Approved January 18, 1898
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 a.m./~~p~~xxxon January 11, , 19 89 in room 313-S of the Capitol.

All members were present except:
Representatives Gomez and Peterson, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Marilyn Bradt, Kansans for Improvement of Nursing Homes, Lawrence
Keith Landis, Christian Science Committee on Publication for Kansas
Chip Wheelen, Kansas Medical Society
Marla Luckert, Kansas Medical Society and Kansas Hospital Association

Hearing on H.B. 2009 --- Durable power of attorney, health care decisions, Re: Proposal No. 20

Marilyn Bradt testified in support of H.B. 2009. She expressed concern that frail aged persons might be coerced into giving an inappropriate power of attorney without any safegruards in the law to assure that does not occur. She also questioned whether anyone associated with the person's care, such as an employee of a nursing facility, should be permitted to hold a power of attorney for health care decisions, see Attachment I.

Keith Landis testified he did not like this bill as well as 1988 H.B.2824. He was concerned that the provisions of H.B. 2009 might be considered to apply only to the making of medical care decisions, and not to health care decisions, which would include Christian Science care and treatment. He was also concerned that Sec. 3 might be expanded to allow a fiduciary to remove or override the decisions of an agent designated to make health care decisions, see Attachment II.

Chip Wheelen stated H.B. 2009 was written to allow a person to designate an objective third party, other than a spouse or a loved one, to make medical care decisions should the principle become incapaciatated. He introduced Marla Luckert who would testify on behalf of the Kansas Medical Society and the Kansas Hospital Association.

Marla Luckert suggested an amendment to New Sec. 6 specifically empowering the agent to place the principal in any facility or institution, including a treatment facility; to consent to removal of an organ or amputation of a limb; and to execute on behalf of the principal a declaration in accordance with K.S.A. 65-28, 101 through 65-28, 109, and amendments thereto, without obtaining a court order. This amendment would grant the agent the power to make decisions in important medical areas while incorporating the protection of the Natural Death Act. She said giving the agent the power to make these decisions when a guardian does not have such power is justified since the agent will be someone personally chosen by the principal and presumably will have discussed or have knowledge of the principal's wishes. She said the Kansaas Medical Society and the Kansas Hospital Association are concerned about Kansas citizens who have no written directives, either living wills or powers of attorney, and they are investigating alternatives, such as incorporating provisions in the living will statutes or a general medical consent act, see Attachment III. She corrected the amendment to strike only (g) (3) and (4) of K.S.A. 59-3018. In regard to (g) (2), she recommended the language referencing psychosurgery should not be striken. She also recommended a cleanup of the guardianship act.

A subcommittee composed of Representative Martha Jenkins, Representative Robert Vancrum and Representative Donna Whiteman was appointed to study the guardianship statutes.

The Committee meeting was adjourned at 4:30 p.m. The next meeting will be at 3:30 p.m., January 12, 1989 in room 313-S.

GUEST REGISTER

DATE Jan. 11, 1989

NAME	ORGANIZATION	ADDRESS
KEITH G. LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	TOPEKA
Marla J. Luckert	Attorney - representing Kansas Hospital Ass'n & Ks Medical Society	Topeka
Chip Wheelen	Ks Medical Society	Topeka
Marilyn Bradt	Kansans for Improvement of Nursing Homes	Lawrence
Margaret FARLEY	Kansas for Improvement of Nursing Homes	Lawrence
Mark Intermill	Kansas Coalition on Aging	Topeka
Bob Corkins	Kansas Hospital Assn.	Topeka
Mary Claybaugh	SRS	Topeka

KINH Kansans for Improvement of Nursing Homes, Inc.
913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842 3088

January 11, 1989

TESTIMONY PRESENTED TO THE HOUSE JUDICIARY COMMITTEE
CONCERNING HB 2009
DURABLE POWER OF ATTORNEY

Mr. Chairman and Members of the Committee:

Kansans for Improvement of Nursing Homes strongly supports the principle of establishing (or clarifying) the authority of a power of attorney to make health care decisions when that authority is specifically delineated in the documents conferring power of attorney. And we agree that legislation to that end should be as simple and straightforward as possible.

Nevertheless, we have some concern that frail, aged persons might too readily be coerced into giving an inappropriate power of attorney without any safeguard in the law to assure that does not occur.

We would agree that if a person is able to make a reasoned decision (which includes, also, the ability to withstand coercion) he/she should be permitted to name whoever they wish as agent, whether or not others believe the agent named to be an appropriate choice. Lacking the ability to make a reasoned decision, the person clearly needs a guardian -- not an attorney in fact. The question is, who make the determination whether the person is or is not capable of making that decision?

There is also some question about whether anyone associated with the person's care, such as an employee of a nursing facility, should be permitted to hold a power of attorney for health care or other decisions.

It is certainly not our intent to encumber good legislation with unnecessary provisions, but we do ask you to give thought to the very vulnerable position of physically fragile elderly persons, particularly those who may be largely isolated in nursing homes, as you consider HB 2009.

Marilyn Bradt
Legislative Coordinator

House Judiciary 1/11/89
Att. I

Christian Science Committee on Publication For Kansas

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

To: House Judiciary Committee

Re: HB 2009

Last year we gave enthusiastic support to HB 2824. Our view of HB 2009 is somewhat different.

HB 2824 contained broad language which clearly stated many choices available to the principal in assigning a durable power of attorney and the types of care desired or rejected. HB 2009 appears more restrictive, in ways which will limit the principal's choices but not provide more protection.

This bill may benefit some Kansans but it will be of little or no help to the group I represent if passed in its present form.

We are concerned that the provisions of this bill might be considered to apply only to the making of "medical care decisions" and not to "health care decisions," which would include Christian Science care and treatment. "Health care decisions" appears only in the title of the bill.

New Section 6 appears to permit the agent to provide the incapacitated principal with "nonmedical remedial care" (a term used to refer to Christian Science care and treatment) but this provision alone may not be sufficient to protect those relying on it.

We are concerned, too, that the language of Section 3, which in current law refers to property, might be expanded to allow a fiduciary to remove or override the decisions of an agent designated to make health care decisions.

If these concerns are unfounded, I apologize for taking up your time unnecessarily. I appreciate your taking time to listen.

Keith R. Landis
Committee on Publication
for Kansas

House Jud.
1/10/89
Att. II

KANSAS HOSPITAL ASSOCIATION
KANSAS MEDICAL SOCIETY

House Bill 2009 January 11, 1988

Both the Kansas Hospital Association and the Kansas Medical Society support the concept of legislation which would allow physicians and hospitals to accept a consent given by an attorney-in-fact or agent if a patient had executed a durable power of attorney without the health care provider having to be concerned about the legality of the consent. While many argue that present statutes authorize an attorney-in-fact to make medical decisions, others contend it does not. As a result many physicians and hospitals have felt uneasy and unprotected in relying on the consent of an attorney-in-fact; many have simply refused to accept such a consent. This uncertainty is frustrating to physicians, hospital administrators and the patient's family.

H.B. 2009, by specifically noting a principal may give guardianship powers, could alleviate much of this uncertainty. K.S.A. 59-3018, specifically states the powers and duties of a guardian shall include assuring that medical care is received and providing all necessary consents.

However, there are some limitations to a guardian's power which frankly are burdensome on the medical community. Some of those limitations are carried over in H.B. 2009. Specifically, an attorney-in-fact empowered with guardianship duties would not be allowed to make decisions about transplants, amputation, or the withholding of life-saving medical procedures. K.S.A. 59-3018(g)(3) and (4) contain these limitations. There must be some mechanism for obtaining substituted consents fairly rapidly. Organ removal, primarily after trauma but occasionally for transplant, occurs with some regularity. Similarly, the decision to withhold or withdraw life supporting systems is one frequently forced upon physicians. Often health care providers are faced with the need to proceed in the care of a patient in these situations but cannot say the situation is an "emergency". Requiring court approval of these decisions would be emotionally traumatic for the family and expensive, in terms of both time and money, for the family, the health care system and the courts. While a medical emergency may not exist allowing implied consent, such a decision may often need to be made more rapidly than a court proceeding can be activated.

The legislation would be more workable for the health care community if the legislation recognized an agent's power to make these decisions.

House Judiciary
2/11/89
Att III

It is suggested new Section 6 be amended to read:

> Any durable power of attorney containing the words "power of attorney for guardianship powers" or "power of attorney for guardianship and conservatorship powers," or similar words showing the intent of the principal that the authority conferred shall include the authority to do acts that a guardian can do, shall convey to the agent the authority to do all acts that a guardian can do under Kansas law~~, including the power to place the principal in any facility or institution, including any treatment facility, but such agent shall not be required to obtain any court order to take any such action except as set out in subsections (g)(3), (4), (5), (6), (7) and (8) of K.S.A. 59-3018.~~ These words shall also empower the agent to place the principal in any facility or institution, including a treatment facility; to consent to removal of an organ or amputation of a limb; and to execute on behalf of the principal a declaration in accordance with K.S.A. 65-28,101 through 65-28,109, and amendments thereto, without obtaining a court order. The powers of the agent herein shall be limited, however, to the extent set out in writing in the power of attorney. No guardian powers shall be effective until the occurrence of the principal's disability or incapacity, unless the power of attorney specifically provides otherwise. Nothing herein shall affect the validity of any power of attorney which conveys by its language the powers a guardian would have under Kansas law, even though the language referred to above is not used.

This amendment would grant the agent power to make decisions in important medical areas while incorporating the protection of the Natural Death Act. It would also clarify the interplay between the two statutes. Giving an agent the power to make these decisions when a guardian does not have such power is justified since the agent will be someone personally chosen by the principal and presumably will have discussed or have knowledge of the principal's wishes.

While allowing agents to make medical decisions would assist health care providers in relying upon substituted consent, it will not take care of the situation of the vast majority of Kansas citizens who have no written directives, either living

wills or powers of attorney. Many states have incorporated provisions to deal with this in the living will statute or a general medical consent act. KHA and KMS are investigating these alternatives and may be proposing such legislation.

However, if the durable power of attorney legislation is amended, we would urge the inclusion of the above language.