyone for such licensee. The provisions of this subsection shall not be deemed to prohibit general advertising;
- (d) willful malpractice;
- (e) willful betrayal of a professional secret;
- (f) unprofessional, unethical or dishonorable conduct;
- (g) incompetency or untrustworthiness in the practice of embalming;
- (h) failure or refusal to properly provide or guard against contagious, infectious or communicable diseases, or the spreading thereof;
- (i) immorality or addiction to liquor or drugs to such a degree as to render such licensee unfit to practice embalming;
- (j) conviction of any felony if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust, or of any offense involving moral turpitude;
- (k) use of untruthful, misleading or improbable statements in advertising or in the sale of merchandise;
- (l) advertising by furnishing free services or the loaning of merchandise or equipment at the time of illness for the purpose of inducing future patronage from the recipients;
- (m) the employment of any unlicensed person to perform the work of actual embalming, or aiding or permitting any unlicensed person to practice actual embalming;
- (n) recommending to the board an applicant for a license who has not, to the licensee's personal knowledge, complied with the requirements of this act or with the rules and regulations of the board;
- (o) refusing to surrender a dead human body upon the request of the next of kin, or legal representative if there is no next of kin, or person entitled to the custody and control of the body if there is no next of kin available and no legal representative qualified to act; or
- (p) violation of any law of this state relating to embalming, burial or disposal of dead human bodies, or of any of the provisions of this act, or of the rules and regulations of the state board of mortuary arts or the applicable rules and regulations of the secretary of health and environment; or using, participating in, selling, promoting,

servicing or operating, directly or indirectly, any burial association, burial certificate or burial insurance certificate system or business which has not been specifically authorized and approved in this state as required by law.

The board shall have the power to make rules and regulations defining, construing and interpreting the above grounds for suspension or revocation of licenses.

All proceedings shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1941, ch. 297, § 13; L. 1953, ch. 292, § 1; L. 1972, ch. 231, § 2; L. 1975,

ch. 462, § 89; L. 1984, ch. 313, § 109; L. 1985, ch. 215, § 6; July 1.

Research and Practice Aids:

Health—31; Licenses—38.

C.J.S. Health § 25; Licenses §§ 43, 44.

CASE ANNOTATIONS

1. Injunction proper remedy to test validity of rule adopted by board. *Butler v. Rude*, 162 K. 588, 593, 178 P.2d 261.

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2-16-87
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65-1722. Denial, suspension or revocation of funeral director's license; grounds; procedure. (a) The state board of mortuary arts may refuse to issue or to renew, or after

notice and hearing, may at any time suspend or revoke any funeral director's license for any one or more of the following causes:

(1) Obtaining or attempting to obtain a license as a funeral director by false representation;

(2) conviction of any felony if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust, or any offense involving moral turpitude;

(3) violation of any law of this state relating to burial or disposal of dead human bodies, or of rules and regulations of the state board of mortuary arts, or the applicable rules and regulations of the secretary of health and environment; or for the violation of any of the provisions of this law; or using, participating in, selling, promoting, servicing or operating, directly or indirectly, any burial association, burial certificate or burial insurance certificate system or business which has not been specifically approved and authorized in this state as required by law;

(4) incompetency or untrustworthiness in the practice of funeral directing;

(5) immorality or addiction to liquor or drugs to such a degree as to render such person unfit to practice funeral directing;

(6) for failure or refusal to properly provide or guard against contagious or infectious disease, or the spreading thereof;

(7) dishonorable conduct;

(8) advertising by furnishing free services or the loaning of merchandise or equipment at the time of illness for the purpose of inducing future patronage from the recipients;

(9) the use of untruthful, misleading or improbable statements in advertising or in the sale of merchandise;

(10) refusing to surrender a dead human body upon the request of the next of kin, or legal representative, if there is no next of kin, or person entitled to the custody and control of the body if there is no next of kin available and no legal representative qualified to act;

(11) solicitation of business by a licensee or by anyone for such licensee. The provisions of this subsection shall not be deemed to prohibit general advertising; or

(12) paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business.

The board shall have the power to adopt rules and regulations defining, construing and interpreting the above grounds for suspension or revocation of licenses.

All administrative proceedings taken by the board pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1935, ch. 234, § 10; L. 1941, ch. 297, § 22; L. 1953, ch. 292, § 2; L. 1972, ch. 231, § 3; L. 1975, ch. 462, § 91; L. 1984, ch. 313, § 111; L. 1985, ch. 215, § 13; July 1.

CASE ANNOTATIONS

1. Injunction proper remedy to test validity of rule adopted by board. *Butler v. Rude*, 162 K. 588, 593, 178 P.2d 261.

2. Bond promising free funeral to policemen and firemen not violation of section. *Byrd v. Cason*, 179 K. 753, 754, 755, 756, 757, 758, 298 P.2d 301.

HOUSE BILL No. 2135

By Committee on Public Health and Welfare

1-29

0017 AN ACT concerning the state board of mortuary arts; relating to
0018 grounds for licensure actions; repealing K.S.A. 65-1711a and
0019 65-1722.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. (a) The state board of mortuary arts may refuse to
0022 issue or renew a license, may revoke or suspend a license or may
0023 publicly or privately censure a licensee, upon a finding that a
0024 licensee or applicant for a license:

0025 (1) Has committed fraud or misrepresentation in applying for
0026 or securing an original or renewal license;

0027 (2) has committed an act of unprofessional or dishonorable
0028 conduct or professional incompetency;

0029 (3) has been convicted of a felony, and the board determines
0030 the licensee or applicant for a license has not been sufficiently
0031 rehabilitated to warrant the public trust, or has been convicted of
0032 any offense involving moral turpitude;

* 0033 (4) has violated any law, ordinance or rule and regulation
0034 affecting the handling, custody, care or transportation of dead
0035 human bodies;

0036 (5) is rendered unfit to practice embalming or funeral direct-
0037 ing by reason of illness, alcoholism, excessive use of drugs,
0038 controlled substances, chemicals or other types of substances, or
0039 as a result of any mental or physical condition;

0040 (6) has failed or refused to properly protect or guard against
0041 contagious, communicable or infectious disease, or the spread-
0042 ing thereof;

0043 (7) has refused to surrender a dead human body upon the
0044 request of the next of kin, or legal representative, if there is no
0045 next of kin, or person entitled to the custody and control of the

0046 body if there is no next of kin available and no legal representa-
0047 tive qualified to act;

0048 (8) or the agent, employee or representative thereof, has
0049 advertised, solicited or sold merchandise or services in a manner
0050 which is fraudulent, deceptive or misleading in form or content;

0051 (9) or the agent, employee or representative thereof, has
0052 engaged in the uninvited, in-person solicitation of an actual or
0053 potential customer, who, because of the customer's particular
0054 circumstances, was vulnerable to undue influence, intimidation,
0055 coercion or overreaching;

0056 (10) or the agent, employee or representative thereof, has
0057 knowingly engaged in at-need solicitation;

0058 (11) has employed, directly or indirectly, any representative
0059 or person, for the purpose of contacting individuals or institu-
0060 tions by whose influence dead human bodies may be turned over
0061 to a particular licensee or funeral establishment;

0062 (12) has aided or abetted an unlicensed person to practice
0063 any licensed activity;

* 0064 (13) has had a license to practice embalming or funeral
0065 directing revoked or suspended, has been censured or has had
0066 other disciplinary action taken against oneself, or

0067 ~~14~~ has had an application for a license denied by the proper
0068 licensing authority of another state, territory, District of Colum-
0069 bia or other country, a certified copy of the record of the action of
0070 the other jurisdiction being conclusive evidence thereof;

0071 ¹⁴~~(15)~~ has cheated on or attempted to subvert the validity of the
0072 examination for a license;

0073 ¹⁵~~(16)~~ has been found to be mentally ill, disabled, not guilty by
0074 reason of insanity or incompetent to stand trial by a court of
0075 competent jurisdiction;

0076 ¹⁶~~(17)~~ has failed to furnish the board, or its investigators or
0077 representatives, any information legally requested by the board;

0078 ¹⁷~~(18)~~ has failed to report to the board any adverse action taken
0079 against the licensee by another state or licensing jurisdiction, a
0080 professional association or society, a governmental agency, by a
0081 law enforcement agency or a court for acts or conduct similar to
0082 acts or conduct which would constitute grounds for disciplinary

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0083 action under this section;
 0084 ¹⁸(18) has an adverse judgment, award or settlement against
 0085 the licensee resulting from the practice of funeral directing or
 0086 embalming which related to acts or conduct similar to acts or
 0087 conduct which would constitute grounds for disciplinary action
 0088 under this section or has failed to report such matter to the board;
 0089 ¹⁹(20) has knowingly submitted any misleading, deceptive,
 0090 untrue or fraudulent representation on a claim form, bill or
 0091 statement; or
 * 0092 ²⁰(21) has violated any ~~rule~~ ^{state or federal law,} ~~and~~ ^{statute or} regulation promulgated
 0093 by the board or any law related to the practice of funeral direct-
 0094 ing, embalming or funeral establishments.
 0095 (b) The board may adopt rules and regulations defining,
 0096 construing and interpreting the above grounds for licensure
 0097 action. All administrative proceedings taken by the board pur-
 0098 suant to this section shall be conducted in accordance with the
 0099 provisions of the Kansas administrative procedure act.
 0100 (c) As used in this section:
 0101 (1) "License" means an embalmer's license, funeral direc-
 0102 tor's license or assistant funeral director's license.
 0103 (2) "At-need solicitation" means any uninvited contact for
 0104 the purpose of the sale of funeral services or merchandise to the
 0105 family or next of kin of a person after the person's death, or where
 0106 death is imminent.
 0107 Sec. 2. K.S.A. 65-1711a and 65-1722 are hereby repealed.
 0108 Sec. 3. This act shall take effect and be in force from and
 0109 after its publication in the statute book.

New subsection (20) should read:
 has violated any state or federal law,
 rule, statute or regulation promulgated
 by the...

DRAFTING NOTES AND REFERENCES

65-1722. Substantial amendment of this statute will permit the board to repeal 65-1711a. The grounds for disciplinary action against embalmers, funeral directors and assistant funeral directors will be combined in one statute.

The grounds for action are a composite of matters previously in 65-1722, 65-1711a, board regulations, and grounds used by other state professional licensing agencies.

Comments by subparagraph:

(a) generic term "licensee" will permit single statute to address all licensees.

(b) addition of censure permits wider range of adverse license action which may be appropriate for some matters.

- (1) rewrite of 65-1722(a)(1); 1711a(a)
- (2) rewrite of 65-1722(a)(4) & (7); 1711a (d),(e),(f),(g)
- (3) rewrite of 65-1722(a)(2); 1711a(j)
- (4) rewrite of 65-1722(a)(3); 1711a(p)
- (5) new; other licensing agencies have similar provision; also rewrite of 65-1722(a)(5); 65-1711a(i)
- (6) rewrite of 65-1722(a)(b); 1711a(h)
- (7) rewrite of 65-1722(a)(10); 1711a(o)
- (8) rewrite of 65-1722(a)(9); 1711a(k)
- (9) rewrite of 65-1722(a)(11); 65-1711a(c); based upon court decision and F.T.C.; alternative proposal for board consideration:
"(9) the licensee, or his agent, employee or representative has solicited the sale of merchandise or services through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct."
- (10) rewrite of K.A.R. 63-2-8(a)(1) [63-2-8(a)]
- (11) rewrite of K.A.R. 63-2-8(a)(2) [63-2-8(b)]; 63-1-7(d)
- (12) rewrite of 65-1711a(m); K.A.R. 63-2-8(a)(4) [63-2-8(d)]
- (13) new; similar to other licensing agencies.
- (14) new; similar to other licensing agencies.
- (15) new; similar to other licensing agencies.
- (16) new; similar to other licensing agencies.
- (17) new; similar to other licensing agencies.
- (18) new; similar to other licensing agencies.

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2-16-87
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(19) new; similar to other licensing agencies.

(20) new; similar to other licensing agencies.

Additional comments:

The following sections of existing board regulations can be included in a revised or amended regulation which lists conduct which would be considered unprofessional, dishonorable or professional incompetency:

K.A.R. 63-2-8(a)(6) & (7) [63-2-8(f) & (g)]; 63-1-7(b) & (c) permits; refusal, neglect or fraud in obtaining or filing;

K.A.R. 63-2-8(a)(9) [63-2-8 (i)]; violation of confidences or secrets;

K.A.R. 63-1-7(h) requiring unnecessary purchase of casket.

Any ground for discipline presently in 65-1722, 1711a, K.A.R. 63-2-8 or 63-1-7 which is not included in this proposed amendment would be repealed by statute or revoked by the board.

The amended statute would control grounds for discipline until amended regulations are promulgated or the new statutory provisions were again amended.