

Approved 3-14-88 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 March 1, 19 88 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Norman Furse, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Paul Klotz, Executive Director, Association of Community of Mental Health Centers

E. W. "Dub" Rakestraw, Association of Community Health Centers
Clinton Willsie, Director, Sedgwick County Department of Mental Health
Jim Trast, Director of Juvenile Programs, SRS
Dr. Jack Martin, Director of Labette County Mental Health Center
Dwight Young, Kansas Organization of Professional Psychologists
C. R. Snyder, Professor and Director, Clinical Psychology Program,
University of Kansas

John Preble, Chairman, Board of Behavioral Sciences
David Rodeheffer, Kansas Psychological Association
Rita Knoll, Assistant Attorney General
Chip Wheelen, Kansas Psychiatric Society
John Peterson, Kansas Association of Professional Psychologists

Paul Klotz, Executive Director, appeared before the committee to introduce E. W. Rakestraw.

E. W. "Dub" Rakestraw appeared before the committee in support of SB-672. Mr. Rakestraw stated that following the passage of SB-288 last year the Behavioral Sciences Regulatory Board requested an opinion from the Attorney General's Office on the "under direction" phrase. The opinion was given that only licensed (Ph.D.) Psychologists could supervise masters level psychologists. The Attorney General's opinion assumed that "supervision" and "direction" were the same. The opinion also stated that neither physicians, psychiatrists, or clinical social workers could provide direction to masters level psychologists. A number of other requested changes in the bill are shown in Attachment 1.

Clinton Willsie, Director of Sedgwick County Department of Mental Health testified and presented written testimony in support of SB-672. Mr. Willsie stated that should the law require that each registered masters level psychologists be supervised by only a licensed Ph.D., his department would suffer severe financial problems. Attachment 2

Jim Trast, Director of Juvenile Programs, SRS, spoke in support of SB-672 stating that he would like to see the supervision remain as it is now due to difficulties of recruitment and given the present successes. Mr. Trast stated that SRS felt they could continue present functions and still satisfy the accrediting agencies as well as providing services to the citizens of Kansas.

Jack Marten, Labette County Mental Health Center testified in support of SB-672, stating that he was appearing as an administrator. Mr. Marten further stated he did feel people coming out of school did need supervision by either a licensed or registered psychologist during the first few years of practice as an assurance of quality is necessary. Mr.

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MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 526-S Statehouse, at 10:00 a.m./~~p.m.~~ on March 1, 1988, 19

Marten further stated he felt lines 028-037 should not be included in the bill, that they would be detrimental to providing quality services. A further concern was expressed that services his center are now providing on a contractual basis to hospitals and the not for profit psychiatric units would be lost.

Dwight Young, Kansas Organization of Professional Psychologists, testified in support of SB-672. Mr. Young stated that following passage of SB-288 last year the Behavioral Sciences Board instructed the committee interpret the word "direction" as being synonymous with "supervision." This was followed by the Attorney General's opinion which served to limit those who could provide direction to just Licensed Psychologists. This ruling served to make compliance of the law impossible for most agencies. Mr. Young stated that if SB-672 is not modified his agency would have additional costs of approximately \$120,000 not counting the service time lost by his staff who are receiving supervision and the revenues associated with those hours. He further related that every agency has built in "structure" to provide the necessary direction to their staff. Attachment 3

C. R. Snyder, Director of Clinical Psychology Program, University of Kansas, appeared before the committee stating he strongly opposed SB-672 because it serves to weaken the educational and training standards of persons providing psychological care to the citizens of Kansas. Dr. Snyder stated that the position of the American Psychological Association was that the minimum entry level education required for independent practice of psychological assessment and psychotherapy has been a Ph.D. degree (including an internship), as well as one or two years of post-Ph.D. supervised experience (by a clinical psychologist). This amount and quality of training is the minimum acceptable for a person who is rendering psychological services to people. The present legislation would allow persons with approximately one-third of the aforementioned amount of training to practice independently as a masters level psychologist. The proposed legislation would result in our state having standards that are much lower than those employed by other states and the American Psychological Association. This proposed legislation raises the obvious possibility that Kansas may become a haven for attracting a number of such masters level persons who have been judged by their graduate programs as not being qualified to independently perform psychological assessments and psychotherapy. Attachment 4

John Preble, Chairman of the Board of Behavioral Sciences appeared before the committee to express the concern of his board. Mr. Preble stated the board is now in the final phase of adopting the rules and regulations so that they can be filed with the Department of Administration, which will begin the legislative approval process. Mr. Preble stated concern with the number and nature of the amendments midstream in the board's work toward meeting the legislative mandate for registration of this group of practitioners. Mr. Preble requested that the committee consider amending Sec. 2(c) to address the concern of unconstitutional delegation of authority to a nongovernmental entity. Attachment 5

David Rodeheffer, Kansas Psychological Association, appeared concerning SB-672. Mr. Rodeheffer stated his organization felt the proposed changes in this bill would eliminate virtually every provision that was put in the bill to ensure the public safety from harm due to inadequately prepared professionals. It was felt that this is not only needless legislation, but dangerous legislation with respect to seriously weakening the provisions in the Kansas statutes to help protect the public from possible harm. Attachment 6

Rita Knoll, Assistant Attorney General, appeared before the committee concerning SB-672. Ms. Knoll expressed concern regarding the "grandfathering" provision of K.S.A. 1987 Supp. 74-5363(c), as it drops the graduate degree requirement. Ms. Knoll further stated that the

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MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 526-S, Statehouse, at 10:00 a.m./p.m. on March 1, 1988.

Attorney General wished to raise a concern to the Committee that the language cited in the current statute and in SB-672 may be an unconstitutional delegation of legislative authority, as the Association of Community Mental Health Centers is a nongovernmental agency which is being delegated authority to determine which persons may be registered in this state as RMLPs without having to meet the educational or degree and supervision requirements. Attachment 7

Chip Wheelen, Kansas Psychiatric Society, appeared before the committee stating that his organization is concerned that certain provisions of SB-672 would repeal the requirement that registered masters level psychologists practice under "direction." Mr. Wheelen suggested the restoration of stricken language in lines 40-44 and inserting "a person licensed to practice medicine and surgery or" in line 41 after the word "of". The committee was urged to bear in mind that the condition of people who suffer from mental illness are very fragile and any erosion of quality of health care provided could have an extremely adverse effect. Attachment 8

Mr. Chip Wheelen changed badges and stated as a representative of the Kansas Medical Society that said organization endorsed the position of the Kansas Psychiatric Society.

John Peterson, Kansas Association of Professional Psychologists, appeared before the committee stating he found it incredible that an area thought to be resolved was once again before the legislature instead of making an effort to work with those making the regulations. The issue of who can provide and direct is addressed in the bill by Senator Karr, SB-469. Mr. Peterson further stated that the issue involved in the Attorney General's opinion will be clarified in time. It was also stated that Senator Parrish has introduced a bill taking care of the one individual that would be covered in the "grandfathering" clause of SB-672. Mr. Peterson also stated that SB-672 was asking the legislature to lower every standard and to put education to the lowest common denominator.

Senator Francisco made the motion to accept the minutes for February 22, 23, 24, 25 and 26 as presented. Senator Mulich seconded the motion and the motion carried.

The meeting adjourned at 11:00 a.m. and will convene Tuesday, March 2, 1988, at 10:00 a.m. in Room 526-S.



Association of Community

Mental Health Centers of Kansas

835 S.W. Topeka Ave., Suite B/Topeka, Kansas 66612/913 234-4773

Paul M. Klotz, Executive Director

TESTIMONY TO:
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
The Honorable Roy Ehrlich, Chair

Re: SB 672

Mr. Chairman and members of the committee. I am Dub Rakestraw here today speaking on behalf of the Association of Community Mental Health Centers of Kansas. I am here to speak in support of SB 672.

As you know, during the 1987 legislative session, SB288 was passed and signed into law. That law allowed for masters level psychologists to become registered through the Behavioral Sciences Regulatory Board.

As a result of experiences with the new law, several gliches have been encountered which can be resolved by the changes we and others are recommending in SB 672. Please, allow me to briefly elaborate on the proposed changes.

ines 28-37 It was discovered that there were several settings in which masters level psychologists currently hold jobs that were not covered in the law. These included some medical care facilities or hospitals as presented in Senator Karr's bill (SB469) and in some of the institutions licensed by or under the auspices of SRS. Adding these work settings is being advocated by SRS and they may address further.

ines 40-44 Under the current law, there is that phrase that stipulates that registered masters level psychologists must practice "under the direction of a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of psychological disorders". It is this issue that is of most interest to the centers.

Prior to the bill being drafted last year, there were many, many meetings I had with others who had an interest in this legislation, including people who were opposed to the original legislation. Many compromises were reached prior to the bill being introduced last year. Included in those compromises was that masters level psychologists would continue to practice in limited settings (which did not include private practice) and, at least in the community mental health centers, under the same employment arrangements they had experienced over the past many decades. It was agreed that the wording "under the direction" was clearly different from "under supervision". The difference is significant.

The community mental health centers and probably most or all of the other work settings described in the law function on a multidisciplinary team model. This model has many built in checks and balances unlike private practice.

As a brief example, a person coming into my center will be interviewed by a clinician who will then formulate a tentative impression about the type of problem, the diagnosis, and the appropriate treatment plan. This is all written up and presented to, at least, two other clinicians, one of whom is a psychiatrist. They review the information, the diagnosis, the treatment plan, etc., and then approve it or change it as they deem appropriate. The client is then assigned to a therapist who begins providing the services. That therapist works in a particular program area (as an example, in our child abuse treatment program). The program has a director who has expertise

Dwight Young
President

Kermit George
President Elect

John Randolph
Vice President

Larry W. Nikkel
Past President

Paul Thomas
Treasurer

Steven J. Solomon
Secretary

Senate Public Health & Welfare
—March 1, 1988
Attachment 1

in that particular field. That program director might be a psychologist or a clinical social worker. They direct the work of other staff in their program. Directing their work means that they assign cases, set up and run team meetings where everyone comes together to discuss their cases, review the charts to see that all services recommended are being provided, etc. In addition, cases are reviewed every 90 days to see if the services are being provided. If there is need to continue to provide services, etc. This review is done by clinicians who are not directly assigned to the case. Finally, there is a medical director and a director of clinical services who also are involved in case reviews, consultation, etc. Thus, there are many checks and balances to everyone's work in the center. Other clinicians are aware of any one person's functioning within the agency. If one's work is questionable in any way they may be placed in direct supervision. That is done on a case-by-case basis.

After the law was passed last year, the Behavioral Sciences Regulatory Board asked the Attorney General's office for an opinion on the "under the direction" phrase. The opinion given was that only licensed (Ph.D.) psychologists could supervise masters level psychologists. The Attorney General's opinion simply assumed that "supervision" and "direction" were the same. The opinion also stated that neither physicians, psychiatrists, or clinical social workers could provide direction to masters level psychologists.

The Behavioral Sciences Regulatory Board then proceeded to draw up rules and regulations based on this opinion. Essentially, such rules and regulations would then be basically the same that apply to private practice.

The masters level psychologists in the compromise negotiations agreed to give up private practice privileges with the understanding they would be permitted by law to continue to practice in limited work settings (such as community mental health centers) just as they had for many decades. To apply the same supervision requirements as in private practice ignores the checks and balances system in place and requires the community mental health centers to spend hundreds of thousands of dollars to add licensed psychologists to provide supervision, etc. The fiscal impact on the centers would be devastating. However, it certainly would provide more jobs for licensed psychologists (and fewer jobs for masters level psychologists).

To assume that a licensed psychologist is the only one who can or should direct the work of a masters level psychologist simply flies in the face of reality and requires grandiose thinking. How does it make sense to have a masters level psychologist working on a child abuse treatment team, as an example, directed by a clinician who is an expert in that area being required instead to be directed by a Ph.D. psychologist who has no expertise in the area? You'll hear the argument, I'm sure, that no one other than a psychologist can direct a masters level psychologist for psychological testing purposes. Well, of course that makes sense, but if we were employing a masters level psychologist who's testing skills were in question we would do what we have always done - we would place them under supervision by a psychologist for that purpose. To say for that reason all masters level psychologists have to be under supervision of a licensed psychologist is killing a fly with a shotgun.

The law to register masters level psychologists was passed in order to legally recognize them as mental health service providers and to provide additional protection for the public. We firmly believe that all of the checks and balances currently provided by their working under the direction and oversight of other mental health professionals and having legal regulation by the Behavioral Sciences Regulatory Board provides adequate public protection. To now add that they have to always be supervised by a licensed psychologist defeats the intent and understandings of the original legislation.

For these reasons, we have recommended that the "under the direction of" phrase be struck. It then allows the masters level psychologists to continue to practice within the work settings described and under the direction (or supervision when warranted) provided within the employing center.

- line 61 The word "graduate" has replaced the word "masters" so it is consistent with the change on lines 65-66.
- lines 65-66 This additional wording was added by SRS to assure their ability to fill their positions would not be reduced. Conferees from SRS may address it more fully. The centers are aware that we occasionally have qualified applicants from other states whose graduate degree may read something other than "masters in psychology" but whose education/training is comparable to that of a masters in clinical psychology.
- lines 77-78 This change would allow for both licensed psychologists and registered masters level psychologists to provide supervision for new, inexperienced masters level psychologists who are just entering the field and are not yet fully qualified for registration. Again, if only licensed Ph.D.'s can do the supervision, centers would have to hire even more licensed psychologists. Note this supervision is for people who already have met all the educational requirements and are now coming into the center to work. This guarantees another psychologist is "looking over their shoulder" during the initial phase of their practice. In the centers, there are a number of others also "looking over their shoulder" as previously described.
- lines 81-91 This carries forward the description of the additional settings in which masters level psychologists can work as contained in Senator Kerr's bill (SB469) and as expanded by SRS.
- line 95 Because of all the confusion on the law and rules and regulations yet to be approved, etc., the "grandfathering/grandmothering" date is being extended to the end of the current year. This assures someone being employed in the interim isn't going to be laid off later because of some new technicality added during this legislative session.
- lines 98-99 Striking this phrase is because of a person who works at the Youth Center at Topeka. He has been employed there as a psychologist for approximately 20 years but does not have a graduate degree. This would simply allow him to keep his job as a psychologist. His situation is also the reason for SB573 (by Senators Parrish and Hoferer). This does not open any wide door by striking the phrase. His is the only case I know of in Kansas. I don't know anyone else coming through this door.
- lines 102-112 Again, carrying forward the wording for adding the settings in which masters level psychologists can be (are) employed.
- lines 113-114 This is again an extension of the date for grandfathering purposes. I would add that the 1987 date on line 113 was intended to read 1988. Not changing it to be consistent with the date change in line 95 was an oversight. I believe SRS will also ask this date be changed to December 31, 1988.
- line 114 Striking "by a state agency" and adding "in this state" is a change made as a result of Senator Kerr's bill and we agree to that change.
- lines 115-122 The wording has been slightly changed to more accurately reflect the recognition process of the community mental health centers.
- lines 139-140 The life span of the temporary permit that can be issued is changed from 6 months to 12 months as is it's renewal. The temporary permit is needed by a masters level psychologist who has not yet met the supervised work experience requirement. That requirement is that the person must have 1500 clock hours of supervised work experience. If one is working 40 hours per week, it takes 37.5 weeks to complete. If working 20 or 30 hours per week, even longer. Thus, a 6 month (24 weeks) permit obviously isn't long enough.
- line 158 For the same reasons as previously stated and for consistency, this date has been extended to December 31, 1988.

ines 205- In the current law, confidentiality privilege was left out due to oversight. SB469 added a confi-
209 dentiality section but it was the same privilege that exists between attorney and client. We believe that to be too rigid and restrictive and have asked that the confidentiality privilege be the same as currently exists in the K.S.A. cited as that is what we currently operate under in the centers and state institutions.

I sincerely appreciate your time and interest and respectfully ask your adoption of these amendments.

I will be glad to respond to questions.

E. W. (Dub) Rakestraw
Association of Community Mental
Health Centers of Kansas

TESTIMONY

TO: SENATE PUBLIC HEALTH & WELFARE COMMITTEE

MR. CHAIRMAN AND COMMITTEE MEMBERS -

MY NAME IS CLINTON WILLSIE AND I AM THE DIRECTOR OF THE SEDGWICK COUNTY DEPARTMENT OF MENTAL HEALTH IN WICHITA.

OUR DEPARTMENT IS A LARGE OPERATION WHICH EMPLOYS PROBABLY THE LARGEST NUMBER OF PSYCHOLOGISTS OF ANY OTHER CENTER IN THE STATE. WE CURRENTLY HAVE ON STAFF 4 PH.D. PSYCHOLOGISTS, 7 REGISTERED MASTERS LEVEL PSYCHOLOGISTS AND 2 PSYCHOLOGY INTERNS.

IF THE LAW REQUIRED THAT EACH OF THE REGISTERED MASTERS LEVEL PSYCHOLOGISTS HAD TO BE SUPERVISED BY ONLY A LICENSED PH.D., OUR DEPARTMENT WOULD SUFFER SEVERE FINANCIAL PROBLEMS. IF WE ADHERED TO ALLOWING ONE PH.D. TO SUPERVISE ONLY THREE MASTERS LEVEL, WHICH IS THE CURRENT REGULATION, IT WOULD CAUSE US TO HAVE TO HIRE AN ADDITIONAL PH.D.

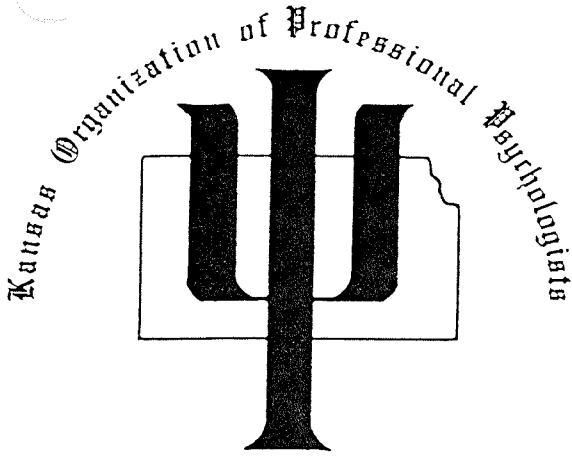
ONLY 3 OF THE 4 PH.D.'S WE HAVE ON STAFF ARE CURRENTLY LICENSED, AS THE 4TH ONE HAS NOT BEEN IN SUPERVISED PRACTICE FOR TWO YEARS FOLLOWING THE AWARDING OF HER DOCTORATE. SHE, THEN, WOULD HAVE TO CONTINUE UNDER SUPERVISION OF A LICENSED PSYCHOLOGIST AS WOULD TWO INTERNS, WHO ALSO POSSESS MASTER'S DEGREES, BUT ARE COMPLETING THEIR FINAL YEAR OF TRAINING PRIOR TO THEM RECEIVING A PH.D.

IN ADDITION, THIS AMOUNT OF SUPERVISION WOULD FORFEIT MANY HOURS THAT NOW ARE BEING DEVOTED TOWARD DIRECT CLINICAL SERVICES AND, HENCE, ARE PRODUCING REVENUE. THE 7 R.M.L.P.'S ARE SEASONED VETERANS AND REQUIRE NO CLINICAL SUPERVISION AND ONLY DIRECTION FROM AN ADMINISTRATIVE STANDPOINT. SOME OF THEM ARE NOT EVEN INVOLVED IN PERFORMING CLINICAL WORK AS THEIR EFFORTS ARE EXCLUSIVELY DIRECTED TOWARD ADMINISTRATIVE MATTERS.

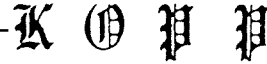
IN SHORT, THE HIRING OF AN ADDITIONAL PH.D. PSYCHOLOGIST WITH BENEFITS AT OUR DEPARTMENT WOULD COST IN EXCESS OF \$35,000 AND THE LOSS OF OVER 350 HOURS OF REVENUE PRODUCING DIRECT CLINICAL SERVICES WHICH WOULD COST ANOTHER \$18,500 FOR A TOTAL OF FINANCIAL SETBACK IN EXCESS OF \$53,000.

THIS WOULD BE EXTREMELY PROHIBITIVE AND CREATING AN EXPENDITURE THAT WOULD BE SUPERFLUOUS, AS OUR CURRENT LEVEL OF SUPERVISION HAS BEEN VERY MUCH FINE TUNED AND WORKING WITH EXTREME EFFICIENCY.

THANK YOU FOR ALLOWING ME TO MAKE THIS PRESENTATION AND I HOPE THAT YOU WILL SUPPORT SENATE BILL 672 AS WRITTEN.



AN ORGANIZATION DEDICATED TO
THE BETTERMENT OF PSYCHOLOGICAL
SERVICES IN THE STATE OF KANSAS



PRESENTATION TO
SENATE HEALTH AND WELFARE COMMITTEE
REGARDING
SENATE BILL 672

By
Dwight L. Young, President

March 1, 1988

This presentation is in support of SB 672. This time last year we were considering this issue with a simple straight forward premise in mind, to legally recognize a group of professionals already practicing and in doing so offer increased protection to Kansas consumers by assuring consistent minimal standards to use the title, "Registered Masters Level Psychologist" (RMLP). However, as in the past 20 years, it has once again turned into a battle between the alledged "supremacy" of the Licensed Ph.D. versus the rights of the RMLP's to practice their chosen profession.

Last year we thought that we had an understanding, a compromise, with the Ph.D.'s in that we agreed to give up any claim to private practice in exchange for their support for autonomous practice within the confines of an agency setting. We used the phrase "under the direction of" to imply that the RMLP worked for somebody not that they were supervised by someone. The clinical director of an agency accepts the responsibility for the clinical services of that agency. This does not mean that the clinical director sees every staff member in one to one supervision. The level of competency is evaluated by the agency and the independence of the practice is granted accordingly.

Unfortunately, after SB 288 was past last year, a Ph.D. member of the Behavioral Sciences Board instructed the RMLP committee to interpret the word direction as being synonymous with supervision. This was followed by the Attorney General's opinion which limited those who could provide direction to just Licensed Psychologist. These two events made the law impossible for most agencies.

If the law is not modified as specified in SB 672, my agency will have to recruit 3 Licensed Psychologists who would spend a quarter of their time providing supervision. If I could find 3 Licensed Psychologists who would move to Great Bend, I estimate that this would cost approximately \$120,000 not counting the service time lost by my staff who are receiving supervision and the revenues associated with those hours. This would obviously be good for the Ph.D.'s but it has little to do with consumer protection. It has a lot to do with professional territorialism.

Please understand that every agency has a built in structure to provide the necessary direction to their staff. It is not necessary or even appropriate that this direction always be offered by a Licensed Psychologist.

Therefore, it will be up to you to determine if our intent in coming to you was just and worthwhile. If you believe that it was, SB 672 corrects the mistakes we made in trying to fulfill that goal. Thank you.

Dwight L. Young, M.S.
5815 Broadway
Great Bend, Ks. 67530
(316) 792-2544

The University of Kansas

Psychological Clinic

March 1, 1988

To: Chairman and Members of the Kansas Senate Public Health & Welfare
Committee

From: C. R. Snyder, Professor and Director, University of Kansas Clinical
Psychology Program

Re: Senate Bill # 672

Ladies and gentleman, my name is C. R. Snyder. Thank you for the opportunity of giving input on the present matter. I have been involved in the teaching of clinical psychologists for the last 20 years, and since 1975 I have been the Director of the Clinical Psychology Program at the University of Kansas. This program is the only clinical psychology training program in the state of Kansas that is approved by the American Psychological Association. In addition to my work at the University of Kansas, I also serve as a site visitor in accrediting clinical psychology programs for the American Psychological Association. For these various reasons, I would submit to you that I am qualified to comment on the training that is necessary for the independent practice of clinical psychology.

I am strongly opposed to Senate Bill # 672 because it serves to weaken the educational and training standards of persons providing psychological care to the citizens of Kansas. In fact, the proposed legislation would diminish the standards to a level that would place Kansas in the dubious position, relative to other states, of having one of the most lax set of requirements for psychologists providing independent mental health care. The bottom line is that I am concerned about the impact of this legislation on the quality of psychological mental health care that we deliver to the citizens of Kansas.

Since the establishment of clinical psychology as a profession, the minimum entry level education required for the independent practice of psychological assessment and psychotherapy has been a Ph.D. degree (including an internship), as well as one or two years of post-Ph.D. supervised experience (by a licensed clinical psychologist). This sequence involves four years of graduate education, one year of internship, and a subsequent one or two years of supervised work. Furthermore, such training occurs in the context of a full-fledged training program that is constantly monitored and evaluated by the American Psychological Association. It is the position of the American Psychological Association that the aforementioned amount and quality of training is the minimum that is acceptable for a person who is rendering psychological services to people. In Kansas, however, the present proposed legislation would allow persons with approximately one-third of the aforementioned amount of training to practice independently as a masters

level psychologist; moreover, the proposed grandfather clause would even go so far as to waive any graduate degree training requirements until December 31, 1988. Obviously, the proposed legislation would result in our state having standards that are much lower than those employed by other states and the American Psychological Association.

Are the American Psychological Association and the other states applying standards that we do not wish to uphold for the citizens of our state? I think not. Perhaps an example may illustrate my concern. If you were physically ill and needed surgery, would you place your health in the hands of a person who had not undergone a lengthy education at an approved medical school, and had also not undertaken carefully supervised internship and post - medical school training? Would it be acceptable to for you to have surgery from a person who had had some medical school courses, or a person that had been working in settings with the physically ill ? The answer is no. The assessment and treatment of psychological problems are no less serious that physical illness, and the sheer amount and quality of necessary training is comparable for psychology and medicine.

In the Clinical Psychology Program at Kansas, we have not allowed some students to continue beyond their masters' degree because we did not believe that they had the necessary intellectual and interpersonal talents to independently conduct psychological assessments and psychotherapy. This is also the reason that the faculty in the approximately 175 other American Psychological Association-approved programs throughout the United States have stopped students from going beyond the masters level. This has been done because the faculty knew that the various states required by law that the masters level person would be supervised by a more competent and fully-trained person. The proposed legislation raises the obvious possibility that Kansas may become a haven for attracting a number of such masters level persons who have been judged by their graduate programs as not being qualified to independently perform psychological assessments and psychotherapy. If the undergirding motivation for the presently proposed legislation is to give our citizens more "psychologists", we may be doing this at the expense of unleashing potentially large numbers of inadequately trained, incompetent people on those same citizens.

In closing, I would ask you a simple question. Suppose a loved one of yours were undergoing psychological difficulties. And suppose that you knew that the appropriate national organization and the laws of other states had set minimum standards regarding psychologists who deliver services. Would you want to take your loved one to a professional in your state who had not met these minimum standards of training and supervised experience ?

JOHN PREBLE, *Chairperson*
MARY ANN GABEL, *Executive Secretary*



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BEHAVIORAL SCIENCES REGULATORY BOARD

TESTIMONY PRESENTED TO THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
ON S.B. 672
March 1, 1988

MR. CHAIRMAN AND COMMITTEE MEMBERS:

I am John Preble, Chairman of the Behavioral Sciences Regulatory Board, appearing before you today to express the board's concerns regarding S.B. 672, an Act concerning registered masters level psychologists.

During the 1987 Session, S.B. 288 provided for the registration of master level psychologists under the jurisdiction of the Behavioral Sciences Regulatory Board. Since the enactment of that legislation, the board has worked toward this end by appointing an advisory committee. The committee has met for the past five months with board staff members to draft rules and regulations and application materials, and to formulate processing procedures. The board staff has collected names and addresses of 328 persons who have expressed their intention to register as master level psychologists and will be able to mail application materials as soon as the rules and regulations are in place. The board is now in the final phase of adopting the rules and regulations so that these can be filed with the Department of Administration, which will begin the legislative approval process.

Having provided you with information on the work of the board and the advisory committee to date and the status of registration, I now wish to express the board's concerns regarding S.B. 672.

Section 1 significantly expands the employment settings in which registered master level psychologists shall have the right to practice. The board's current budget and proposed FY'89 budget are based on an estimated 300 registered persons. This estimate was obtained from the proponents of S.B. 288 which represented the number of persons who would qualify for registration on the basis of both education and employment as defined in S.B. 288.

Section 2(b) amends the educational requirements by changing a master's degree in clinical psychology to that of a graduate degree or a graduate degree "primarily psychological in nature." The absence of an accrediting body for master degree psychology programs presents the board with problems in determining equivalency between programs. In Kansas alone, graduate psychology programs vary from 30 hours to 60 hours.

Section 2(c) both in current statute and as amended defers determination of eligibility for registration to a nongovernmental entity; namely, to the professional standards committee of the Association of Community Mental Health Centers of Kansas who bears none of the liability for unethical behavior or malpractice of persons registered under the board's jurisdiction. The liability for registering incompetent or unethical practitioners rests with the board. It would appear that the deferral to this outside entity places the board in a precarious position. This concern will be further explained by the Attorney General's Office.

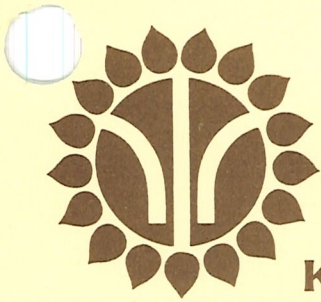
Section 3(b) amends the issuance of a temporary permit from six months to 12 months with the provision that it may be renewed for an additional 12 months. Section 1 is amended to remove the requirement that registered persons, "practice only under the direction of a person licensed to provide mental health services as an independent practitioner and whose license allows for the diagnosis and treatment of psychological disorders." Amendments to both these sections now permit persons with a temporary permit to practice without any restriction or requirement for direction for 12-24 months.

In conclusion I want to express the board's concern with the number and nature of the amendments midstream in the board's work toward meeting the legislative mandate for registration of this group of practitioners. The board would pose to this committee the following questions concerning S.B. 672:

1. How many additional applicants will now seek registration and will the board's current and proposed FY'89 budget and staff be able to support these additional persons?
2. What does primarily psychological in nature mean?
3. With the inclusion of "primarily psychological in nature", will not the board now be faced with additional ambiguities for which it is responsible to interpret?
4. The proposal is made to issue temporary permits to persons for 12-24 months and the requirement for direction is removed in Section 3(b). Since these persons will not have demonstrated minimal competency pursuant to completion of requirements for registration, how then is the public protected?

The board has the ability to carry out the charge of registering these practitioners under K.S.A. 1987 Supp. 74-5365 and requests that the committee consider amending Sec. 2(c) to address the concern of unconstitutional delegation of authority to a nongovernmental entity.

Thank you for allowing me to appear before you today. Either I or the board's Executive Secretary will be happy to answer any questions.



KANSAS PSYCHOLOGICAL ASSOCIATION

March 1, 1988

Mr. Chairman, members of the committee, I am Dr. David Rodeheffer. I am appearing before you today representing the Kansas Psychological Association, it's Board of Governors and it's president, Dr. Mary Cerney in regard to Senate Bill 672. As I am sure many of you are painfully aware, the issues involved in this legislation and the relevant statutes have been difficult and protracted ones for the legislature. The legislation that was passed just last year to deal with the Master Level Psychologist was the result of many years of at times heated debate. Once again you are being asked to address these issues; however, we believe this time needlessly and prematurely. We believe that the legislation that was drafted last year has not had ample opportunity to be implemented to determine what if any problems may arise. The Behavioral Science Board has not drafted the accompanying rules and regulations that will allow its implementation; there is simply no basis at this point to determine what if any problems will exist.

Beyond this concern, we believe that the proposed changes in this bill would eliminate virtually every provision that was put in the bill to ensure public safety from harm due to inadequately prepared professionals. It removes completely the requirement that the RMLP practice under the direction of an independent provider of mental health services (lines 40 - 41). It significantly weakens the educational requirements of the RMLP with respect to the focus of training needing to specifically be in the area of psychology and with respect to the amount of education required (lines 61, and 65-66). It removes the requirements that the post-graduate training supervision be under

the direction of a licensed psychologist (line 78). It removes a number of protections with respect to the grandfathering stipulations including the elimination of the need for a graduate degree (lines 98-99), the requirement that the prospective RMLP must have been practicing under the auspices of a state agency or community mental health center (lines 114-115) and in some cases circumvents the authority of the Behavioral Science Board by delegating governmental authority, to determine if a prospective RMLP meets educational standards for grandfathering, to a nongovernmental body, the Association of Community Mental Health Centers of Kansas (lines 119-122). It unnecessarily includes a provision for confidential privileges since the RMLP is covered in the statutes by the confidentiality privileges of the institutions in which they are employed (New Sec. 6).

In sum, we believe that this is not only needless legislation, but dangerous legislation with respect to seriously weakening the provisions in the Kansas statutes to help protect the public from possible harm. We urge you to defeat this bill.

Mr. Chairman, members of the committee, on behalf of the Kansas Psychological Association, thank you for your consideration of my testimony. I would be happy to answer any questions at this time or you can contact me through our association's central office (913-267-7435).



STATE OF KANSAS

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SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

Testimony on Senate Bill No. 672

Offered by Rita L. Noll
Assistant Attorney General
March 1, 1988

Mr. Chairman and Committee Members:

I am Rita Noll, an Assistant Attorney General. As part of my duties as an Assistant, I serve as legal counsel to the Behavioral Sciences Regulatory Board. However, I appear before you today not in that capacity, but on behalf of the Attorney General.

The office of the Attorney General is neither a proponent or opponent of Senate Bill No. 672. However, we wish to express our concern regarding language contained in the Registered Masters Level Psychologist's Act. K.S.A. 1987 Supp. 74-5363(c) is the "grandfathering" provision of the Act. In pertinent part, it provides that a person is not required to meet the educational or degree and supervision requirements to

become registered as an RMLP if the person has a graduate degree and "was recognized as a masters level psychologists by the professional standards committee of the association of community mental health centers of Kansas. . . ."

Senate Bill 672 amends K.S.A. 1987 Supp. 74-5363 on pages three and four, lines 0095 through 0122. Among the changes that are made, the graduate degree requirement is dropped. A person may obtain registration by grandfathering if the person "was recognized by the professional standards committee of the association of community mental health centers of Kansas as having completed a graduate curriculum equivalent to that taken by a masters level psychologist."

The Attorney General wishes to raise a concern to the Committee that the language cited above in the current statute and in S.B. 672 may be an unconstitutional delegation of legislative authority. The Kansas Supreme Court in Gumbhir v. Kansas State Board of Pharmacy, 228 Kan. 579 (1980), copy attached, held as unconstitutional a statute which required applicants for registration under the pharmacy act to have an undergraduate degree from a school accredited by the American Council on Pharmaceutical Education. The Court ruled:

"The provision in K.S.A. 1979 Supp. 65-1631(a) which restricts approval of the necessary educational qualifications for examination and registration of pharmacists in this state to those individuals who have graduated from schools of pharmacy accredited by the American Council on Pharmaceutical Education, a nongovernmental agency, is constitutionally impermissible. The Kansas State Board of Pharmacy, which has been given general authority to register pharmacists, if bound by said provision, would not have the ultimate authority. That authority would be in ACOPE, a nongovernmental association which makes its own standards for accrediting those schools whose graduates may become registered pharmacists in Kansas.

The provision of the statute referred to above constitutes an unlawful delegation of legislative authority to a nongovernmental association and is constitutionally impermissible under Article 2, Section 1 of the Constitution of the State of Kansas." 228 Kan. at 587.

In like manner, the Association of Community Mental Health Centers is a nongovernmental agency which has been delegated authority to determine which persons may be registered in this state as RMLPs without having to meet the educational or degree and supervision requirements. The present situation is different from the Gumbhir case only in that K.S.A. 1987 Supp. 74-5363(c) concerns registration by grandfathering. However, the effect of the language is the same: a nongovernmental entity is determining qualifications for recognition by the state. The Behavioral Sciences Regulatory Board has been given authority to register RMLPs, however,

this provision takes away such authority and gives it to a nongovernmental agency. While the Association is to establish the standards to obtain registration, it has no responsibility for the conduct of the persons licensed under the laws of this state.

Thank you for allowing me to appear before you today. I would be happy to answer any questions you may have.

Shoemake with aggravated robbery of Michael Jones, must be set aside.

The defendant's final assignment of error is that the prosecuting attorney made improper and prejudicial statements during his closing argument. The trial court instructed the jury that the burden of proof was upon the State to prove each of the elements of each count beyond a reasonable doubt. In his closing argument, the prosecutor suggested to the jury that, if the jury should find Shoemake guilty to a reasonable certainty, that would be sufficient. In *State v. Winston*, 214 Kan. 525, 530, 520 P.2d 1204 (1974), this court held that an instruction defining reasonable doubt as "beyond a moral certainty sufficient to satisfy the reason" had no prejudicial effect upon defendant's substantive rights and was not reversible error. In this case, the trial court properly instructed the jury and we cannot say the prosecutor's statements exceeded the limits of fairness or were outside the considerable latitude allowed the prosecutor in arguing his case to the jury. *State v. Robinson*, 219 Kan. 218, 221, 547 P.2d 335 (1976).

For the reasons set forth above, the judgment of the district court is reversed as to the defendant's conviction on Count V charging aggravated robbery of Michael Jones. That conviction is set aside and the defendant is discharged therefrom. In all other respects, the judgment of the district court is affirmed.

No. 51,935

ASHOK K. GUMBHIR, *Appellant*, v. KANSAS STATE BOARD OF PHARMACY, *Appellee*.

(618 P.2d 837)

SYLLABUS BY THE COURT

1. LEGISLATURE—*Constitutional Mandate*. Under Article 2, Section 1 of the Constitution of the State of Kansas the legislative power of this state shall be vested in a house of representatives and senate.
2. KANSAS CONSTITUTION—*Legislation—Delegation of Power*. An unlawful delegation of legislative power is contrary to the public policy expressed in the Constitution.
3. LEGISLATURE—*Authority—Delegation of Authority to State Agencies*. The legislature may enact general provisions for regulation and grant to *state agencies* certain discretion in filling in the details, provided it fixes reasonable and definite standards to govern the exercise of such authority.
4. SAME—*Authority—Delegation of Authority to Nongovernmental Agencies Prohibited*. The legislative power of this state is vested in the legislature and the legislature is prohibited from delegating legislative powers to *nongovernmental associations or groups*.
5. PUBLIC HEALTH—*Pharmacists—Educational Qualifications—Restrictions in Statute Unconstitutional*. The provision in K.S.A. 1979 Supp. 65-1631(a) which restricts approval of the necessary educational qualifications for examination and registration of pharmacists in this state to those individuals who have graduated from schools of pharmacy accredited by the American Council on Pharmaceutical Education, a nongovernmental agency, is constitutionally impermissible.
6. SAME—*Pharmacists—Legislative Delegation of Authority to Regulate Granted to Nongovernmental Agency—Statute Unconstitutional*. The provision of the statute referred to above constitutes an unlawful delegation of legislative authority to a nongovernmental association and is constitutionally impermissible under Article 2, Section 1 of the Constitution of the State of Kansas.
7. STATUTES—*Constitutionality—Legislative Intent to Retain Act Even if Portion Later Declared Unconstitutional*. A legislative intention to uphold and retain a part of a legislative act, if a portion thereof is held to be unconstitutional and void, should be upheld when it appears the remaining portion of the act would have been enacted had such unconstitutional or invalid provisions not been included.

Appeal from Johnson district court, division No. 1, HERBERT W. WALTON, judge. Opinion filed November 1, 1980. Reversed and remanded with directions.

J. Nick Badgerow, of McAnany, Van Cleave & Phillips, P.A., of Kansas City, argued the cause and was on the brief for the appellant.

Robert E. Davis, of Davis, Davis, McGuire & Thompson, Chartered, of Leavenworth, argued the cause, and *John F. Thompson*, of the same firm, was with him on the brief for the appellee.

The opinion of the court was delivered by

FROMME I: This is an appeal from an order of a district court

upholding the action of the Kansas State Board of Pharmacy (the Board) in refusing to permit Ashok K. Gumbhir either to take the examination for registration as a pharmacist or to be admitted by reciprocity. The claim of Mr. Gumbhir is that a certain provision in the pharmacist registration statute, K.S.A. 1979 Supp. 65-1631, is constitutionally impermissible. The Board interprets the statute so as to permit no one to take the examination for registration as a pharmacist or to be admitted by reciprocity if such person does not have an undergraduate degree from a school in the United States accredited by the American Council on Pharmaceutical Education (ACOPE). ACOPE is a nongovernmental agency organized exclusively for educational and other nonprofit purposes. This nongovernmental agency attempts to approve and accredit only schools of pharmacy located in the United States. No pharmacist who has obtained his or her undergraduate degree from a school outside the United States can hope to become a registered pharmacist in the State of Kansas under the Board's interpretation of this statute.

The facts leading to the present appeal were stipulated by the parties. Mr. Gumbhir manages and is part owner of a pharmacy in Overland Park, Johnson County, Kansas. He is a citizen of the United States and a resident of the State of Missouri. He graduated and received a bachelor's degree in pharmacy from Punjab University in Chandigarh, India, in 1960.

The plaintiff on coming to the United States graduated and received a master of science degree in pharmacy from the University of Minnesota in 1968. The undergraduate pharmaceutical program of the University of Minnesota is, and was at all times relevant, accredited by ACOPE and is recognized and approved by the Board, but not its graduate program.

The plaintiff graduated and received a Ph.D. degree in pharmacy administration from Ohio State University in 1971. The undergraduate program of Ohio State University is and was at all times relevant accredited by ACOPE and recognized and approved by the Board, but not its graduate program. ACOPE does not approve any graduate programs.

The plaintiff was registered as a licensed pharmacist in the State of Ohio by examination in 1970, and presently holds a license to practice pharmacy in the State of Ohio. He was regis-

tered as a pharmacist in the State of Missouri by reciprocity in 1974, and holds a license to practice pharmacy in the State of Missouri.

The plaintiff applied for registration in the State of Kansas by examination, by submitting the required application and fee in accordance with K.S.A. 1979 Supp. 65-1631(b). The plaintiff also applied for registration in Kansas by reciprocity by submitting the required application and fee in accordance with K.S.A. 1979 Supp. 65-1631(d)(g) based on prior registrations in both Ohio and Missouri.

The Board denied both applications for registration on the basis the statute, K.S.A. 1979 Supp. 65-1631, requires every applicant in Kansas to be a graduate of a college accredited by ACOPE. ACOPE accredits only undergraduate schools in the United States. Punjab University is not in the United States. Plaintiff filed this action in the district court after all administrative remedies had been exhausted and all prerequisites to the jurisdiction of that court had been fulfilled.

The statute regulating the registration of pharmacists, K.S.A. 1979 Supp. 65-1631, in pertinent part provides:

"(a) It shall be unlawful for any person to practice as a pharmacist in this state, unless such person is registered by the board as a pharmacist. *Every applicant* for examination and registration as a pharmacist *shall be* of good moral character and temperate habits, *a graduate of a school or college of pharmacy or department of a university accredited by the American council on pharmaceutical education* and recognized and approved by the board, and shall file proof satisfactory to the board, substantiated by proper affidavits, of a minimum of one year of pharmaceutical experience, acceptable to the board, under the supervision of a registered pharmacist and shall pass an examination by the board. Pharmaceutical experience as required in this section shall be under the supervision of a registered pharmacist and shall be predominantly related to the dispensing of prescription medication, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under the state and federal statutes." Emphasis supplied.

The portions of the statute which relate to applications for registration on both examination and on reciprocity require, as a condition precedent to taking the examination or to receiving registration by reciprocity, that the applicant have the required education prescribed in subsection (a), *i.e.*, graduation from a school or pharmacy accredited by ACOPE.

The primary attack launched against the constitutionality of this statute is based upon the claim that 65-1631(a) of the Kansas

Pharmacy Act constitutes an unlawful delegation of legislative authority to a nongovernmental agency, ACOPE, which delegation is impermissible under the Constitution of the State of Kansas.

Article 2, Section 1 of the Constitution of the State of Kansas provides:

"The legislative power of this state shall be vested in a house of representatives and senate."

This constitutional provision prevents usurpation of legislative authority by other departments of government as well as by a nongovernmental agency or a private individual. The authority to make obligatory rules and provide penalties for breach of said rules belongs to the legislature. An unlawful delegation of legislative power is contrary to the public policy expressed in the Constitution. *State v. Crawford*, 104 Kan. 141, 177 Pac. 360, 2 A.L.R. 880 (1919).

The *Crawford* case dealt with a statute which provided that all electrical wiring shall be in accordance with the national electric code. The court found the code could be changed sporadically by the National Fire Protective Association which met only occasionally, and even then might meet anywhere in North America. It was held the statute was constitutionally impermissible as amounting to an unlawful delegation of legislative power to the National Fire Protective Association, a nongovernmental association. The *Crawford* court stated:

"If the legislature desires to adopt a rule of the national electrical code as a law of this state, it should copy that rule and give it a title and an enacting clause and pass it through the senate and the house of representatives by a constitutional majority and give the governor a chance to approve or veto it, and then hand it over to the secretary of state for publication." 104 Kan. at 144.

In *Quality Oil Co. v. duPont & Co.*, 182 Kan. 488, 322 P.2d 731 (1958), the court dealt with a fair trade statute. The statute authorized a trademark owner and a retailer to agree upon a price for an article which was then to be binding between not only the parties agreeing but also any other persons who later were notified of said price. The court held this statute to be an unconstitutional delegation of legislative power, saying that the power to fix rates or prices upon all citizens is a legislative power and the legislature may not abdicate its function and delegate its legislative powers to others.

In *State, ex rel., v. Mermis*, 187 Kan. 611, 358 P.2d 936 (1961), it is pointed out that legislative authority in limited cases may be delegated to *governmental agencies* if, and only if, adequate guidelines are set out in the statute to clearly limit and define the conditions and the nature of the authority to be exercised. In *Mermis* a statute which delegated to the director of alcoholic beverage control the authority and discretion to set minimum prices of intoxicating liquors to be sold in Kansas, without providing guidelines, was held to be an unlawful delegation of legislative authority. The decision was based upon *Crawford* and *Quality Oil*.

The case of *Poe v. Menghini*, 339 F. Supp. 986 (D. Kan. 1972), dealt with delegation of authority to the Joint Commission on Accreditation of Hospitals so the commission might determine what hospitals could perform abortions. The opinion of Judge Theis contains some very appropriate language which bears upon our present case:

"This provision suffers from a second constitutional defect. The JCAH is a private, non-profit corporation with headquarters outside the State of Kansas. To this private concern the Kansas Legislature has delegated the power to promulgate standards binding on Kansas hospitals, at least if therapeutic abortions are to be performed in their facilities. In the event an unaccredited hospital, such as the Douglass Hospital, lends its facilities to the performance of therapeutic abortions, it may be subject to criminal prosecution. Many years ago, the Kansas Supreme Court defined the following limitation on the legislative power:

"The legislature cannot delegate to private individuals and private associations the power to make obligatory rules concerning the management and care of property, nor can it provide that the breach of such rules shall be a penal offense. *Kansas v. Crawford*, 104 Kan. 141, 177 P. 360 (1919)."

"This rule is compatible with present federal constitutional law. *Carter v. Carter Coal Co.*, 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160 (1935). In this case, the Kansas Legislature has acted in apparent disregard of this constitutional limitation on their powers of delegation. And particularly since the result of this delegation has been the infringement of a fundamental right, the delegation violates the Due Process Clause of the Fourteenth Amendment." 339 F. Supp. at 994, 995.

In *State, ex rel., v. Gleason*, 148 Kan. 1, 79 P.2d 911 (1938), a question was raised as to the constitutionality of a provision of the Osteopathic Practice Act of Kansas. The act provided that educational requirements for an osteopath applying for examination and registration should include graduation from an osteopathic school or college of good repute. The definition of such college was contained in the statute and required it to be a college in which the requirements for graduation "shall be in no partic-

ular less than those prescribed by the American Osteopathic Association." See G.S. 1935, 65-1202. The court in *Gleason* held there was no unlawful delegation of legislative authority. The standards of the American Osteopathic Association mentioned in the statute were merely used as a guideline or standard to be used by the state board and the delegation of authority was to the state board, not to the American Osteopathic Association.

In *Sutherland v. Ferguson*, 194 Kan. 35, 397 P.2d 335 (1964), the healing arts statute came under constitutional attack by the chiropractors who claimed it failed to lay down guidelines and standards. G.S. 1961 Supp. 65-2825 required the board to prepare and keep up to date a list of accredited healing arts schools. The accreditation was placed in the hands of the State Board of Healing Arts. There was no claim that the board abdicated its accreditation responsibilities to some other nongovernmental association or group. G.S. 1961 Supp. 65-2876 defined an accredited school of chiropractic to "be a legally incorporated school teaching chiropractic which the board shall determine to have a standard not below that of the national college of chiropractic of Chicago" and all such schools had to be approved first by the board before a graduate could take the examination. Again this court held there was no impermissible delegation of legislative power. The National College of Chiropractic of Chicago was merely used as a guide or standard to be followed by the state board.

The appellant, Mr. Gumbhir, cites additional cases from other states in which the courts have examined similar statutes. In those cases the legislatures have delegated some discretion and authority to state boards. The cases follow the general trend of the Kansas cases. Several cases rely on our early case of *State v. Crawford*, 104 Kan. 141. After reviewing these cases it appears the legislature may enact general provisions for regulation and grant to *state agencies* certain discretion in filling in the details, provided it fixes reasonable and definite standards to govern the exercise of such authority. *State, ex rel., v. Urban Renewal Agency of Kansas City*, 179 Kan. 435, 440, 296 P.2d 656 (1956); *State ex rel. Schneider v. City of Topeka*, 227 Kan. 115, 125, 605 P.2d 556 (1980).

However, a strict rule is applied when the delegation of authority to some outside, nongovernmental agency is attempted.

The legislative power of this state is vested in the legislature and the legislature is prohibited from delegating legislative powers to *nongovernmental associations or groups*. *State v. Crawford*, 104 Kan. 141; see also *Coffman v. State Bd. of Examiners*, 331 Mich. 582, 50 N.W.2d 322 (1951); *Murtha v. Monaghan*, 7 Misc. 2d 568, 169 N.Y.S.2d 137, *aff'd* 5 App. Div. 2d 695, 169 N.Y.S.2d 1010 (1957); *Gold v. S. C. Bd. of Chiropractic Exam.*, 271 S.C. 74, 245 S.E.2d 117 (1978).

The Board does not attempt to distinguish the cases relied on by Mr. Gumbhir, except for the *Poe* case. The Board cites and relies on a myriad of cases from other jurisdictions in which the courts have quite uniformly rejected the unlawful delegation argument in cases where the admission of lawyers to practice law may have been limited to those graduating from law schools accredited by the American Bar Association. However, the cases relate to limitations imposed by the courts, not by the legislatures. Some of these states have requirements similar to that of Kansas for the basic qualifications for applicants for admission to practice. Rule 704 of the Rules of the Supreme Court provides:

"[E]ach applicant shall satisfy the Admissions Board that he has completed a full course of study in both an accredited college and an accredited law school and that he has been granted and holds a baccalaureate degree and a Bachelor of Laws or Juris Doctor degree or their equivalent or higher degrees. . . . The standard for determining sufficiency of any educational requirement, or of courses of study leading to the granting of degrees above mentioned, shall be that fixed and recognized by the University of Kansas." 225 Kan. cxi, cxli.

Therefore in Kansas, what is an accredited college or law school depends on a standard, the University of Kansas, and the final determination as to required educational requirements is left to the board of admissions, which is an arm of the court. The cases involving the admission of attorneys are not too persuasive on the question of unlawful delegation of legislative authority, for the licensing and the control of attorneys are not based upon legislative authority. The licensing and control of attorneys, traditionally, has been recognized and exercised as an inherent power of the courts in the administration of justice. The judicial article of the Constitution of the State of Kansas, Article 3, Section 1, places the judicial power of this state in one court of justice; and the Supreme Court is given administrative authority over all courts in this state. The inherent power of the Supreme Court in licensing and controlling attorneys was recognized by

the legislature in K.S.A. 7-103 where it is stated this court may make such rules as it may deem necessary for the examination of applicants for admission to the bar of this state and for discipline and disbarment of attorneys.

Many of the cases relating to the licensing requirements for attorneys are in states which follow similar rules to those adopted in Kansas. In Kansas a certain educational standard is set forth as a guideline for use by the board of admissions. This would not be an unlawful or unreasonable delegation when it is placed in the hands of a board appointed by the court which has and retains the primary authority.

By way of comparison of the educational qualifications required of applicants for registration and certification as a pharmacist and those requirements for licensing by the Board of Healing Arts, we note that the statute, K.S.A. 1979 Supp. 65-2865, authorizes the Board of Healing Arts to promulgate all necessary regulations to be filed with the revisor of statutes. The rules and regulations adopted by the board which have the effect of law include K.A.R. 1980 Supp. 100-6-2. This regulation requires an applicant for license to be "[a] graduate of an approved healing arts school or college" and:

"(A) A doctor of medicine and surgery shall present proof to the board that he or she has completed a postgraduate training or residency training program of not less than one (1) year's duration approved by the council of education of the American medical association or its equivalent in the year in which he or she took such training or present proof that he or she has completed two (2) year's employment under a fellowship license." Emphasis supplied.

We note a standard is used of the council of education of the American medical association or its equivalent. K.A.R. 100-6-3 provides:

"The board shall prepare and keep up-to-date a list of accredited healing arts schools but no school shall be approved without the formal action of the board."

K.A.R. 1980 Supp. 100-6-5 covers applications of foreign graduates for examination and requires proof that the foreign school or college from which the applicant graduated meets the requirements set out in K.S.A. 65-2874 as follows:

"An accredited school of medicine for the purpose of this act shall be a school or college which requires the study of medicine and surgery in all of its branches, which the board shall determine to have a standard of education not below that of the university of Kansas school of medicine. All such schools shall be approved by the board."

Again we note a standard of education is set of not below that of the University of Kansas School of Medicine. The authority to approve the educational qualifications remains with the board.

Now, where does this lead us so far as K.S.A. 1979 Supp. 65-1631(a) is concerned? The statute which regulates registration of pharmacists requires every applicant for examination to be a graduate of a school or college of pharmacy "accredited by the American council on pharmaceutical education and recognized and approved by the board." The wording of this statute and the interpretation placed upon this provision by the Pharmacy Board has the effect of delegating to ACOPE through its accreditation process the standards of education required before registration is permitted. ACOPE is not a governmental agency. It is a private nonprofit association having full control over its own accreditation requirements. The arbitrary and unreasonable nature of its action in its accreditation process is apparent in this case. No foreign schools receive ACOPE accreditation. No graduate schools either in or out of the United States are accredited.

The provision in K.S.A. 1979 Supp. 65-1631(a) which restricts approval of the necessary educational qualifications for examination and registration of pharmacists in this state to those individuals who have graduated from schools of pharmacy accredited by the American Council on Pharmaceutical Education, a nongovernmental agency, is constitutionally impermissible. The Kansas State Board of Pharmacy, which has been given general authority to register pharmacists, if bound by said provision, would not have the ultimate authority. That authority would be in ACOPE, a nongovernmental association which makes its own standards for accrediting those schools whose graduates may become registered pharmacists in Kansas.

The provision of the statute referred to above constitutes an unlawful delegation of legislative authority to a nongovernmental association and is constitutionally impermissible under Article 2, Section 1 of the Constitution of the State of Kansas.

The closing provision of the State Pharmacy Act, K.S.A. 1979 Supp. 65-1649, provides:

"If any clause, sentence, paragraph, section or part of the pharmacy act of the state of Kansas or the application thereof to any person or circumstances shall for any reason be adjudged by any court of competent jurisdiction to be unconstitu-

Gumbhir v. Kansas State Board of Pharmacy

tional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence or paragraph, section or part thereof involved in the controversy, in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that such act would have been enacted had such unconstitutional or invalid provisions not been included."

A legislative intention to uphold and retain a part of a legislative act if a portion thereof is held to be unconstitutional and void should be upheld when it appears the remaining portion of the act would have been enacted had such unconstitutional or invalid provisions not been included. *State v. Next Door Cinema Corp.*, 225 Kan. 112, Syl. ¶ 8, 587 P.2d 326 (1978); *State, ex rel., v. City of Overland Park*, 215 Kan. 700, 711, 527 P.2d 1340 (1974). Such an intention is clearly expressed. The phrase which is constitutionally impermissible as an unlawful delegation of legislative power in K.S.A. 1979 Supp. 65-1631 is "accredited by the American council on pharmaceutical education and." By striking this phrase the balance of the statute appears proper. The removal of said portion would not appear to affect, impair, or invalidate the remainder thereof. The valid portion of the statute remaining can then be read and applied as follows:

"Every applicant for examination and registration as a pharmacist shall be of good moral character and temperate habits, a graduate of a school or college of pharmacy or department of a university . . . recognized and approved by the board, and shall file proof satisfactory to the board, substantiated by proper affidavits, of a minimum of one year of pharmaceutical experience . . ."

Having decided this portion of the statute is constitutionally impermissible because it unlawfully delegates legislative authority to a nongovernmental agency, it is not necessary for us to examine the other constitutional questions and issues raised by appellant concerning the refusal of the Board to permit examination and registration. Such questions and issues are raised merely as additional grounds for reversing the decision of the district court and of the Board.

We reverse the judgment of the district court and set aside the order of the Kansas Board of Pharmacy denying Ashok K. Gumbhir's application to take the examination for registration as a pharmacist, and denying his application to be admitted by reciprocity. The Kansas Board of Pharmacy is directed to reconsider these applications in accordance with what has been said in the foregoing opinion.

Texaco, Inc. v. Fox

No. 51,943

TEXACO, INC., a corporation, WILLIAM S. POST, WALTER I. POST, ETTA BEATRICE GEIMAN, FANNIE WOOD, CELIA IVERS WHELIHAN, ELSIE G. POST, JERRY L. POST, LARRY J. POST, and MARJORIE GEARHISER, *Appellants*, v. WENDELL B. FOX and MILDRED V. FOX, husband and wife, *Appellees*.

(618 P.2d 844)

SYLLABUS BY THE COURT

1. OIL AND GAS—"Paying Quantities" and "Commercial Quantities" Synonymous Terms in Lease. In an oil and gas lease, the term "paying quantities" as used in the habendum clause is synonymous with the term "commercial quantities" found in the "thereafter" clause of a mineral reservation in a real estate deed.
2. SAME—Production of Lease in Paying Quantities—Assessment of Costs—Depreciation. In determining production in paying quantities, the initial cost of drilling and equipping the well is eliminated from consideration. Only direct costs are taken into account, such as those enumerated in *Reese Enterprises, Inc. v. Lawson*, 220 Kan. 300, Syl. ¶ 3, 553 P.2d 885 (1976). Depreciation on the original investment is not included in determining whether there is production in paying quantities.
3. SAME—Production of Lease in Paying Quantities—Accounting Period—"Reasonable Time" Construed. In determining whether an oil and gas lease is producing in paying quantities, the proper accounting period is to be a reasonable time, depending upon the circumstances of each case, taking into consideration sufficient time to reflect the current production status of the lease and thus provide the information which a prudent operator would take into account in whether to continue or to abandon the operation.
4. SAME—Lease and Mineral Reservation—Full Force and Effect. In a civil case the record is examined and it is held: the mineral reservation and appellant's oil and gas lease remain in full force and effect.

Appeal from Meade district court, JAY DON REYNOLDS, judge. Opinion filed November 1, 1980. Reversed.

Jack M. Short, of Tulsa, Oklahoma, argued the cause and was on the brief for the appellant Texaco, Inc., and Gerald C. Golden, of Meade, argued the cause and was on the brief for the appellants, William S. Post, Walter I. Post, Etta Beatrice Geiman, Fannie Wood, Celia Ivers Whelihan, Elsie G. Post, Jerry L. Post, Larry J. Post, and Marjorie Gearhiser.

Harold K. Greenleaf, Jr., of Smith, Greenleaf & Brooks, of Liberal, argued the cause and David J. Wilson, of Wilson, Beard & Good, of Meade, was with him on the brief for the appellees.

The opinion of the court was delivered by

HERD, J.: Texaco, Inc. et al. brought a declaratory action against Wendell B. and Mildred V. Fox seeking a declaratory judgment declaring its oil and gas lease to be in full force and effect and

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Kansas Psychiatric Society

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March 1, 1988

TO: Senate Public Health and Welfare Committee
FROM: Kansas Psychiatric Society
SUBJECT: Senate Bill 672, As Introduced

The Kansas Psychiatric Society is concerned that certain provisions of Senate Bill 672, if enacted, would repeal the requirement that registered masters level psychologists (RMLPs) practice under direction. We believe that it is extremely important that the diagnosis and treatment of mental illness or psychological disorders involve the expertise of a licensee who has more extensive academic training and clinical experience. This is necessary to assure that patients receive the standard of quality health care that citizens of Kansas deserve.

The deleted language in Section 1 is an attempt to solve a problem that arises from Attorney General's opinion 87-184. A copy of the synopsis is attached. This opinion concludes that because the RMLP statute refers to diagnosis and treatment of psychological disorders, that physicians are not eligible to supervise RMLPs. This conclusion reflects the assumption that psychological disorders do not fall within the realm of mental illness. We respectfully submit that while the Attorney General's opinion may be an accurate analysis of the letter of the law, it is not an accurate reflection of legislative intent.

We sincerely appreciate the sponsor's attempt to correct this discrepancy but we believe there is a better way of accomplishing the same objective. That is by restoring the stricken language in lines 40-44 and inserting "a person licensed to practice medicine and surgery or" in line 41 after the word "of."

We would also request that the Committee proceed with caution in reviewing other amendments to current law proposed in SB 672. Please keep in mind that the condition of people who suffer from mental illness is very fragile. Any erosion of quality of health care provided could have an extremely adverse effect.

Thank you for considering our concerns.

CW:nb



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 21, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 87- 184

Ms. Mary Ann Gabel
Executive Secretary
Behavioral Sciences Regulatory Board
Landon State Office Building
900 Jackson - Room 855
Topeka, Kansas 66612

Re: State Boards, Commissions and Authorities --
Certification of Psychologists -- Registration of
Masters Level Psychologists; Limitation of Practice

Synopsis: Persons who may supervise registered masters level
psychologists (RMLPs) must meet two
requirements: (1) They must be licensed to
provide mental health services and (2) their
licensure must allow them to diagnose and treat
psychological disorders. It is our opinion that
licensed psychologists meet these requirements,
but social workers and psychiatrists do not. Cited
herein: K.S.A. 65-2802; 65-2803; 65-2869; 65-2872;
K.S.A. 1986 Supp. 74-5302; 74-5310; K.S.A.
74-5311; 74-5340; 74-5344, as amended by L. 1987,
ch. 306, §12; 75-5347; K.S.A. 1986 Supp.
75-5353; K.A.R. 102-1-1; K.A.R. 1986 Supp.
102-1-12; K.A.R. 102-2-1a; K.A.R. 102-2-8, as
amended May 1, 1987.

*

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Dear Ms. Gabel: