

Approved 2-3-87  
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./~~p.m.~~ on January 29, 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:

Lawrence Buening, General Counsel, Board of Healing Arts  
Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine  
Elizabeth Taylor, Kansas Occupational Therapy Association  
Mike Hinds, Kansas Respiratory Care Society  
Susan Hanrahan, Kansas Physical Therapy Association  
Don Strohle, Physician Assistants  
Jerry Slaughter, Kansas Medical Society  
Sherman A. Parks, Jr., Kansas Chiropractic Association  
Wayne Probasco, Executive Director, Kansas Podiatry Association  
witten testimony only

Others attending: see attached list

SB-33 - An Act relating to the state board of healing arts; concerning the composition thereof;

Lawrence Buening testified and presented written testimony concerning SB-33. Mr. Buening presented a brief history of the State Board of Healing Arts. He further stated that the Board was provided with a rough draft of SB-33 on December 8, 1986. On January 26 and 27, 1987, a telephone poll resulted in 14 members of the Board responding favoring continuation of the composition of the Board as it presently exists. Two reasons were cited, one being that the board is presently operating well under the present composition and secondly, there is concern about the constitutionality of SB-33. The concern is related to the fact that SB-33 mandates that the Governor must select a member to the Board from a list supplied by the applicable professional society or association. (attachment 1)

Harold Riehm testified and presented written testimony concerning SB-33. Mr. Riehm stated that the Osteopathic Association opposed lowering the number of members of any group now having membership on the Board but did support adding one or two new members to represent the Allied Health professions now responsible to the Board. Mr. Riehm also stated that his organization felt that it was important that they have some say in who represents them on the Board. (attachment 2)

Elizabeth Taylor testified and presented written testimony concerning SB-33. Ms. Taylor told the committee that KOTA had one major concern about this bill. It was felt that fair and adequate representation is not afforded to members of the professions of occupational therapy, respiratory therapy, physical therapy or physician assistants since only one of the four professions would be represented at any one time. Two alternatives were presented in the written testimony. A representation of one member from each of the groups would be preferable as their financial support through registration fees would be involved, thus they should all be afforded fair and adequate representation. (attachment 3)

Mike Hinds testified and presented written testimony opposing the concept of SB-33, that of one member from the Allied Health Professions representing

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 29, 1987.

those groups in its entirety. It was felt that this representation would be unfair and unequitable to the parties involved. It was suggested that an option would be to create a board of registered Allied Health Professions under the auspices of the Board of Healing Arts. (attachment 4)

Susan Hanrahan testified and presented written testimony concerning SB-33. Ms. Hanrahan stated that the American Physical Therapy Association does not support the bill in its current form for the following reasons: inadequate representation of registered groups under the Board of Healing Arts; with the expiration of the occupational therapy and respiratory therapy councils, 1770 registered professionals will have no assistance carrying out provisions of the law regarding qualifications and examinations; dieticians have completed credentialing and could become a fifth profession to be added for potential representation. The committee was requested to consider the writing of a substitute bill to create a registration board under the Board of Healing Arts separate from the current licensure board. (attachment 5)

Don Strohle testified that his group essentially concurred with other testimony in that they could not support one representative for four or five diverse professions. It was felt that one member from each profession being on a subboard would work quite well, and however the division occurred, the physician assistants would like to have a seat on the board. (attachment 6)

Jerry Slaughter testified, stating that he represented 3500 members of the Kansas Medical Society. Mr. Slaughter stated that there isn't much about the composition and current structure of the board that his organization finds particularly pleasing - they would like to have their own board as they represent the largest number of licensees, and pay the majority of the bills. Their membership represents 33% of the membership and under SB-33 would have 30% of the representation and be vastly underrepresented. It was further stated that they could not support SB-33 which would result in taking a doctor off the board. It was suggested that the legislature take a long look at what it asks from its licensing agencies and what it wants out of them and how it wants the results accomplished. Possible consideration of suggestions put forth by previous conferees was suggested. (attachment 7)

Sherman A. Parks, Jr., testified that his organization would have to oppose any segregated board of any branch of the healing arts, mainly because the inner cooperation among the health care providers does, in fact, work. It was further stated that they had no objections to the addition of other Allied Health Care providers under the jurisdiction of the Board of Healing Arts. A suggestion was made of possibly separating the licensed and registered health care providers. The area of appointments from the Governor was supported.

Written testimony from Wayne Probasco, Kansas Podiatric Medical Association stating his association had no position on SB-33 and SB-34 was furnished to the committee members. (attachment 8)

SB-34 - An Act of the state board of healing arts; relating to members, officers and staff;

Lawrence Buening, Jr., testified and presented written testimony concerning SB-34. Mr. Buening stated that the Board opposed SB-34, based on receipt of a rough draft of SB-34 and a telephone poll conducted relative to this bill on January 26 and 27, 1987. It was the feeling of the board that should SB-34 pass, creating a situation whereby an individual not licensed to practice the healing arts was making decisions and determinations relative to standard of practice, the position would be untenable should the board ever be sued and could subject the public to substandard conduct by individuals regulated by the board. (attachment 9)

The Chairman requested that Jerry Slaughter and Sherman A. Parks, Jr., present their testimony concerning SB-34 in writing to the committee.

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 29, 1987

Senator Vidricksen's pages, Anneli Nogelius and Jeanette Suelter from Lincoln, Kansas were recognized.

The chairman announced there would be no committee meeting January 30, 1987, due to conflict of time the Senate was to convene.

The meeting adjourned at 11:04 a.m. with the next meeting scheduled on Monday, February 2, 1987.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 1-29-87

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

FRANCES B. KASTNER

KAPTA

MIKE HINDS

KANSAS RESPIRATORY CARE SOC

Gary Robbins

Ks Optometric Assn

Sherrill Paak, Jr.

Ks Chiropractic Assn

Susan Hencher

KS Phys Ther Assn

Charlene K. Ahlbert

Bd. Healing Arts

KEVIN R. LAUDIS

CHRISTIAN SCIENCE COMMITTEE  
ON PUBLICATION FOR KANSAS

Bretchen Storey

Division of Budget

Don W. Sutherland

Ks Academy of Physician Assistants

Donald A. Stroh

Ks Academy of Physician Assts

John Hanna

Associated Press

Carolyn Bloom

P.T. Examining Committee

Christine E. Taylor

Ks Occupational Therapy Assn

TOMMY SWANKER

Ks Medical Society

Marilyn Bradt

KINH

Theresa Shively

KANSAS NARAL

Wear Meyers family

Mark E. Craig, III

Washburn University Intern

HAROLD KIERAN

Ks Assn Osteopathic Med

Ken Schafermeyer

KS Pharmacists Assoc.

Laurie Hartman

KBR

Larry Buning

Bd of Healing Arts

TESTIMONY TO THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

RE: SENATE BILL NO. 33

PRESENTED BY: LAWRENCE T. BUENING, JR., GENERAL COUNSEL  
KANSAS STATE BOARD OF HEALING ARTS

HISTORY OF BOARD COMPOSITION.

As you are all aware, this Board was created by the Legislature in 1957 and resulted, for the first time, in bringing together 3 branches of the healing arts under one composite board. Prior to that time, the 3 professions had been regulated by 3 separate boards. The composition of the Board in 1957, as it relates to these 3 professions, remains as it is today - 5 M.D.s, 3 D.O.s and 3 D.C.s.

In 1963, physical therapists and physical therapy assistants were brought under the authority of the Board and a State Examining Committee for physical therapy was created. In 1972, the Board began registering physician assistants and in 1975 the State Board of Podiatry Examiners was abolished and the regulation of podiatrists transferred to the State Board of Healing Arts. In 1975, one public member was added to the Board and in 1976 a podiatrist was included. Effective July 1, 1986, occupational therapists, occupational therapy assistants and respiratory therapists were brought under the authority of the Board. Councils for the occupational therapists and respiratory therapists were created to assist the Board in establishing initial rules and regulations, registration forms, etc. These 2 councils will lapse pursuant to statute on July 1, 1987. Also, on July 1, 1986, 2 additional public members were added to the Board.

A very detailed explanation of the Board's development is set forth in the memorandum dated August 11, 1986 from Legislative Research Department to the Special Committee on Ways and Means. A diagram of the structure of the Board is attached hereto as "Exhibit A".

STATE BOARD OF HEALING ARTS POSITION.

At its meeting on December 6, 1986, the Board was provided with copies of a rough draft of what is now SB-33. Further, on January 26 and 27, 1987, a telephone poll was made of the Board in preparation for this Hearing. The action at the Board meeting was against further changes in the present composition of the Board. Further, the results of the telephone poll were that 14 members of the Board favored the continuation of the composition of the Board as it presently exists (the other member of the Board was out of town and could not be reached).

The Board position on SB-33 can be stated as based on 2 specific areas. These are as follows:

- (1) The Board presently is operating well under its present composition.

As above stated, physical therapists and physical therapy assistants have been under the authority of the Board since 1963. The Board is unaware of any general dissatisfaction from this related health care specialty as to the manner in which it has been regulated by the Board. Similarly, the Board has not been made aware of any long

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1-29-87  
Attachment 1

standing concerns of physician assistants regarding the regulation of this specialty by the Board, although physician assistants have not had a statutorily created advisory council or committee since the Board began the registration of physician assistants in 1972. As to occupational therapists, occupational therapy assistants and respiratory therapists, it was only in the last legislative session that these professions actively supported the statutes that placed them under the auspices of the Board of Healing Arts in the manner that those professions now are regulated. I firmly believe that if you hear from members of the councils created by the 1986 Legislature for these professions you will find that the Board has made a very concerted effort to deal with these professions fairly and to adopt the proposals the council members feel will be beneficial to the proper and adequate registration and regulation of individuals working in these areas.

Comments by Board members in recent months have indicated a great satisfaction that the Board operation and function is at a high level. The Board feels that the related health care specialties under its control are fully represented under the present structure. The recommendations made by these professions at Board meetings are duly considered and, by and large, adopted by the Board as a whole. Furthermore, the membership of the Secretary of the Board to the various Committees and Councils has created for each of these professions a direct conduit to the Board which, in all likelihood, is more powerful and beneficial to the professions than simply adding one person to the Board to represent all 4 related health care specialties.

(2) The second issue upon which the Board relies upon in support of the present composition of the Board is the concern about the constitutionality of SB-33. This concern is related to the manner in which SB-33 directs the Governor to appoint members to the Board.

Section 1 of SB-33 mandates that the Governor must select a member to the Board from a list supplied by the applicable professional society or association.

Attached hereto and marked as "Exhibit B" is a decision from the Georgia Supreme Court in which a similar section was rendered unconstitutional. This particular decision allowed the State Board of Medical Examiners in Georgia to continue but required that further appointments be made irrespective of membership in the particular professional Associations or societies involved. Although time constraints have not allowed further research into this particular decision, we believe that there has been a continuing series of cases in the State of Georgia which recently resulted in the medical board in that state being totally dismantled and rendered without any authority whatsoever for a period of time due to the fact that the Governor in that state is obligated to appoint members from lists provided by the applicable professional societies.

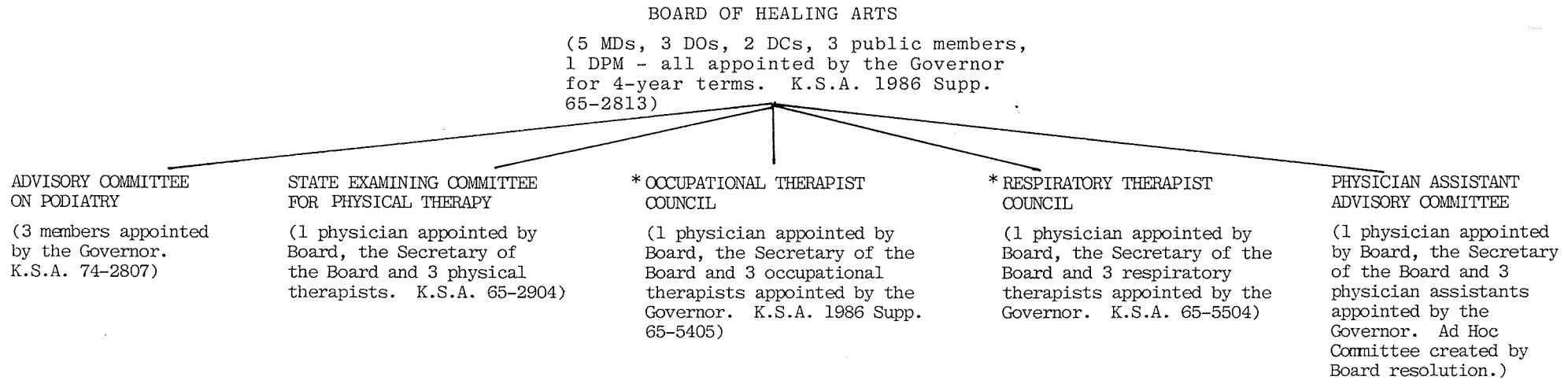
In conclusion, it is the position of the State Board of Healing Arts that SB-33 not be enacted and that the composition of the Board remain as it presently exists under the various statutes involved.

Thank you very much for the opportunity to appear before you today. I would be most willing to answer any questions the committee members might have.

LTB/sl

Attachments - 2

STRUCTURE OF STATE BOARD OF HEALING ARTS  
EFFECTIVE JULY 1, 1986



\* Committee will expire on July 1, 1987.





ARTHUR K. BOLTON  
ATTORNEY GENERAL

The Department of Law  
State of Georgia  
Atlanta

30334

SECRETARY OF STATE  
SEP. 12 2 45 PM '79  
EXAMINING  
BOARDS DIV.

132 STATE JUDICIAL BUILDING

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JAN 8 1987

KANSAS STATE BOARD OF  
HEALING ARTS

September 7, 1979

MEMORANDUM

TO: Composite State Board of Medical Examiners  
FROM: John C. Jones *JCJ*  
Assistant Attorney General  
RE: Rogers v. Medical Association of Georgia, et al.

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Enclosed you will find the decision from the Georgia Supreme Court wherein said Court determined that Ga. Code § 84-903 which allows the Medical Association of Georgia to indirectly select members to the Medical Board is unconstitutional. Essentially, the Court stated that the members of the Board may only be selected through elected representatives and not an independent organization which represents and is accountable to its membership.

Section 3 of the Opinion makes it abundantly clear that the present composition of the Medical Board is appropriate and the members may remain in office for the duration of their terms. The Supreme Court held only that future appointments need not be limited to those persons recommended by the Medical Association of Georgia. With this decision, this case file is now closed.

If you have any questions on this matter, please feel free to contact me.

JCJ:klh

Enclosure

*File  
9-10-79  
J.C.J.*



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JAN 8 1987

KANSAS STATE BOARD OF  
HEALING ARTS  
470, 570 to 4

In the Supreme Court of Georgia

Decided: SEP 06 1979

35102. ROGERS v. MEDICAL ASSOCIATION OF GEORGIA et al.  
35103. GEORGIA STATE MEDICAL ASSOCIATION v. MEDICAL  
ASSOCIATION OF GEORGIA et al.

UNDERCOFLER, Presiding Justice.

John Rogers, M.D., attacks the constitutionality of Ga. L. 1971, p. 689 (Code Ann. § 84-903) which provides the manner in which the Governor shall appoint qualified M.D.s to fill vacancies on the State Board of Medical Examiners.<sup>1</sup> Dr. Rogers brought suit for himself and all others similarly situated who are licensed to practice medicine in Georgia and who are not members of the Medical Association of Georgia, contending these physicians, approximating one-third of all doctors licensed to practice in Georgia, have been systematically excluded from consideration for appointment to the State Board of Medical Examiners by M.A.G.'s

<sup>1</sup> Code Ann. § 84-903 reads in pertinent part: ". . . All appointments to the board shall be made by the Governor and confirmed by the Senate. Appointments to the board of members who must hold an M.D. degree shall be made by the Governor from a list of not less than three nor more than five qualified candidates submitted to the Governor by the Medical Association of Georgia . . . ."

practice of notifying only its associate county medical societies of impending vacancies in their congressional districts, screening and then recommending only members in good standing in M.A.G. to the Governor.<sup>2</sup>

Appellants claim a denial of due process and equal protection of the laws. They assert also that Code Ann. § 84-903 is unconstitutional because it delegates the power of appointment to a private interest group. Among other prayers, appellants seek a declaration that the members of the State Board of Medical Examiners are holding office illegally. The trial court granted summary judgment to appellees.

1. We hold appellants have standing to bring this suit. In our opinion, it is a quo warranto proceeding. Essentially, the appellants claim the members of the State Board of Medical Examiners were appointed illegally and they have no rights to the offices. Appellants as residents, citizens, taxpayers, and licensed physicians are entitled to make such challenge.

McCullers v. Williamson, 221 Ga. 358 (1) (144 SE2d 911) (1965);

2

The Medical Association of Georgia stipulated: (1) all vacancies filled since January 1, 1975, have been filled by physicians listed by M.A.G. to the Governor; and (2) each physician was, at the time, a member of M.A.G.. Since the institution of this suit, M.A.G. solicits candidates for nomination to the Board from a wide range of persons in the field of medicine.

Smith v. Mueller, 222 Ga. 186 (1) (149 SE2d 319) (1966); Boatright v. Brown, 222 Ga. 497 (150 SE2d 680) (1966).

2. Appellants contend that the delegation of the power of appointment to public office to a private organization is unconstitutional. See 97 ALR2d 363. We agree. Fundamental principles embodied in our constitution dictate that the people control their government. "All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and at all times, amenable to them." Code Ann. 2-201. "The people of this State have the inherent, sole and exclusive right of regulating their internal government and the police thereof. . . ." Code Ann. § 2-202. This is accomplished through elected representatives to whom is delegated, subject to constitutional limitations, the power to regulate and administer public affairs, including the power to provide for the selection of public officers.

"The General Assembly shall have the power to make all laws consistent with this Constitution, and not repugnant to the Constitution of the United States, which they shall deem necessary and proper for the welfare of the State." Code Ann. § 2-1401.

These constitutional provisions mandate that public affairs shall be managed by public officials who are accountable to the people. As important as any other governmental power is the power to appoint public officials. They are the persons who control so much of our lives. The importance of this power is emphasized by the constitutional provision by which the people initially granted to their Chief Executive, the Governor, the power to fill vacancies in public offices "unless otherwise provided by law; and persons so appointed shall continue in office until a successor is commissioned, agreeably to the mode pointed out by this Constitution or by law in pursuance thereof." Code Ann. § 2-2804. In our opinion, it is clear that the constitutional provisions cited above demand that the power to appoint public officers remain in the public domain. The General Assembly may, within constitutional limitations, establish qualifications for public office and designate a governmental appointing authority. But it cannot delegate the appointive power to a private organization. Such an organization, no matter how responsible, is not in the public domain and is not accountable to the people as our constitution requires. It represents and is accountable to its membership. Here the Medical Association of Georgia, a private organization,

controls the appointment of the members of the State Board of Medical Examiners under the 1971 Act which provides that the Governor must appoint from its nominees. This is violative of our Constitution.

3. The conclusion reached in division 2 does not oust from office the present members of the State Board of Medical Examiners. They are properly qualified, duly appointed, and not charged with any misconduct. The Governor may well have appointed them to office in the absence of the statutory provision declared unconstitutional herein. Accordingly, there is no basis for their removal from office. We hold only that future appointments need not be limited to those persons recommended by M.A.G.

4. Case # 35103 appealing the denial of Georgia State Medical Association's motion to intervene is moot.

Judgment affirmed in part and reversed in part in Case

# 35102. Appeal dismissed in Case # 35103. All the Justices

concur.



# Testimony of The Kansas Association of Osteopathic Medicine

Bill # S.B. 33 & 34  
Date JAN. 29, 1987

MR. CHAIRMAN AND MEMBERS OF THE SENATE PUBLIC HEALTH COMMITTEE:

My name is Harold Riehm and I represent The Kansas Association of Osteopathic Medicine. I appreciate the opportunity of appearing before you to offer our views on S.B.s 33 and 34. Below I indicate the major points of our stand on these Bills. Time permitting, I will briefly elaborate in my oral presentation.

## S.B. 33 - COMPOSITION AND APPOINTMENTS TO THE BOARD OF HEALING ARTS

Our stand on S.B. 33 is that we support the additional member that would represent the four provider groups registered by the Board but we are in opposition to lowering the number of representatives or members of other provider groups, ourselves included.

In past testimony we have supported the two most obvious objectives of S.B. 33: (1) to provide some representation (though certainly only token in this case) to the four groups now under the jurisdiction of the Board (Physical Therapists, Respiratory Therapists, Occupational Therapists, and Physician Assistants); and (2) to keep the size of the Board at a level that is not so large as to be inefficient and unwieldy.

Were the one addition be made, the Board would be 16 in size. If an even number is unworkable, we suggest an additional representative for the allied health groups mentioned above.

The present membership alignments were the results of extensive legislative deliberation in the mid 1950's, at the time the Board was structured. At that time the matter of the number of members being based proportionally on the number of practitioners was rejected, with the prevailing view that it is professions that are represented, not numbers. The history of the Bill producing the present alignment among the three groups with the most members on the Board (M.D.s, D.O.s, and D.C.s) suggests that never were the two minority groups to have a number vis-a-vis the M.D.s less than the 5-3-3 breakdown that now prevails. We think it important that this be maintained.

We also feel that what I may refer to as "full-service physicians", in this case M.D.s and D.O.s, should constitute, if at all possible, a majority of the voting membership of the Board. Currently, these two groups have 8 of the 15 members. Under provisions of S.B. 33, this would be reduced to 6 of 13.

A joint licensing Board presents both problems and opportunities. While in the one hand it may offer checks and balances among groups, it also can be perceived as inefficient in its deliberation, necessitating, at times, compromise. On the other hand, if give and take among groups is to have much meaning, all groups should be represented at least with one voice and/or vote on the Board. This may create a Board that by the factor of size alone, makes compromise and efficiency difficult.

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Attachment 2

Therefore, while we oppose lowering the numbers of the existing groups, we think it may be time to take a more careful look at the composition of the Board, in light of the increased number of professions now responsible to it.

We think there may be some merit in structuring two Boards, one licensing, perhaps, physicians, and the second being an Allied Health Professions. In the past, this has always raised the troublesome question of what groups fit in that category. We think this can be resolved. We also think there may be some merit in having the current Board staff serve as an umbrella staff, providing support for two Boards. There may also be merit in some form of "super" health provider department that would bring under a single jurisdiction many or most of the professions that deliver health care services.

Through such an approach, adequate representation can be provided to professions and the size of respective Boards can be kept within sound numbers for efficiency of operation.

To recap, Mr. Chairman, we are in opposition to lowering the number of members of any group now having membership on the Board but support adding one or two new members to represent the Allied Health professions now responsible to the Board. At the same time we think such representation is primarily token in nature and that the ultimate solution may be in restructuring two Boards, one representing physicians and one representing Allied Health Professions.

PROVISION THAT THE GOVERNOR APPOINT FROM A LIST PROVIDED BY PROFESSIONAL ASSOCIATIONS

We support this part of S.B. 33. Given the enhanced relationships that exist between the Board of Healing Arts and the Professional Associations in recent Legislative enactments, we think it important that the Associations have some say in who represents them on the Board. We think the possible questions of abuse have little meaning. It is in the distinct best interests of the professions and their respective Associations that the Board consist of persons sensitive to protecting the public and complying with the known wishes of the Kansas Legislature. Every member of our profession has the opportunity to join our Association. Only were this not the case, should the matter of discrimination against non-members be a factor in the decision of the Governor's choice in appointments to the Board. In the "worst-case" scenario, there could be an appointee of one profession that is a member of the professional association of another, and not of his own group.

S.B. 34 - PROVIDING FOR THE APPOINTMENT OF AN EXECUTIVE DIRECTOR FOR THE BOARD

We have no formal position on the appointment of a so called "high powered" executive director for the Board. We do, however, recognize the reasons why there may be a perception of need. It is our feeling that the Board could itself have created such a position by enhancing the duties, responsibilities and "clout" of the present position of Executive Secretary. It has not done this, however.

This has resulted in there being, at times, a leadership void that recently has been filled by the General Counsel of the Board. This is not a reflection at all on any current Board personnel, whom we think do an outstanding job, but instead on a void that, like all voids, seeks to be filled though, short of specified structure, usually not very well. Even if the position of Secretary of the Board is abolished, there will continue to be a need for a physician to work closely with the Board staff. We think some form of reorganization is necessary to provide a single person focal point for response, communication and direction of the Board's activities.





KANSAS OCCUPATIONAL THERAPY ASSOCIATION  
SERVING KANSAS AND WESTERN MISSOURI

January 29, 1987

TO: Senate Public Health and Welfare Committee Members

FROM: Kansas Occupational Therapy Association  
Elizabeth E. Taylor, Legislative Consultant *et*

RE: SB 33 - Representation to the Board of Healing Arts

KOTA has one major concern about SB 33. We do not feel as though fair and adequate representation is afforded to members of the professions of occupational therapy, respiratory therapy, physical therapy or physician's assistants. We realize that these professions are registrants and not fully licensed. However, to allow that only one of the four professions would be represented at any one time provides the following difficulties:

- non-existent representation of three of the four registered professions during each term; and
- unfair delegation of authority to the one registered profession chosen to represent all four, three professions of which the chosen member has little or no education and experience in;

KOTA would suggest for the committee's consideration the following alternatives:

**FIRST ALTERNATIVE** - amend Section 1a line 24 by changing the number of representatives to the board from 13 to 16 and amend Section 2e line 84 to read "(e) one member from each of the following shall be a resident of Kansas for a period of" and amend line 97 to read "and (4) a registered occupational therapist who has been actively".

**SECOND ALTERNATIVE** - establish separate advisory councils for each of the four registered professions. These advisory councils would then be available to give advice to the board as needed.

KOTA prefers the **FIRST ALTERNATIVE** and provides the following justification:

- first, occupational therapists as well as the other registered professions will be financially supporting the board through its registration fees and thus is entitled to fair and adequate representation;
- secondly, occupational therapists as well as the other registered professions should be afforded fair and adequate representation in our democratic system. Without having the proper education and/or experience in the other registered professions, we are not adequately prepared to represent all four registered professions. Equally, the other registered professions, without proper education and/or experience in occupational therapy, would not be adequately prepared to represent the needs of occupational therapy on the board.

Thank you for your consideration of our concerns. We do support SB 33 with either of the above amendments, with the **FIRST ALTERNATIVE** our preference.

*S. P. H. & W.*  
*1-29-87*  
*attachment-3*



**Kansas  
Respiratory  
Therapy  
Society**

15th and State / Emporia, Kansas 66801

TESTIMONY ON SENATE BILL 33

AN ACT relating to the state board of healing arts;

I am Michael Hinds a Registered Respiratory Therapist representing the Kansas Respiratory Care Society. The Kansas Respiratory Care Society opposes Senate Bill 33's concept of 1 member from the allied health professions representing those groups in its entirety. To place responsibility of representing 4 distinct professions by 1 person is both unfair and unequitable to the parties involved. A good example is the Respiratory Advisory Council to the board of healing arts whose responsibilities are to write the rules/regulations whose term will expire July 1, 1987. To relinquish those responsibilities to another non respiratory practitioner would be detrimental to our profession or any other allied health profession. Interim studies proposed expanding the board of healing arts to 19 members but this option was not feasible. The Kansas Respiratory Care Society offers another option to Senate Bill 33 by creating a board of registered allied health professions under the auspices of the board of healing arts. This would enable present and future professions entering the credentialing system the proper input for their rules/regulations. This would also maintain continuity of administering examinations and disciplinary actions within the professions according to the board of healing arts.

Thank you for this time to present what the Kansas Respiratory Care Society feels is a fair and equitable option.

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attachment 4*

KANSAS CHAPTER  
AMERICAN PHYSICAL THERAPY ASSOCIATION

January 27, 1987

Susan Hanrahan, RPT  
Legislative Chairperson  
Kansas Chapter,  
American Physical Therapy Association  
3731 Southeast 27th  
Topeka, Kansas 66605  
(913)295-6619 (work)

Senate Testimony on SB#33

Mr. Chairman and Members of the Public Health & Welfare Committee:

My name is Susan Hanrahan and I represent the Kansas Physical Therapy Association (KAPTA). My purpose today is to address SB#33 - a bill relating to the composition of the Board of Healing Arts.

Our Association does not support the bill in its current form for the following reasons:

1) We do not feel the bill provides for adequate representation of registered groups under the Board of Healing Arts. SB#33 asks for one representative from among 857 Physical Therapists and Physical Therapist Assistants, 1100 Respiratory Therapists, 670 Occupational Therapists and Occupational Therapist Assistants and 87 Physician Assistants. I, for one, would not want to be the sole representative of over 2700 registered professionals in this State on a Board comprised on licensees.

2) This individual representative will not address the need that will be created when the Occupational Therapy and Respiratory Therapy advisory councils expire this year despite the fact that the Board will retain the Physical Therapy Examining Committee. That leaves 1770 registered professionals that the Board will have no assistance in carrying out the provisions of the law regarding the qualifications and examination of

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attachment 5*

Respiratory Therapists, Occupational Therapists and Occupational Therapist Assistants.

3) Dietitians have currently completed the credentialing process and will be introducing a practice act bill this legislative session. If they become a registered profession and their regulation is by the Board of Healing Arts (which are both very likely), will they become the fifth profession to be added to the existing group for potential representation?

4) In the interim study on Board composition last summer, the committee opted to delete equal representation (one appointee from each registered profession) to only one representative, citing that the Board was getting too large and would become ineffective. Four representatives is certainly more proportionate but apparently that is not a viable option.

In the 1986 legislative session, the House Public Health & Welfare Committee heard a bill establishing a separately functioning Board of Allied Health Professionals. The Board of Healing Arts did not support this bill as it took Physician Assistants, Physical Therapists and Physical Therapist Assistants out from under their jurisdiction. The Board of Nursing did not support the bill as it took Licensed Mental Health Technicians from under their regulation. Physician Assistants did not support the bill as they wanted to stay with the Medical Doctors under the Board of Healing Arts, Licensed Mental Health Technicians wanted to stay under the Board of Nursing and the Physical Therapists took a neutral stand on the measure.

Because of the difficulties with a separate board, although that idea was a good one, our Association recommends to this committee that the Board of Healing Arts create a secondary board comprised of representatives from Physical Therapy, Occupational Therapy, Respiratory Therapy and Physician Assistants to deal with issues specifically related to those registered

professionals. These groups will experience very similar problems and concerns in regards to their regulation, when you consider examination, registration renewal, continuing education units and reciprocity issues for registered professionals. A Board of Licensees may not have the time, desire or understanding to deal with such problems.

Our Association has worked with the Board of Healing Arts for 24 years and feel, because of the addition of so many registered bodies (with potentially more to come), this may be the best approach in working with all the groups involved and satisfying the needs of these professions. We ask you to consider writing a substitute bill to create a registration board under the Board of Healing Arts separate from the current licensure board.

Thank you for your consideration and potential support of our proposal. I will be happy to answer any questions.

KANSAS ACADEMY OF PHYSICIAN ASSISTANTS

TESTIMONY ON SB 33

The Kansas Academy of Physician Assistants (KAPA) generally concur with the testimony presented by the other allied health care groups. Although it feels strong that Physician Assistants need and deserve representation on the Board of Health Arts, SB 33 is not the proper vehicle for it. Having one person of one profession representing the interest of four or five diverse professions would create more havoc than benefit.

Accordingly, KAPA endorses the concept presented by the Physical Therapists Association to establish a sub-board with a representative of each profession on it. Common interest could be addressed in this manner with the opportunity for individual interest to be presented.

If a bifurcated board occurs sometime, e.g. MD-DO board and allied health board, KAPA would request that a PA be placed upon whichever board registers them.

Thank you for your time. I will be happy to answer any questions.

Respectfully submitted,

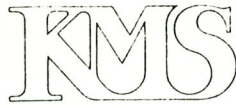


Donald G. Strole,  
Attorney for Physician Assistants  
16 East 13th Street  
Lawrence, Kansas 66044

PA"s.1

*SPH/90*  
*2-2-87 for*  
*1-29-87*  
*Attachment 6*





# KANSAS MEDICAL SOCIETY

1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

February 2, 1987

TO: Senate Public Health and Welfare Committee

FROM: Jerry Slaughter  
Executive Director

SUBJECT: Senate Bills 33, 34 and 35

The Kansas Medical Society appreciates the opportunity to submit a brief statement about Senate Bills 33, 34 and 35.

## S.B. 33; Composition of the Kansas State Board of Healing Arts

We are opposed to S.B. 33, because it reduces the representation of doctors of medicine from five to four on the board. We have a long standing policy which advocates proportional representation among the various disciplines licensed, and under the current arrangement 33% of the total board hold degrees of doctor of medicine, and under the arrangement contemplated in S.B. 33 the representation slips to about 30%. We do not oppose the addition of members of the public, but feel that the full compliment of the various disciplines should be retained.

We do not oppose some greater representation for members of the allied health professions registered by the board, but would encourage the committee to consider looking into a different alternative, such as a separate board or boards for those professions.

Our overall recommendation would be to not adopt S.B. 33, or in the alternative, we would recommend that the whole issue of composition and representation of allied health professionals be referred to an interim study for a more thorough discussion.

## S.B. 34; Establishing an Executive Director of the Board of Healing Arts

We strongly support the concept of a full-time executive director for the Board of Healing Arts. We supported the concept last year in similar legislation, and we feel it will provide for better administration of the growing and more complex board. It would be advantageous if the new executive director was a physician with proven management experience. We believe such a person would be ideal for this position.

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1-29-87  
attachment 7



Senate Public Health and Welfare Committee  
Senate Bills 33, 34 and 35  
February 2, 1987  
Page Two

S.B. 35; Biennial Licensure; Podiatry Amendments and Physician Assistants Amendments

The Kansas Medical Society generally supports most of the provisions in S.B. 35, as the majority are generally intended to be cleanup amendments. However, we oppose the move to biennial licensure, because it will create extreme difficulties in administering the provisions of the Health Care Stabilization Fund law. That law requires all licensees of the board to maintain a current policy of professional liability insurance, which must be verified by the Insurance Commissioner's office in conjunction with the Board of Healing Arts annually. We would urge the committee to disapprove the portion of the bill concerning biennial licensure.

I appreciate the opportunity to offer these comments and would be happy to respond to any questions. Thank you.

JS:nb

# KPMA

Kansas Podiatric Medical Association

615 S. Topeka Ave. • Topeka, Kansas 66603 • (913) 354-7611

PRESIDENT

JOSEPH R. LICKTEIG, D.P.M.  
The Bethel Clinic  
201 S. Pine  
Newton, Ks. 67114  
(316) 283-3600

January 29, 1987

PRESIDENT-ELECT

RICHARD KRAUSE, D.P.M.  
3109 12th  
Great Bend, Ks. 67530  
(316) 793-6592

SECRETARY-TREASURER

WARREN W. ABBOTT, D.P.M.  
Medical Arts Bldg., #110  
10th & Horne  
Topeka, Ks. 66604  
(913) 235-6900

TO: Senate Public Health and Welfare Committee  
Chairman Ehrlich and Committee Members

DIRECTOR

HAROLD COX, D.P.M.  
666 New Brotherhood Bldg.  
Kansas City, Ks. 66101  
(913) 371-0388

IN RE: Senate Bill No. 33  
and Senate Bill No. 34

DIRECTOR

JOSEPH A. SVOBODA, D.P.M.  
2308 Anderson  
Manhattan, Ks. 66502  
(913) 539-7664

The Kansas Podiatric Medical Association is greatly interested in the State Board of Healing Arts and all matters pertaining thereto.

IMMEDIATE PAST PRESIDENT

DR. FRANK K. GALBRAITH, D.P.M.  
758 S. Hillside  
Wichita, Ks. 67211  
(316) 686-2106

The Association has a great deal of interest in these two bills, and will be carefully watching the fate of them.

MEMBER OF ST. BOARD  
OF HEALING ARTS


DR. HAROLD J. SAUDER, D.P.M.  
209 N. 6th St.  
Independence, Ks. 67301  
(316) 331-1840

But, our Association has no position with regard to these bills.

EXECUTIVE SECRETARY

WAYNE PROBASCO  
615 S. Topeka Avenue  
Topeka, Ks. 66603  
(913) 354-7611

Respectfully,

  
Wayne Probasco

WP/jw

SP & W  
1-29-87  
attachment 8

TESTIMONY TO THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

RE: SENATE BILL NO. 34

PRESENTED BY: LAWRENCE T. BUENING, JR., GENERAL COUNSEL  
KANSAS STATE BOARD OF HEALING ARTS

This Bill, similar to SB-33, originated from the Special Committee on Ways and Means regarding Proposal No. 40.

This particular Bill was submitted to the Board of Healing Arts at its meeting on December 6, 1986 in the form of a rough draft which had been prepared by the Revisor of Statutes. A telephone poll was conducted relative to this Bill on January 26 and 27, 1987. The Board at its meeting in December adopted a position in opposition to this Bill. Similarly, the results of the telephone poll conducted was 12 members in favor and 2 opposed as to whether the Board should ratify the position which it took at its meeting in December. (The other member of the Board was out of town and could not be reached.)

PRESENT STATUS OF BOARD OPERATION.

The Board presently has 14 FTE positions. These do not include the position of secretary. Included within the 14 FTE positions are those of executive secretary, general counsel and disciplinary counsel.

The executive secretary is in charge of day to day administrative duties and the general supervision of all Board staff. The executive secretary reviews all applications for licensure, registration and reinstatement of such. Any applications which cause concerns to the executive secretary are then presented to the Board secretary for a review.

The general counsel provides legal advice to the Board, including the secretary and the Board staff and also responds to various inquiries of a legal nature. The general counsel also attends all meetings of the Board and its various subcommittees as is specified in the testimony provided regarding SB-33. Rules and regulations authorized by the Board are prepared and submitted through the various channels by the general counsel. At present, the general counsel is also in charge of all disciplinary matters not under the jurisdiction of the disciplinary counsel.

The disciplinary counsel is in charge of all complaints involving 3 branches of the Healing Arts - M.D.s, D.O.s and D.C.s. This involves the review of all complaints, the direction of all investigation and the initiation and prosecution of adjudicative proceedings against the licensees involved.

PRESENT DUTIES OF BOARD SECRETARY.

To understand the importance of the Board Secretary to the operation of the Board from a standpoint of disciplinary actions, one need only refer to the Memorandum of August 11, 1986 from the Legislative Research Department to the Special Committee on Ways and Means. Please refer to Table IV thereof which is attached hereto as "Exhibit A". The Board Secretary has a number of other important functions

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which are referred to in the Legislative Research Department Memorandum above mentioned. These are in addition to the functions of the Secretary as explained in the testimony heretofore provided regarding SB-33.

#### BOARD POSITION ON SB-34

It should be stated that by virtue of the various statutes involved, the rules and regulations of the Board and its actual practice, the Secretary of the Board is the Board when that Body is not in actual session. The Secretary is an extension of the Board upon whom the Board has placed its trust to act on its behalf when it is not in session. The Kansas State Board of Healing Arts meets bi-monthly. According to the Memorandum prepared by the Legislative Research Department, only 11 medical boards in other states also meet bi-monthly. However, 24 boards meet only 4 or fewer times a year while 23 boards meet monthly.

As stated in the Legislative Research Department Memorandum, the Secretary of the Board is the chief executive officer of the body when it is not in session. In that interim period between meetings of the entire board, the Secretary presently performs invaluable services. The Secretary reviewed and made recommendations for determinations on approximately 139 cases which had been previously reviewed by various review committees from October 1 through December 31, 1986. Further, exclusive of those individuals which may have been interviewed as a result of review committee action, the Secretary also interviewed an additional 63 individuals during calendar year 1986. Each of these interviews involved possible problems relating to the past conduct of an applicant for registration or licensure or the conduct of a present registrant or licensee of the Board.

SB-34 states that the executive director position to be created shall not be a member of the Board. The provisions of SB-34 result in replacing a member of the Board with a non-member on those committees and subcommittees pertaining to related health care specialties. The Secretary is presently a member of the Occupational Therapist Council, Respiratory Therapist Council, Examining Committee for Physical Therapy and the Physician Assistant Advisory Committee and attends all meetings of such committees.

The Board has also been presented with a number of issues which require immediate attention. These involve the emergency suspension of licenses or registrations pursuant to the Administrative Procedures Act. Without having a member of the Board who has been specifically authorized to act on its behalf on such issues, the Board could very well be emasculated in its efforts to fulfill its statutory obligations of protecting the citizens of the State of Kansas from dishonorable and substandard care from healing arts practitioners.

It is felt by the Board that the chief executive officer should be an individual who is a member of the Board and able to make decisions for the Board in the interim period in which the Board is not meeting. Should SB-34 be adopted in its present form and an executive director appointed who has no license in any of the 3 branches of the healing arts, it is felt that the Board will be denied a valuable tool it

Testimony RE: SB-34

January 29, 1987

Page 3

now uses extensively in dealing with disciplinary matters. In this regard, the Board would then have to develop some procedure in order to screen the various cases now being handled by the Secretary since no level of confidence could be placed upon an individual who had no experience, training and education in the healing arts.

It is felt by the Board that having a secretary who is also licensed in one of the 3 branches of the Healing Arts is an invaluable asset to the Board. Should SB-34 be adopted, it would create a situation whereby an individual not licensed to practice the healing arts was making decisions and determinations relative to standard of practice. This would create what could be an untenable position should the Board ever be sued and could also prolong and unnecessarily subject the public to sub-standard conduct by individuals regulated by the Board.

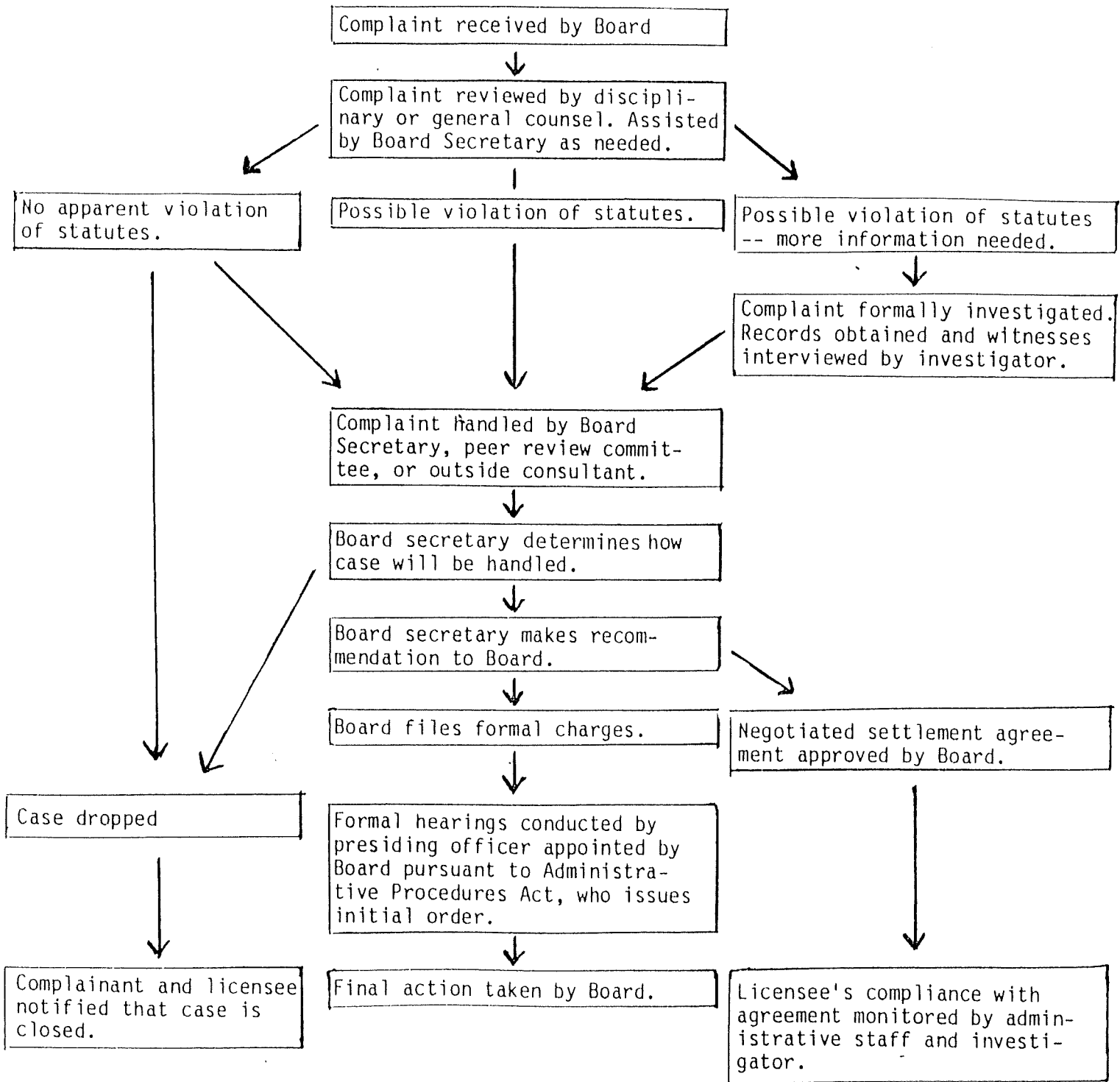
Thank you for the opportunity to appear before you today. Please feel free to ask any questions that the committee members might have.

L/TB/sl

Attachment

TABLE IV

Complaint Handling and Disciplinary  
Action Process



Source: Flow chart adapted from chart contained in Performance Audit Report of the Board of Healing Arts by the Legislative Division of Post Audit, August 1985.