

Approved 1-27-87  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRlich at  
Chairperson

10:00 a.m./~~xxx~~ on January 22, 1987 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research  
Bill Wolff, Legislative Research  
Norman Furse, Revisor of Statutes Office  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Gary L. Robbins, Executive Director, Kansas Optometric Society  
Dr. Lois Scibetta, Executive Administrator, Kansas State Board of Nursing  
Jacque Oakes, Kansas Association for Counseling and Development  
Sherman Parks, Jr., Kansas Chiropractic Association

Others attending: see attached list

Gary Robbins of the Kansas Optometric Society presented a draft of the bill he was requesting. Questions were raised by committee members as to the outcome of meetings between the Optometrists and the Ophthalmologists held this past summer. Mr. Robbins stated that the committee would hear several different versions of the meetings. At the initial meeting Dr. Walker layed down some areas that he felt needed to be examined and looked at, one was in the area of Glaucoma and another was surgery. The optometrists returned to the meeting with the proposals similar to the ones in the proposed bill. A counter proposal was made by the ophthalmologists. Basically the counter proposal broke no new ground and in some areas restricted what the optometrists are now allowed to do under state law. Mr. Robbins further stated that they were told that this was the bottom line and there was no room for negotiations. The optometrists had made preparations for further negotiations and are back before the committee out of frustration. This bill has attempted to clear up areas where Dr. Walker suggested changes. Senator Anderson moved that the committee accept the bill with a second from Senator Hayden. Motion carried. (attachment 1)

Dr. Lois Scibetta, Executive Administrator, Kansas State Board of Nursing requested statutory changes to clarify and carry out the duties of the Board in regard to the Nurse Practice Act. Also items are needed in the Mental Health Technician Act. Senator Morris made the motion to introduce these bills with a second from Senator Vidricksen. Motion carried. (attachment 2)

Jacque Oakes requested the committee introduce a bill on behalf of the professional counselors and associate counselors. Senator Vidricksen moved that the committee introduce this bill. Senator Mulich seconded the motion and the motion carried. (attachment 3)

Senator Bill Morris requested that the committee introduce a bill, now in the process of being drawn, which would permit the Children's Trust Fund to allow the director, whose hiring was authorized last year, some latitude in order that materials could be printed and mailed, also some travel expenses authorized. The motion to introduce such a bill was made by Senator Morris with a second from Senator Kerr. Motion carried.

Sherman Parks, Jr., Kansas Chiropractic Association, appeared before the committee to request the introduction of a bill yet to be drawn which would allow more allied health care providers access to hospitals in the state of Kansas. Mr. Parks stated that he planned to work out difficulties prior to introduction of a bill in order that he could bring a well-drawn bill to the committee. It was the concensus of the committee that Mr. Parks get

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 22, 1987.

with the allied health service agencies and then staff could work with them to draft the legislation.

The chairman stated that in reviewing SB-12 and SB-13, division of assets bills, after speaking with staff he wondered if the concensus of the committee would be to draft this into one piece of legislation. Senate Bills 12 and 13 would remain in the book while the committee worked on a simplified bill combining these two bills. Senator Bond made a motion to proceed with the drafting of a single bill with Senator Mulich seconding the motion. Senator Salisbury expressed concern over the fact that the two bills would be combined and the fiscal note on one was much larger than the other. Senator Morris stated that he might share the concern if the committee was going to make a substitute bill or kill SB-12 and SB-13, but since these bills would be kept alive in committee a new bill would be much cleaner to work with. Senator Hayden stated that if we come back with one bill and the two bills are combined, if the committee felt uncomfortable it would still have SB-12 and SB-13 alive in the book. A need for clearer definitions was expressed. The motion carried with Senator Salisbury requesting to be recorded as a NO vote.

The meeting was adjourned at 10:30 a.m. with the next meeting scheduled at 10:00 a.m. Friday, January 23, 1987.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE January 22, 1987

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

HAROLD C. PITTS	KCOA
Marilyn Bradt	KINH
Dr. Lari R. Scibetta	KSBN
Jim Yonally	KOA
Sharon Russell	self
Wayne Probesco	Ks Pediatric Med Assn.
MELISSA HUNGERFORD	Ks Hosp Assoc.
Gary Robbins	KOA
Harold Riem	KADM
John Grove	Ks Home For Aging
Dale M. Davis	K S D E.
Connie Huelber	54 Bd. of Ed. CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
KEITH R LANDIS	
Rebecca Crenshaw	KSDS
Sail Danielson	ICW. N.O.W.
DICK HUMMEL	Ks. Heretic Care Assn.
Sherman A. Parks, Jr.	Ks Chiropractic Assn.
Helen Stephens	KACD
Jacque Oakes	KACD

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE Jan. 22, 1927

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

*Jessie Hartman*

*KBA*

\_\_\_\_\_ BILL NO. \_\_\_\_\_

By

AN ACT concerning the optometry law; defining the practice of optometry; establishing continuing education requirements; amending K.S.A. 65-1501, 65-1501a, 65-1505 and 65-1509a and K.S.A. 1986 Supp. 65-1626 and repealing the existing sections.

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

Section 1. K.S.A. 65-1501 is hereby amended to read as follows: 65-1501. The practice of optometry means:

(1) The examination of the human eye and its adnexae and the employment of objective or subjective means or methods (including ~~topical--pharmacological--agents--known--generically--as anesthetics,--mydriatics--and--eyeplegies~~ the administering, or dispensing, of topical pharmaceutical drugs) for the purpose of diagnosing the refractive, muscular, or pathological condition thereof; and

(2) the prescribing, use or adapting of lenses (including any ophthalmic lenses which are classified as drugs by any law of the United States or of this state), prisms, orthoptic exercises and visual training therapy for the relief of any insufficiencies or abnormal conditions of the human eyes eye and their its adnexae; and

(3) the prescribing, administering or dispensing of topical pharmaceutical drugs for the treatment of any insufficiencies or abnormal conditions of the human eye and its adnexae.

(b) The practice of optometry shall not include: (1) The use-of-pharmacological-agents-for-therapeutic-purposes management and treatment of glaucoma except that therapeutic licensees may prescribe, administer, or dispense topical pharmaceutical drugs in the management and treatment of chronic open angle glaucoma;

*Senate P.H.W.  
1-22-87  
Attachment 1*

(2) the performance of surgery, except that therapeutic licensees may remove foreign matter that is not intraocular from the human eye and its adnexae; and (3) the use of topical pharmaceutical drugs pharmacological--agents for the diagnostic or therapeutic purpose-of-diagnosing-the-refractive,--muscular--or--pathological condition--of--the--human-eye-or-its-adnexae purposes by a person licensed to practice optometry unless such person has successfully completed--an--examination-approved-by-the-board-of examiners-in-optometry-on-the-pharmacological--actions--of--these agents--and--their--clinical-side-effects meets and completes the requirements of K.S.A. 65-1505 and amendments thereto.

Sec. 2. K.S.A. 65-1501a is hereby amended to read as follows: 65-1501a. For the purposes of this act the following terms shall have the meanings respectively ascribed to them unless the context requires otherwise:

(a) "Board" means the board of examiners in optometry for the state of Kansas.

(b) "License" means a license to practice optometry granted under this act.

(c) "Licensee" means a person licensed under this act to practice optometry.

(d) "Adapt" means the determination, selection, fitting or use of lenses, prisms, orthoptic exercises or visual training therapy for the aid of any insufficiencies or abnormal conditions of the eyes after or by examination or testing.

(e) "Lenses" means any type of ophthalmic lenses, which are lenses prescribed or used for the aid of any insufficiencies or abnormal conditions of the eyes.

(f) "Prescription" means a verbal or written order directly from a licensee giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the specifications and directions for lenses, prisms, orthoptic exercises or visual training therapy to be used for the aid of any insufficiencies or abnormal conditions of the eyes, including instructions necessary

for the fabrication or use thereof, the date of issue and expiration date.

(g) "Prescription for topical pharmaceutical drugs" means a verbal or written order directly from a licensee expressly certified to prescribe drugs under this act and giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, the number of refills permitted, the date of issue and expiration date.

(h) "Topical pharmaceutical drugs" means drugs known generically as anesthetics, mydriatics, cycloplegics, anti-infectives, anti-glaucoma agents and anti-inflammatory agents administered topically and not by other means for the examination, diagnosis and treatment of the human eye and its adnexae.

(i) "Dispense" means to deliver prescription only medication or ophthalmic lenses to the ultimate user pursuant to the lawful prescription of a licensee and dispensing of prescription-only medication by a licensee shall be limited to a twenty-four-hour supply or minimal quantity necessary until a prescription can be filled by a licensed pharmacist.

(j) "Diagnostic licensee" means a person licensed under this act and certified by the board to prescribe, administer or dispense topical pharmaceutical drugs for diagnostic purposes.

(k) "Therapeutic licensee" means a person licensed under this act and certified by the board to prescribe, administer or dispense topical pharmaceutical drugs for therapeutic purposes.

Sec. 3. K.S.A. 65-1505 is hereby amended to read as follows: 65-1505. (a) Persons entitled to practice optometry in Kansas shall be those persons heretofore lawfully registered, and every person who is hereafter licensed in accordance with the provisions of this act. Every registered-optometrist-holding-a ~~valid-certificate-of-registration-in-effect~~ licensee at the time this act takes effect shall be deemed to be a licensed

optometrist under this act, and such person shall not be required to file an original application hereunder for a license every licensee certified by the board to use topical pharmaceutical drugs for diagnostic purposes at the time this act takes effect shall be deemed to be a diagnostic licensee under this act. A person shall be deemed qualified to be licensed and to receive a license as an optometrist: (1) Who is of good moral character; and in determining the moral character of any such person, the board may take into consideration any felony conviction of such person, but such conviction shall not automatically operate as a bar to licensure; (2) who has graduated from an accredited school or college of optometry approved by the board; (3) who successfully meets and completes the requirements set by the board and passes an examination given by the board.

(b) All applicants for licensure or reciprocal licensure on or after July 1, 1987, and all licensed optometrists at the time this act takes effect, except as provided in subsection (a) and (e), in addition to successfully completing all requirements of a licensee shall take and successfully pass an examination required by the board to be certified by the board as a diagnostic and therapeutic licensee.

(c) All persons before taking the examination required by the board to be certified a diagnostic and therapeutic licensee shall submit satisfactory evidence to the board of having successfully completed a course approved by the board in didactic education and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexae, totaling at least 100 hours.

~~(b)~~ (d) Any person desiring to be examined by the board must fill out and swear to an application furnished by the board, accompanied by a fee fixed by the board in an amount of not to exceed ~~seventy five dollars (\$75)~~ \$75, and file the same with the secretary of the board at least ~~thirty (30)~~ 30 days prior to the holding of an examination which the applicant is desirous of taking. At such examinations the board shall examine each applicant in subjects taught in an accredited school or college



of optometry, as may be required by the board. If such person complies with the other qualifications for licensing and passes such examination, such person shall receive from the board, upon the payment of a fee fixed by the board in an amount of not to exceed ~~fifteen-dollars-(\$15)~~ \$15, a license entitling such person to practice optometry. In the event of the failure on the part of the applicant to pass the first examination, such person may, with the consent of the board, within ~~eighteen-(18)~~ 18 months, by filing an application accompanied by a fee fixed by the board in an amount of not to exceed ~~thirty-seven-dollars-and--fifty--cents (\$37.50)~~ \$37.50, take a second examination; for the third and each subsequent examination a fee fixed by the board in an amount of not to exceed ~~twenty-two--dollars--and--fifty--cents--(\$22.50)~~ \$22.50.

~~(e)~~ (e) Any applicant for reciprocal licensure may in the board's discretion be licensed and issued a license without examination in the category of licensure under the optometry law for which application is made if the applicant presents a certified copy ~~er~~ of a certificate of registration or license which has been issued to the applicant by any other state where the requirements for such licensure are deemed by the board to be equivalent to ~~these--of~~ the requirements for licensure in the category of licensure under this act for which application is made, if such state accords a like privilege to holders of a license issued by the ~~Kansas--state board of--examiners--in~~ optometry. Such applicant shall be required to satisfy only the requirements of the category of licensure under the optometry law for which application is made and which existed in this state at the time of the applicant's licensure in such other state; or, if such requirements did not exist in this state at the time of the applicant's licensure in such other state, the applicant shall be required to satisfy only the requirements of the category of licensure under the optometry law for which application is made which originally were required for that category of licensure. The fee for licensing such applicants shall be fixed by the board

in an amount of not to exceed ~~seventy-five-dollars-(\$75)~~ \$75.

Sec. 4. K.S.A. 65-1509a is hereby amended to read as follows: 65-1509a. In addition to the payment of the license renewal fee, each optometric licensee applying for ~~the-renewal-of~~ his-or-her license, renewal shall furnish to the secretary of the Kansas--state board of-optometry satisfactory evidence ~~that-he-or~~ she-has-attended-at-least--two--days--of--the--annual--education ~~program--as-conducted-by-the-Kansas-state-optometric-association,~~ or-its-equivalent, of successfully completing a minimum of 20 hours of continuing education programs approved by the board in the year just preceding such application for the renewal of his ~~or--her~~ the license. The board may in its discretion increase the required hours of continuing education by rules and regulations adopted by the board. The secretary of the Kansas-state board of optometry shall send a written notice of continuing education requirements to this effect to every person holding a valid license to practice optometry within the state at least ~~thirty~~ thirty ~~(30)~~ 30 days prior to the first day of May in each year, directed to the last known address of such licensee.

In the event that any licensee ~~shall-fail~~ fails to meet such ~~annual--postgraduate-requirement,-his-or-her~~ continuing education requirements, such licensee's license may be revoked by the board after ~~twenty-(20)~~ 20 days' notice is given to the licensee of the time and place of a hearing on such revocation. The board of examiners may reinstate such licensee to practice optometry upon the presentation of satisfactory evidence of ~~postgraduate--study~~ of--a--standard completion of the annual continuing education requirement approved by the Kansas-state board ~~of--examiners--in~~ optometry, and upon the payment of all fees due.

Sec. 5. K.S.A. 1986 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a

practitioner, or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(g) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner.

(h) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(i) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(j) "Distributor" means a person who distributes a drug.

(k) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component

of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, as defined in K.S.A. 47-501 and amendments thereto, if such livestock remedy has been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated.

(l) "Generic name" means the established chemical name or official name of a drug or drug product.

(m) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the Kansas code for care of children and the Kansas juvenile offenders code;

(C) students of the Kansas technical institute, a public or private university or college, a community college or any other institution of higher learning which is located in Kansas; or

(D) employees of a business or other employer.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(n) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

(o) "Manufacture" means the production, preparation,

propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(p) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(q) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(r) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(s) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced

and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited." As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(t) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, scientific investigator, optometrist licensed under the optometry law as a diagnostic licensee or therapeutic licensee or other person expressly licensed or registered to administer, prescribe and use prescription-only drugs in the course of professional practice or research.

(u) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(v) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(w) "Prescription-only drug" means any drug required by the federal or state food, drug and cosmetic act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription."

(x) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner.

(y) "Probation" means the practice or operation under a

temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(z) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a drug the label of which is required to bear substantially the statement "Caution: Federal law prohibits dispensing without prescription"; or (3) a drug intended for human use by hypodermic injection.

(aa) "Secretary" means the executive secretary of the board.

(bb) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions; or

(5) unlawful possession of drugs and unlawful diversion of drugs to others.

Sec. 6. K.S.A. 65-1501, 65-1501a, 65-1505 and 65-1509a and K.S.A. 1986 Supp. 65-1626 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.



# KANSAS STATE BOARD OF NURSING

BOX 1098, 503 KANSAS AVENUE, SUITE 330  
TOPEKA, KANSAS 66601-0098

Telephone 913/296-4929

TO: The Honorable Roy Ehrlich, Chairman  
Public Health and Welfare Committee

FROM: Dr. Lois Rich Scibetta, Executive Administrator *L. Scibetta*

DATE: January 22, 1987

RE: Request For Legislative Changes (Attached)

Thank you Mr. Chairman for the opportunity to appear before this committee to request legislative changes for the 1987 Legislative Session.

Most of the changes involve an update of the Nurse Practice Act, and in addition there are some statutory changes requested. I will go through each request and the materials for the change.

I will be happy to respond to questions.

LRS:vmd

Attachments

*Senate PH&W  
1-22-87  
Attachment 2*



Kansas State Board of Nursing - Proposed Statutory Changes  
Nurse Practice Act

Board Duties and Powers

- 1) 74-1106 (c)(3) (last sentence) "It shall accredit such schools and approve courses as meet the requirements of the appropriate act and rules and regulations of the board."

Rationale: Adding the word approve clarifies the regulations about the function of the Board related to the schools.

- 74-1106 (c) Duties and Powers of the Board  
New (7) The Board of Nursing shall have the authority to enter into contracts in order to carry out its duties.

Rationale: The Assistant Attorney General assigned to the Board has raised the issue that the Board of Nursing does not have any "official" authority to enter into contracts i.e., examination contract; renting space for examinations, etc. The statutory authority, if granted, will clear up this issue.

- 74-1106 New (8) The Board of Nursing shall have the statutory authority to accept grant monies. These monies not to be subject to the 20% State Surcharge.

Rationale: The Executive and professional staff are planning to write grant applications which will facilitate the work of the Board. One such plan "in the works" is related to mandatory continuing education. Currently, there is not any authority to accept these monies.

- 2) 65-1124 Acts Which Are Not Prohibited  
Change (h) "Auxiliary patient care services consist of techniques and procedures which do not require specialized knowledge and judgement derived from the biological, physical and behavioral sciences.

Rationale: Adding this statutory definition will enable the Board to be far more specific when questions are asked regarding auxiliary patient services.

- 65-1124 \*New (k) Performance in the school setting of selected nursing procedures necessary for handicapped students.

\*New (l) Performance in the school setting of selected nursing procedures necessary for students to accomplish activities of daily living and which are routinely performed by the student or student's family in home setting.

Rationale: These changes were prepared in cooperation with the Department of Education, in order to facilitate and implement Public Law 94-142. Without these changes, the nurse in the schools will be functioning illegally, if they instruct an unlicensed person in selected nursing procedures and/or tasks.

\*Approval pending Board of Nursing meeting, January 21, 22, 1987

Kansas State Board of Nursing  
Licensed Mental Health Technician Practice Act

Two new items are needed in the Mental Health Technician Act.

- 1) The statutory authority to adopt rules and regulations under this Act.
- 2) The statutory authority to write regulations which define unprofessional conduct.

Rationale: Recently the Board of Nursing has been unable to take disciplinary action against the licenses of mental health technicians because the Board did not have the statutory authority to define unprofessional conduct.

"K.S.A. 65-1164, and could read as follows: "The Board shall adopt and promulgate rules and regulations as are necessary to carry out the provisions of this act."

\_\_\_\_\_  
BILL NO. \_\_\_\_\_

By

AN ACT concerning counselors; providing for the licensure of professional counselors and associate counselors by the behavioral sciences regulatory board; establishing the advisory commission on professional counseling; declaring certain acts to be unlawful and providing penalties for violations; amending K.S.A. 1986 Supp. 74-7501 and 74-7507 and repealing the existing sections.

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

New Section 1. Sections 1 through 17 shall be known and may be cited as the professional counselors licensing act.

New Sec. 2. As used in the professional counselors licensing act:

(a) "Board" means the behavioral sciences regulatory board created by K.S.A. 74-7501 and amendments thereto.

(b) "Practice of counseling" means assisting an individual or group for a fee, monetary or otherwise, through counseling, assessment, consultation and referral.

(c) "Counseling" means to assist an individual or group to develop understanding of personal strengths and weaknesses, to restructure concepts and feelings, to define goals and to plan actions as these are related to personal, social, emotional, mental and career development and adjustment.

(d) "Assessment" means selecting, administering, scoring and interpreting instruments designed to describe an individual's aptitudes, abilities, achievements, interests and personal characteristics.

(e) "Consultation" means the application of principles, methods and techniques of the practice of counseling to assist in solving current or potential problems of individuals or groups in

*Senate PHW*  
*1-22-87*  
*Attachment 3*

relation to a third party.

(f) "Referral" means the evaluation of information to identify problems and to determine the advisability of referral to other practitioners.

(g) "Licensed professional counselor" means a person who is licensed under this act to engage in the practice of counseling.

(h) "Licensed associate counselor" means any person licensed under this act to engage in the practice of counseling for a fee, monetary or otherwise, while under the supervision of a licensed professional counselor.

(i) "Specialty" means the designation of a subarea of counseling practice and includes, but is not limited to, clinical mental health counseling, rehabilitation counseling, career counseling and marriage and family counseling.

New Sec. 3. (a) On and after January 1, 1988, no person shall represent that such person is a licensed professional counselor, licensed counselor or professional counselor or engage in the practice of counseling for a fee, monetary or otherwise, without having first obtained a license as a professional counselor under the professional counselors licensing act.

(b) On and after January 1, 1988, no person shall represent that such person is a licensed associate counselor or engage in the practice of counseling as an associate counselor for a fee, monetary or otherwise, without having first obtained a license as an associate counselor under the professional counselors licensing act.

(c) Violation of this section is a class B misdemeanor.

New Sec. 4. (a) Applications for licensure as a professional counselor shall be made to the board on a form and in the manner prescribed by the board. Each application shall be accompanied by the fee fixed under section 9.

(b) Each applicant for licensure as a professional counselor shall furnish evidence satisfactory to the board that the applicant:

(1) Is at least 21 years of age;

(2) is a resident of, or in the process of establishing residency in, this state;

(3) has completed 60 graduate semester hours including a graduate degree from a college or university approved by the board and which includes study in each of the following areas:

- (A) Counseling theory and practice;
- (B) the helping relationship;
- (C) group dynamics, processing and counseling;
- (D) human growth and development;
- (E) lifestyle and career development;
- (F) appraisal of individuals;
- (G) social and cultural foundations;
- (H) research and evaluation;
- (I) professional orientation;
- (J) supervised practicum and internship; and

(4) has three years of supervised full-time experience in professional counseling acceptable to the board. An applicant may subtract one year of the required professional experience for every 30 graduate semester hours obtained beyond the master's degree, provided that such hours are clearly related to the field of professional counseling. In no case shall the applicant have less than one year of the required professional experience; and

(5) has validated the statement of professional intent as well as demonstrated knowledge of the field of counseling in general by passing an examination required by the board.

New Sec. 5. (a) Applications for licensure as an associate counselor shall be made to the board on a form and in the manner prescribed by the board. Each application shall be accompanied by the fee fixed under section 9.

(b) Each applicant for licensure as an associate counselor shall furnish evidence satisfactory to the board that the applicant:

- (1) Is at least 21 years of age;
- (2) is a resident of, or in the process of establishing residency in, this state;

(3) has earned a master's degree from an institution of higher education approved by the board, which is primarily counseling in content and which meets the academic and training content standards established by the board for this purpose or the substantial equivalent in both subject matter and extent of training; and

(4) has demonstrated knowledge of the field of counseling in general by passing an examination required by the board.

New Sec. 6. An application for examination shall be made to the board on a form provided by the board. The application shall specify whether the applicant is applying for a license as a professional counselor or as an associate counselor and shall be accompanied by the examination fee fixed under section 9. If an applicant fails to pass the examination, the applicant may reapply and shall be allowed to take a subsequent examination. An applicant who has failed two successive examinations may not reapply for two years from the date of the last examination.

New Sec. 7. (a) An applicant who meets the requirements for licensure pursuant to this act, has paid the license fee provided for by section 9 and has otherwise complied with the provisions of this act shall be licensed by the board.

(b) Licenses issued pursuant to this act shall expire 24 months from the date of issuance unless revoked prior to that time. A license may be renewed upon application and payment of the fee provided for by section 9. The application for renewal shall be accompanied by evidence satisfactory to the board that the applicant has completed during the previous 24 months the continuing education required by rules and regulations of the board.

(c) A person whose license has been suspended or revoked may make written application to the board requesting reinstatement of the license upon termination of the period of suspension or revocation in a manner prescribed by the board, which application shall be accompanied by the fee provided for by section 9.

New Sec. 8. The board may at its discretion waive the statutory requirements of an applicant for licensure as a licensed professional counselor if such applicant is licensed or certified to practice counseling by a similar board in another state and if the standards and qualifications required for the practice of counseling in the state in which the applicant is licensed or certified are substantially the same as those required under the professional counselors licensing act.

New Sec. 9. (a) The board shall fix by rules and regulations the following fees:

- (1) For application for license, not more than \$75;
- (2) for examination, not more than \$100;
- (3) for renewal of a license, not more than \$75;
- (4) for reinstatement of a license, not more than \$75;
- (5) for replacement of a license, not more than \$20;
- (6) for application for endorsement in a specialty, not more than \$100; and
- (7) for biennial renewal for endorsement in a specialty, not more than \$100.

(b) Fees paid to the board are not refundable.

New Sec. 10. (a) The board may deny, suspend or revoke any license or specialty designation granted under the professional counselors licensing act for any of the following reasons:

- (1) Use of drugs or alcohol, or both, to an extent that impairs the individual's ability to engage in the practice of counseling;
- (2) the individual has been convicted of a felony and, after investigation, the board finds that the individual has not been sufficiently rehabilitated to merit the public trust;
- (3) use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to the provisions of the professional counselors licensing act or in obtaining permission to take any examination given or required pursuant to the provisions of the professional counselors licensing act;
- (4) obtaining or attempting to obtain any fee, charge,



tuition or other compensation by fraud, deception or misrepresentation;

(5) incompetence, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a counselor;

(6) violation of, or assisting or enabling any individual to violate, any provision of the professional counselors licensing act or any rule and regulation adopted under such act;

(7) impersonation of any individual holding a license or allowing any individual to use the licensee's or applicant's license or diploma from any school;

(8) revocation or suspension of a license or other right to practice counseling granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized by the professional counselors licensing act;

(9) the individual is mentally ill or physically disabled to an extent that impairs the individual's ability to engage in the practice of counseling;

(10) assisting or enabling any person to practice or offer to practice professional counseling who is not licensed and currently eligible to practice under the provisions of the professional counselors licensing act;

(11) the issuance of the license was based upon a material mistake of fact;

(12) violation of any professional trust or confidence;

(13) use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed; or

(14) unprofessional conduct as defined by rules and regulations adopted by the board.

(b) Suspension of a license upon order of the board shall not be for a period greater than six months and any licensee thereby suspended shall not practice counseling in this state until the termination of the suspension period and subsequent

reinstatement of the license by the board.

(c) Revocation of a license upon order of the board shall be for a period of at least three years and a person whose license has been revoked may not apply for reinstatement until at least three years from the date such revocation is legally effective.

New Sec. 11. The confidential relations and communications between a licensed professional counselor or licensed associate counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's client. Nothing in this act shall be construed to require such privileged communications to be disclosed.

New Sec. 12. Before January 1, 1988, the board, upon receipt of a proper application and payment of fees, shall issue a license without examination to a person who prior to July 1, 1987:

(a) Has practiced full time as a professional counselor for at least five years and possesses a graduate degree in counseling from a college or university approved by the board and is currently engaged in the practice of counseling; or

(b) has practiced full time as a professional counselor for at least two years, possesses a graduate degree with at least 60 graduate semester hours in counseling from a college or university approved by the board and is currently engaged in the practice of counseling.

New Sec. 13. Nothing in the professional counselors licensing act shall be construed:

(a) To apply to the activities and services of qualified members of other professions, such as physicians, psychologists, registered nurses or social workers performing counseling consistent with the laws of this state, their training and any code of ethics of their professions, so long as they do not represent themselves by any title or description in the manner prescribed in section 3;

(b) to apply to the activities, services and use of an

official title on the part of an individual employed as a counselor by any federal, state, county or municipal agency or public or private educational institution, so long as such individuals are performing counseling or counseling-related activities within the scope of their employment;

(c) to apply to the activities and services of a student, intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education if these activities are performed under supervision and constitute a part of the supervised course of study, so long as such an individual is designated a "counselor intern";

(d) to apply to the activities and services rendered by a nonresident individual not more than 30 days during any calendar year, such individual is duly authorized to perform such activities and services under the laws of the state or country of such individual's principal residents;

(e) to apply to the activities and services of a rabbi, priest, minister or clergyperson of any religious denomination or sect, so long as such activities and services are within the scope of the performance of such individual's regular or specialized ministerial duties and for which no separate charge is made, or when such activities are performed, with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally recognizable church, denomination or sect and when the individual rendering service remains accountable to the established authority thereof.

New Section 14. (a) In accordance with the provisions of this section, the board may establish specialties within the practice of counseling and provide for the endorsement of licensed professional counselors in such specialties. The board shall adopt rules and regulations applicable to the endorsement of specialties which:

(1) Establish categories of specialties within the practice of counseling which are consistent with specialties recognized by

the profession of counseling;

(2) establish education, training and qualifications necessary for endorsement for each category of specialty established by the board at a level adequate to assure the competent performance of the specialty; and

(3) define each category of specialty established under this section and establish limitations and restrictions on each category, as appropriate. The definition of each category of specialty established under this paragraph (a)(3) shall be consistent with the education, training and qualifications required to obtain an endorsement in that category of specialty and shall be consistent with the protection of the public health and safety.

(b) The board may fix by rule and regulation an application fee for endorsement in a specialty and shall fix a biennial renewal fee for endorsement in a specialty. The application fee and biennial renewal fee shall be fixed in accordance with section 9. Any such fee shall be in addition to other fees collected by the board under the professional counselors licensing act.

(c) A licensed professional counselor holding an endorsement from the board in a specialty within the practice of counseling may represent to the public that such individual is endorsed in such specialty. It shall be unlawful for any individual not endorsed in a specialty within the practice of counseling to intentionally represent to the public that such individual is endorsed in such specialty. Violation of this subsection (c) is a class B misdemeanor.

New Sec. 15. (a) There is hereby established an advisory commission on professional counseling. The advisory commission shall advise the behavioral sciences regulatory board on matters relating to the implementation of the professional counselors licensing act. The advisory commission shall be attached to the behavioral sciences regulatory board and shall be within the board as a part thereof. All budgeting, purchasing and related

management functions of the commission shall be administered under the direction and supervision of the board. All vouchers for expenditures of the advisory commission shall be approved by the chairperson of the board or a person designated by the chairperson.

(b) The advisory commission shall consist of five members appointed by the behavioral sciences regulatory board. The board shall appoint to the advisory commission three members who are actively engaged in the practice of counseling and who are licensed professional counselors or who are eligible to become licensed professional counselors under the professional counselors licensing act, at least one of whom is currently involved in counseling education. The board shall also appoint one member of the advisory commission who is a member of the behavioral sciences regulatory board and is a licensed psychologist and one member of the advisory commission who is a member of the behavioral sciences regulatory and is a licensed social worker. If a vacancy occurs on the advisory commission, the board shall appoint an individual of like qualifications to fill the vacancy. The terms of the members of the advisory commission shall expire on the date of expiration of this section under subsection (d).

(c) Members of the advisory commission attending meetings of the advisory commission, or attending a subcommittee meeting thereof authorized by the advisory commission, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto from the behavioral sciences regulatory board fee fund.

(d) This section shall expire on July 1, 1988.

New Sec. 16. Proceedings under the professional counselors licensing act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under the professional counselors licensing act shall be in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 17. If any part or parts of this act are held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

Sec. 18. K.S.A. 1986 Supp. 74-7501 is hereby amended to read as follows: 74-7501. (a) There is hereby created a behavioral sciences regulatory board consisting of ~~seven~~ nine members appointed by the governor. The membership of the board shall be as follows: Two members of the board shall be licensed psychologists; two members of the board shall be licensed to engage in the practice of social work; two members of the board shall be licensed professional counselors or if appointed prior to January 1, 1988, shall be eligible to become licensed professional counselors; and three members of the board shall be from and represent the general public. Each member of the board shall be a citizen of the United States and a resident of this state.

(b) The term of office of each member of the board shall be four years, except that the term of office of the members professional counselors first appointed to the first board shall be as follows: ~~Three-members-shall-be-appointed-for-terms-of-two years;-three-members-shall-be-appointed-for-terms-of-three--years and-one-member~~ One shall be appointed for a term of two years and one shall be appointed for a term of four years. The governor shall designate the term of office for each such member first appointed to the first board. No member of the board shall be appointed for more than two successive terms. Upon the expiration of a member's term of office, the governor shall appoint a qualified successor. Each member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs in the membership of the board prior to the expiration of a term of office, the governor shall appoint a qualified successor to fill the unexpired term. The governor may remove any member of the board for misconduct, incompetency or neglect of duty.

(c) The board shall organize annually at its first meeting subsequent to June 30 and shall select from its members a chairperson and a vice-chairperson. Other meetings shall be held as the board designates. ~~Four~~ Five members of the board shall constitute a quorum for the transaction of business.

(d) The board may appoint an executive secretary who shall be in the unclassified service of the Kansas civil service act and shall receive an annual salary fixed by the board, subject to approval by the governor. The board may employ clerical personnel and other assistants, all of whom shall be in the classified service under the Kansas civil service act. The board may make and enter into contracts of employment with such professional personnel as necessary, in the board's judgment, for the performance of its duties and functions and the execution of its powers.

(e) Members of the behavioral sciences regulatory board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

Sec. 19. K.S.A. 1986 Supp. 74-7507 is hereby amended to read as follows: 74-7507. The behavioral sciences regulatory board shall have the following powers, duties and functions for the purpose of administering ~~the--provisions--of~~ this act, the ~~provisions--of-the~~ licensure of psychologists act of the state of Kansas, the professional counselors licensing act and the ~~provisions---of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto:

(a) Recommend to the appropriate district or county attorneys prosecution for violations of this act, the ~~provisions of-the~~ licensure of psychologists act of the state of Kansas, the professional counselors licensing act or ~~the-provisions-of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(b) compile and publish annually a list of the names and addresses of all persons who are licensed under ~~the-provisions-of~~

this act, the ~~provisions-of-the~~ licensure of psychologists act of the state of Kansas, the professional counselors licensing act or ~~the--provisions--of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(c) prescribe the form and contents of examinations required under ~~the-provisions-of~~ this act, the ~~provisions-of-the~~ licensure of psychologists act of the state of Kansas, the professional counselors licensing act or ~~the-provisions-of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(d) enter into contracts necessary to administer the ~~provisions-of~~ this act, the ~~provisions--of--the~~ licensure of psychologists act of the state of Kansas, the professional counselors licensing act or ~~the-provisions-of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(e) adopt an official seal;

(f) adopt and enforce rules and regulations for professional conduct of persons licensed under the ~~provisions--of~~ the licensure of psychologists act of the state of Kansas, the professional counselors licensing act or ~~licensed--under--the~~ ~~provisions---of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(g) adopt and enforce rules and regulations establishing requirements for the continuing education of persons licensed under the ~~provisions-of-the~~ licensure of psychologists act of the state of Kansas, the professional counselors licensing act or ~~licensed--under--the--provisions--of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(h) adopt rules and regulations establishing classes of social work specialties which will be recognized for licensure under ~~the-provisions-of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto;

(i) adopt rules and regulations establishing procedures for examination of candidates for licensure under the licensure of psychologists act of the state of Kansas, the professional counselors licensing act and licensure under ~~the--provisions--of~~



K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto, and for issuance of such certificates and such licenses;

(j) adopt such other rules and regulations as may be necessary for the administration of this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensing act and ~~the provisions of~~ K.S.A. 75-5346 to 75-5362, inclusive, and amendments thereto, and to carry out the purposes thereof;

(k) appoint an executive secretary and other employees as provided in K.S.A. 74-7501 and amendments thereto; and

(l) exercise such other powers and perform such other functions and duties as may be prescribed by law.

Sec. 20. K.S.A. 1986 Supp. 74-7501 and 74-7507 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.