

Approved 4-6-88
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 28, 1988 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, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Richard J. Morrissey, Director, Bureau of Adult and Child Care
Tom Bell, Kansas Hospital Association
Steve Menke, President, Central Kansas Medical Center, Great Bend
Representative Frank Buehler
Dr. Richard Parker, Director, Bureau of Epidemiology, KDHE
Juanita Carlson, American Civil Liberties Union
Brenda Braden, Deputy Attorney General
Jim Clark, Association of County and District Attorneys
Jim Snyder, Executive Director, Kansas Funeral Directors Association
Larry McElwain, Chairman, Legislative Committee, Kansas Funeral Directors Association

Richard Morrissey, KDHE, appeared in support of HB-3035. Mr. Morrissey stated the KDHE supported passage of HB-3035 as amended by the House Public Health and Welfare Committee stating it is important to allow hospital mergers with reasonable limitations. The mergers would concern a number of separate establishments and their geographic location with respect to one another. Without any limitations, however, the traditional concept of a community hospital licensed and available to provide essential services may be substantially changed. Attachment 1

Tom Bell stated that Kansas Hospital Association supported HB-3035. Mr. Bell introduced Steve Menke.

Steve Menke, Great Bend, appeared before the committee stating that rural hospitals are faced with tremendous problems, both financially and with staffing. This bill would allow consolidation of overhead and enable them to be financially viable for the future. Accessibility is a major concern in rural areas. Attachment 2

Senator Kerr made a motion to recommend HB-3035 favorable for passage and request it be placed on the consent calendar. Senator Bond seconded the motion and the motion carried.

Representative Frank Buehler appeared in support of his bill, HB-2659. Representative Buehler stated he is a member of a Task Force for Health Care, Conference of Midwest Legislators which met a number of times on AIDS. Several legislators agreed to introduce legislation concerning AIDS in their respective states and HB-2659 is such a bill. Representative Buehler further stated the bill was to cover 4 items. 1) To mandate testing of anyone who is convicted of a sex crime. 2) Provide counseling and testing to a victim of a sex crime. 3) A strong section on confidentiality. 4) Reports to be made to the appropriate people. It was further stated the exchange of body fluids was added to the bill.

Richard Parker appeared before the committee stating he had just completed testifying before the House on SB-686 and stated that his department was assuming a neutral position on HB-2659.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S Statehouse, at 10:00 a.m./p.m. on March 28, 1988

Juanita Carlson appeared in opposition to HB-2659 stating the bill is an infringement of a protected constitutional right against search and seizure without probable cause. It was further stated this bill goes against recommendations of the Governor's Task Force on Aids and is of little use in promoting good public health standards. Attachment 3

Brenda Braden testified to the committee on HB-2659 stating the Attorney General's office felt it unnecessary to wait until a person is convicted of a sex offense before the person may be tested for AIDS. It was further stated that under current law, a prosecutor may obtain a search warrant to obtain blood samples from a suspect for evidentiary purposes. "The individual's interest in privacy and security are weighed against society's interest in conducting the procedure." Ms. Braden offered a proposed amendment to HB-2659. Attachment 4

Senator Hayden made a motion to accept the amendment presented by the Attorney General's office. Senator Reilly seconded the motion. Discussion followed with Senator Bond pointing out a number of difficulties with HB-2659. The motion was lost.

Jim Clark spoke stating that his organization supported the type of legislation dealt with in HB-2659. However, Mr. Clark stated concern over the search warrant issue and felt the other AIDS bills were needed and was reluctant to see another one added to further confuse the issue.

Jim Snyder, Executive Director, Kansas Funeral Association, appeared in support of HB-2980 and introduce Larry McElwain to the committee.

Mr. McElwain is the chairman of the legislative committee for the Funeral Directors Association. Mr. McElwain spoke in support of HB-2980 stating his organization was concerned with the liability of storing and retaining human remains left in their care for long periods of time. He further stated there is an increasing percentage of people opting for cremation which, along with the ever increasing mobile society, would continue to magnify the problem. Mr. McElwain stated they had no objections to the the House amendments. Attachment 5

Senator Bond moved to pass out favorable HB-2980 and request it be placed on the consent calendar. Senator Mulich seconded the motion. The motion carried.

Jim Snyder appeared in support of HB-2978 and to introduce Larry McElwain.

Mr. Larry McElwain spoke in support of HB-2978 stating that SB-686 contained protection for those dealing with AIDS victims but did not protect or require notification of other communicable diseases. This bill would provide protection from such diseases as Hepatitis B, Tuberculosis and others. Mr. McElwain suggested the committee might want to add a new subsection (f) which would correspond with language appearing in SB-686 and is shown in Attachment 6.

Senator Bond suggested changing Section 9 in SB-686 to include other contagious diseases. Mr. McElwain stated that they were basically concerned about the need of protection and information. Since SB-686 exempts the HIV virus from the contagious disease category concern was expressed about combining the two bills.

The meeting adjourned at 11:01 a.m. and will meet Tuesday, March 29, 1988 at 10:00 a.m. in room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE March 28, 1988

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Jim Snyder - Topeka

KFDA

Barbara Snider "

Pete M. Gov. Assn.

Sam W. Elwan Lawrence

KFDA

Granita Carlson

ACLU

Bob Williams

KPhA

Jim Clark

KCDAA

Charles Carson

KLU Law School

R.L. PARKER

KDFZ

Steve Menck

Central Kansas Medical Center

Chip Wheelen : Topeka

Ks Medical Society

Robert Tabor ~~Lawrence~~
Topeka

Fed. of Blind, Kansas

LARRY HENDERSON TOPEKA

Ks. SUPREME COURT

Ken Bahr Topeka

Ks. Deaf Assn

Elizabeth Taylor Topeka

Local Health Dept

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

TESTIMONY PRESENTED TO

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

BY

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

House Bill 3035

Background

House Bill 3035 originally proposed to create a third category for hospital licensure to be called a "rural hospital." Existing categories for hospitals are "general hospital" and "special hospital." However, the bill was amended by the House Committee on Public Health and Welfare deleting reference to a new category of hospital licensure. Instead, the bill now proposes a change in KSA 65-429 authorizing the issuance of a single license for two separate establishments which are located in the same or contiguous counties and operated by a single owner or governing board.

A. Hospital Mergers

House Bill 3035 was prompted by the emerging issue of hospital mergers which is becoming more prominent every day. Hospitals see combining resources as one means of economic savings. In addition, Medicare regulations provide financial incentives for those hospitals which can qualify as rural referral centers.

Within the past six months, two different hospitals have requested a single license for merged facilities. However, it has been the policy of the Kansas Department of Health and Environment (KDHE) to issue a separate license for each facility even though the same governing authority is operating separate facilities under a common medical staff and administration.

The general licensing statute for hospitals is KSA 65-425. The statute is not extremely clear on the issue of whether or not a single license can be granted for more than one location even if the separate facilities are owned and operated by the same governing body. However, the statute at least implies that licenses are to be issued on behalf of a facility and not necessarily the governing board who operates it. Under current law, the definition of both a "general hospital" and a "special hospital" means "an establishment with an organized medical staff (emphasis added)." The implication is that each physical structure is to be licensed. In addition, KSA 65-429 states that: "Each license shall be issued only for the premises and persons . . . named in the application . . ."

B. KDHE Experience With Hospital Mergers

KDHE has already confronted the issue of hospital mergers with respect to licensing. On December 4, 1987, the department agreed to issue a single license to a governing body which operated two previously separate facilities located within several blocks of one another in the same community. In the letter announcing this decision to the governing authority, several reasons were offered for granting a single license:

1. The new health care corporation which owned both facilities had a single governing authority.
2. The operation of both facilities was directed by a single administrator.
3. The two previously separate facilities were located in the same city within eight blocks of each other.
4. The single governing authority anticipated and planned that further consolidation of services and resources between the previously separate facilities would continue after the merger.
5. It was expected that patients would receive medical care in both facilities for the treatment of a single injury or illness. Therefore, obtaining professional liability insurance was difficult under separate licenses.

Although the department agreed to issue a single license in the case of two facilities in the same community, it was aware that future cases would need to be reviewed on their own merits. There was no intent to authorize a single license for facilities located in separate communities where patients would not be routinely treated in both facilities for a single injury or illness.

Recommendations

KDHE supports passage of House Bill 3035 as amended by the House Public Health and Welfare Committee. It is important to allow hospital mergers

with reasonable limitations concerning the number of separate establishments and their geographic location with respect to one another. Without any limitations, however, the traditional concept of a community hospital licensed and available to provide essential services may be substantially changed.

Presented by: Richard J. Morrissey, Director
Bureau of Adult and Child Care
March 28, 1988

TESTIMONY

ON HOUSE BILL 3035 PRESENTED TO THE
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

My name is Steve Menke, and I'm the president of Central Kansas Medical Center in Great Bend, which also includes St. Joseph's Hospital Division in Larned. I would like to take this opportunity to thank all of you for taking time out of your busy schedules to consider House Bill No. 3035.

This afternoon we are asking you to consider a bill which would allow rural hospitals which have decided to merge to receive a single license from the state. This is important because it would allow the hospitals to consolidate their overhead and continue to be financially viable for the future.

The bill addresses a major concern of many people who live in rural areas. That issue is the accessibility to health care services. I personally have been involved in health care since 1972. I believe that the challenges for rural hospitals are greater than I have ever seen during my professional career.

Time does not allow to fully discuss every one of these challenges. However, some of the major issues include the following:

-The Federal Medicare Program is reimbursing rural hospitals approximately 20 percent less than their regional counterparts for exactly identical services. However, when that hospital has to buy supplies from national vendors, corresponding discounts are not provided.

-A second major issue challenging rural hospitals is the availability of trained personnel. We are beginning to experience a significant shortage of registered nurses. There's an acute need for physical therapists, occupational therapists, and respiratory therapists. In order to recruit these individuals, the hospitals are being forced to consider dramatic increases in salaries in an effort to entice the individuals to choose a rural setting.

-The hospitals have experienced and continue to experience physician shortages. In some cases, the lack of physicians has eliminated services, such as obstetrics, and in others, threatened the closure of the hospital.

-The malpractice insurance rates have dramatically increased for both the physicians and the hospitals. Without new sources of revenue, these costs have to be absorbed by the hospitals.

-The fifth major problem that I see for rural hospitals is the regional competition. In some cases, groups of physicians are buying the practices of doctors in outlying areas, which then influences where the patients are subsequently hospitalized.

All of these things present overwhelming challenges for the small hospitals. Almost every expert predicts that there will be major closings of hospitals in the future. In Kansas, I believe these closings will dramatically impact the rural portions of our state.

As an example to illustrate the significance of this problem, I would like for you to consider St. Joseph Memorial Hospital in Larned, Kansas. St. Joseph's Hospital is a 68 bed facility which provides a combination of hospital, chemical dependency, and long-term care services. This hospital has a debt of \$3.5 million. The past few years have been very difficult for the hospital. In 1985, the hospital lost \$150,000. In 1986, it lost \$388,000. In 1987, they lost approximately \$100,000.

Last summer, the hospital realized that it was in serious financial problems. The hospital considered the options of defaulting on its long-term debt, or merging with its sister hospital in Great Bend, Central Kansas Medical Center. Considering the long-term commitment to the people of Larned, the Dominican Sisters and the Boards of Directors of St. Joseph Memorial Hospital and Central Kansas Medical Center decided that a merger would better meet the health care needs, rather than defaulting on the bonds, and subsequently bankruptcy. Therefore, the hospitals merged January 1 of this year.

One of the benefits of the merger is that the combined institution may be eligible for consideration as a Rural Referral Hospital by the Federal Medicare Program. If the combined hospital has over 5,000 admissions, appropriate medical staff, and sufficient case mix index, the Medicare program may consider it as a Rural Referral Hospital. If so designated, the hospital would receive a higher reimbursement for all Medicare patients.

If this designation was in effect during the last fiscal year, the hospital would have received over \$1 million for providing the services it did. However, the federal law currently indicates that in order to be considered for this designation, the merged hospital must operate as a single entity. The problem is that the state licensing organization has expressed a desire to continue to provide two licenses for the combined organization. Accordingly, we must prove to the federal government that we are a

single organization, and prove to the licensing organization that we are operating as two organizations. The fact of the matter is that in order to achieve the overhead savings from the merger, we must operate as a single entity.

Some examples of the problems that we have already experienced include:

- Inability to participate in a self-insured malpractice pool, which potentially could save thousands of dollars in malpractice premiums.

- We have had problems in applying for drug administration numbers because of the two licenses.

- In the event of a malpractice lawsuit, the plaintiff's attorney could criticize the fact that we are operating as a single organization when we have two licenses.

- Finally, a state hospital inspector may require duplication of overhead activities, which would reduce the potential savings of the merger.

HB 2659

My name is Juanita Carlson. I represent the American Civil Liberties Union of Kansas. I am here to register our opposition, comments and concerns about HB2659, the testing for Acquired Immuno Deficiency of sex offenders.

I would hope that the legislature would set as a minimum requirement that any AIDS bill that it votes into law will unmistakably assist in containing the spread of the AIDS virus. I think this bill fails that minimum test.

The testing of sex offenders offers no real assistance to victims. Victims cannot wait for the trial and conviction of the alleged sex offender to act—they must proceed in a timely way to look after his or her own mental health and physical health.

The number of AIDS related bills introduced this session shows that the legislature wants to do something about the AIDS problem. This bill is no help— it is an infringement upon a protected Constitutional right against search and seizure without probable cause.

There is no epidemiological evidence to link sex offenders with the AIDS virus.

We should not be guilty of violating the civil rights of this class of persons simply because they have violated the rights of others.

This bill is worthless as a public health measure. There are ways that the AIDS virus can be controlled to alter behavior. Knowledge of one's health status and attendant counseling would be most helpful. Publicly financed, voluntary and anonymous testing and counseling are good public health measures as well as general public education about the disease.

The Governor's Task Force on AIDS states that "the greatest public benefit can be achieved by a comprehensive, voluntary program of public health education together with the highest quality professional testing and counseling services." Anonymous testing and counseling would be helpful along with legislation prohibiting discrimination on the basis of one's AIDS status or presence of the disease.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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March 28, 1988

The Honorable Roy M. Ehrlich
State Senator
Chairman, Public Health & Welfare
Topeka, KS 66612-1597

Dear Mr. Chairman and Members of the Committee:

Attached is a proposed amendment to HB 2659. The amendment addresses certain concerns of this office.

First, we believe it is unnecessary to wait until a person is convicted of a sex offense before the person may be tested for AIDS. Under current law, a prosecutor may obtain a search warrant to obtain blood samples from a suspect for evidentiary purposes. The test applied to determine whether such an intrusion is reasonable under the Fourth Amendment is a balancing test; i.e., "The individual's interest in privacy and security are weighed against society's interest in conducting the procedure." Winston v. Lee, 105 S.Ct. 1611 (1985).

In the situation you are trying to address, you would balance the intrusiveness of the taking of blood from a person only accused of an offense with the state's interest in preventing the spread of AIDS. It is my understanding that if the victim of a sex offense was exposed to the AIDS virus and did contract the AIDS virus from the perpetrator, the victim would be contagious several weeks or months before the victim would test positive for AIDS. Thus, it seems that a victim should be advised of the possible exposure to AIDS as quickly as possible so that the victim may take precautions to avoid spreading the illness to others. Since the only way to determine whether a victim has been exposed to the AIDS virus during the period before the victim might test positive is to test the suspect, we believe the intrusion is reasonable in light of the state's compelling interest.

Senate Public Health & Welfare
March 28, 1988
Attachment 4

We do not believe this flies in the face of "innocent until proven guilty." A person may be found not guilty of rape, for example, because of insanity or a question of consent. Even if the accused turns out to be the wrong person, the intrusion is slight.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Brenda L. Braden
Deputy Attorney General

BLB/cy

ATTACHMENT

HB 2659 Proposed Substitute

Upon the arrest of a person for an offense which, if the suspect has AIDS, may have exposed the victim of the offense to AIDS, at the request of the victim, or if the victim is a minor, the victim's parent or guardian, the county or district attorney shall request a search warrant to obtain blood from the accused for the purpose of testing for AIDS. Notwithstanding any request from a victim or a victim's parent or guardian, the county or district attorney may request a search warrant to obtain blood from the accused for the purpose of testing for AIDS if the county or district attorney believes such testing is in the interest of public health and welfare.

March 28, 1988

TESTIMONY HB 2980
SENATE PUBLIC HEALTH & WELFARE COMMITTEE

Mr. Chairman, members of the committee. Thank you very much for the opportunity to appear before your committee this morning. Our Association favors the passage of HB 2980 which would provide a legal method for the disposition of cremated human remains if they have not been claimed within 120 days.

From a survey taken of our membership, we estimate between 150 and 200 unclaimed cremated remains in Kansas. One mortuary in Lawrence has nineteen ranging back as far as 1934.

The problem here is not the storage space or inconvenience. The problem is the ongoing liability of having these in the funeral director's possession and having to produce them at some undetermined time down the road. Lawrence and some other areas in Kansas have higher cremation rates and generally a more mobile group of people. This can cause problems in locating family members months and years following the death of the person.

We wish to be reasonable in our approach to this matter and obviously, we have not been quick to act on the concern. But, the cremation rate is growing in Kansas as well as the U.S., so we see this as an increasing problem. We as funeral directors wish to give survivors time to discuss and decide on the final disposition of the remains and 120 days seems to be an appropriate compromise since people who choose burial have to make this decision usually within two or three days.

We have no objection to the House amendments and urge you to report this bill favorably. Thank you.

March 28, 1988

TESTIMONY HB 2978
SENATE PUBLIC HEALTH & WELFARE COMMITTEE

Mr. Chairman, members of the committee. Thank you very much for the opportunity to appear before your committee this morning. Our Association favors the passage of HB 2978 which would require a written notification to accompany persons who die of a contagious or infectious disease.

We believe this is in the best interests of hospital personnel, nursing home personnel and funeral home personnel as well as the citizens of Kansas. This will prevent the transportation of bodies throughout the State without regard for the infectious or contagious disease that they have died from.

Senate Bill 686 which came from this Committee addressed the AIDS concern, but there are other life-threatening diseases listed by the Kansas Department of Health and Environment--both blood borne and air borne--such as Hepatitis B, Tuberculosis, and others. This bill would provide for this protection when death occurs from one of the other contagious diseases.

As you can see, the bill was amended by the House Committee. This was to bring the language closer to Senate Bill 686 which was being considered at the same time. In order to bring it even closer, you may wish to amend HB 2978 by adding a new subsection (f) which language appears in Senate Bill 686 and would read: "Any person who completes the form required in subsection (a) in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report." Since it is my understanding that House Bill 2978 will probably be placed in a conference committee to make sure it and Senate Bill 686 are totally compatible, this amendment would help clean up the bill and make it possible for conference.

Our members will protect the confidential information in the future as they have in the past, but we have an equal responsibility to the public, the funeral home staffs, and to our own families to protect their health in dealing with infectious or contagious disease. We urge you to pass favorably on House Bill 2978.