

Approved Arthur Douville 3-28-89
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:07 a.m./~~p.m.~~ on March 17, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Everhart - Excused
Representative Patrick - Excused

Committee staff present:

Jerry Donaldson - Legislative Research Department
Kay Johnson - Committee Secretary

Conferees appearing before the committee:

Bill Clawson - Chief of Benefits, Department of Human Resources
Chip Wheelen - Director of Public Affairs, Kansas Medical Society

Chairman Douville called the meeting to order at 9:07 a.m.

SB 295 - Employment security law; certain disqualifications for benefits.

Bill Clawson, Chief of Benefits, Department of Human Resources, explained the proposed changes as recommended by the Employment Security Advisory Council and endorsed by the Department of Human Resources. The amendment to K.S.A. 44-706(a)(4) is an attempt to correct inequitable situations involving spousal transfers. The amendment ties spousal transfers to job related situations and is not intended to allow benefits when there is no job involved. The amendment to K.S.A. 44-706(r) is an attempt to be fair and equitable to people who want to upgrade their skills, by attending school or classes, without affecting their eligibility. The third amendment is the back pay award denial. Examples of the proposed amendments were submitted, attachment #1.

Chairman Douville asked, in regard to the back pay award denial, if that was the case where it is being determined whether or not an employee is entitled to unemployment benefits for that particular period of time. Mr. Clawson responded yes, it sets up a mechanism to reverse out any payments made, get the money back from the employer and put it in the trust fund and then clear the account for the employee. Chairman Douville asked about the case where an employee has received unemployment benefits and then, later on, received a back pay award. Mr. Clawson responded that the total back pay award would be minus any amount received in unemployment benefits.

Representative Webb asked who is going to pay. Mr. Clawson responded that the employer is going to pay for it. The employee is not going to get paid twice, nor will the employee reimburse the fund. Paul Bicknell, Chief of Contributions, Department of Human Resources, speaking from the audience, gave the example of a \$10,100 back pay award to an employee who has already received \$2,100 in unemployment benefits. The \$2,100 would be set up as an overpayment and reimbursed by the employer to the fund and subtracted from the total amount of the award. Therefore, the back pay award would be \$10,100 - \$2,100 = \$8,000. Mr. Clawson explained that this was to prohibit the trust fund from paying part of the back pay award.

Chairman Douville asked if there would be any circumstances where the employee would be required to reimburse the fund. Mr. Clawson said no, not in the back pay award situation. Wayne Maichel, Kansas AFL-CIO, speaking from the audience, concurred.

Representative Buehler asked who makes up the Employment Security Advisory Council. Mr. Clawson said it is composed from 4 individuals from labor, 4 from industry and 4 from the public. The council is chaired by the Secretary of the Department of Human Resources who selects members from nominations submitted by each group. Representative Buehler asked where the money comes from in the fund. Mr. Clawson responded it was from contributing employers and interest on the fund. Mr. Bicknell said it is based on the size of taxable wages paid the previous year and the size of the fund.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:07 a.m./~~p.m.~~ on March 17, 1989

Chip Wheelen, Director of Public Affairs, Kansas Medical Society, addressed the committee regarding a proposed change to 44-706(a)(1). He stated he was not testifying as a proponent or as an opponent. According to a 1987 Attorney General Opinion defining "physician", attachment #2, a physician is anyone licensed to practice medicine and surgery. The current definition in the statute is erroneous. The proposed change is to substitute "health care provider" for "physician", attachment #3.

Representative Crumbaker made a motion to pass SB 295 favorably. Representative Webb seconded the motion.

Chairman Douville asked for discussion on the motion. Representative Buehler stated he opposes the motion on the grounds that SB 295 does nothing more than authorize voluntary quits. The language on page 2, line 50 of the bill, "for a different employer", opens the issue too wide.

Representative Hensley stated that the voluntary quits issue was resolved in 1985 because labor and management got together. The one remaining issue, transfers, is being dealt with in SB 295. It is an agreed to bill by the Employment Security Advisory Council and he is in favor of the bill.

The motion carried. Representative Buehler requested to be recorded as voting no.

The meeting adjourned at 9:33 a.m. The next meeting of the committee is on call of the Chairman on Tuesday, March 21, 1989 at 9:00 a.m. in room 526-S.

K.S.A. 44-706(a)(4)

This amendment is to clarify the denial of benefits that relates to spousal transfers. This particular exception to the disqualification provision has been subject of several court decisions presenting conflict in the definition of the word "transfer". This has caused a great deal of confusion and presented difficulty in the administration of this part of the law. This amendment allows a spouse to receive benefits when they leave to accompany their spouse to another area who has work in the new area and no longer requires the transfer to be with the same employer.

Example

An individual is unemployed and receiving unemployment insurance due to a plant shutdown. That individual obtains work in Lincoln, Nebraska in a similar occupation and moves to that area. The spouse then leaves the job and she and the children move to Lincoln to resume their household. The spouse has quit the job because of the transfer to new work in Lincoln and benefits are allowed.

Another situation might be that an individual who is unemployed due to a plant shutdown and becomes discouraged in the area of their residence. The couple decides they will move to another state where there are more jobs and the spouse quits to move with the unemployed spouse; therefore, they move their household. Under these circumstances, neither spouse is job connected, there is no job connected transfer involved therefore the one who quits to accompany the spouse is disqualified. Benefits would continue to be denied to someone who quits employment to move to an area in order to seek new employment.

K.S.A. 44-706(r)

This amendment is to clarify this denial to exclude individuals who are attending school at night or limited hours that may or may not be career enhancing or are attending classes that does not substantially restrict one's eligibility.

Example

An individual is attending a word processing course at the area vocational and technical school one hour on Tuesdays and Thursdays between 6:00 p.m. and 7:00 p.m. This particular course may or may not enhance their skills when they are looking for work. It may be either for upgrading their personal skills or it may be career enhancing. Benefits are allowed.

Another situation may arise where an individual is attending a course 3 days a week during the noon hour while working full-time and then becomes unemployed due to lack of work or a temporary shutdown of an employer's establishment. The individual continues with this school work. The school work is qualifying under this amendment since it is limited daytime hours and does not conflict with work or the individual's search for work.

K.S.A. 44-706(s)

This amendment is a companion addition to the disqualification section and is described in the amendments under K.S.A. 44-703(o).



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

March 5, 1987

MAIN PHONE: (913) 296-2215
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ATTORNEY GENERAL OPINION NO. 87- 42

The Honorable Dale M. Sprague
State Representative, Seventy-Third District
State Capitol, Room 112-S
Topeka, Kansas 66612

Re: Public Health -- Healing Arts; Kansas Healing Arts
Act -- Doctors of Chiropractic; "Chiropractic
Physicians"

Synopsis: Under the Kansas statutes the term "physician" means a person licensed to practice medicine and surgery unless it is defined otherwise. See, e.g., K.S.A 65-2869. In addition, when "physician" is used in conjunction with another word, the health care provider is deemed to be one licensed to practice medicine and surgery. See 65-2870; 65-2897a. Chiropractors are specifically prohibited by statute from practicing medicine and surgery. K.S.A. 65-2871. Thus, the term "chiropractic physician" is misleading to the public as it implies that a chiropractor is licensed to practice beyond the scope of the statutory definition of chiropractic. Therefore, it is our opinion that doctors of chiropractic cannot use the term "chiropractic physician." Cited herein: K.S.A. 1986 Supp. 8-1001; 17-2707; K.S.A. 40-2101; 40-3103; 44-508; K.S.A. 1986 Supp. 59-2902; K.S.A. 60-427; 65-1,114; 65-448; 65-5a01; 65-6b01; 65-2401; 65-2801; 65-2802; 65-2803; 65-2869; 65-2870; 65-2871; 65-2892; 65-2892a; 65-2893; 65-28,102; 65-2897a; 65-2901; 65-3209; K.S.A. 1986 Supp. 65-4003; K.S.A. 65-4202; 65-4301; K.S.A. 1986 Supp. 65-5501; K.S.A. 72-5208; 74-4916; K.A.R. 28-34-1.

HOUSE LABOR AND INDUSTRY
Attachment #2
03-17-89

Dear Representative Sprague:

As State Representative for the Seventy-Third District, you request our opinion whether doctors of chiropractic licensed by the State of Kansas may call themselves "chiropractic physicians." It is our understanding that the Board of Healing Arts in October, 1986 reaffirmed its policy that it would not discipline a doctor of chiropractic for using the term "chiropractic physician."

All practitioners of the healing arts must be licensed by the State Board of Healing Arts (Board). K.S.A. 65-2801; K.S.A. 65-2803. "Healing arts" is defined by statute as follows:

"The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic." K.S.A. 65-2802(a).

Medicine and surgery, osteopathic medicine and surgery, and chiropractic are three branches of the healing arts. K.S.A. 65-2869 provides as follows:

"For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

"(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches.

(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation

(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or

abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings." (Emphasis added).

"Physicians," then, are persons engaged in the practice of medicine and surgery. By statute, osteopaths are licensed to practice medicine and surgery:

"For the purpose of this act the following persons shall be deemed to be engaged in the practice of osteopathy or to be osteopathic physicians and surgeons:

"(a) Persons who publicly profess to be osteopathic physicians, or publicly profess to assume the duties incident to the practice of osteopathy, as heretofore interpreted by the supreme court of this state, shall be deemed to be engaged in the practice of osteopathy.

"(b) Osteopathic physicians and surgeons shall mean and include those persons who receive a license to practice medicine and surgery pursuant to the provisions of this act." K.S.A. 65-2870. (Emphasis added).

The practice of chiropractic is defined as follows:

"For the purpose of this act the following persons shall be deemed to be engaged in the practice of chiropractic: (a) Persons who examine, analyze and diagnose the human living body, and its diseases by the use of any physical, thermal or manual method and use the X-ray diagnosis and analysis taught in any accredited chiropractic school or college and (b) persons who adjust any misplaced tissue of any kind or nature, manipulate or treat the human body by manual, mechanical, electrical or natural methods or by the use of physical means, physiotherapy (including light, heat, water or exercise), or by the use of foods, food concentrates, or food extract, or who

apply first aid and hygiene, but chiropractors are expressly prohibited from prescribing or administering to any person medicine or drugs in materia medica, or from performing any surgery, as hereinabove stated, or from practicing obstetrics." K.S.A. 65-2871. (Emphasis added).

As emphasized in the above statute, chiropractors may not practice medicine or surgery. See Kansas State Board of Healing Arts v. Burwell, 5 Kan. App. 2d 357, rev. denied 228 Kan. 807 (1980) (Chiropractors may not prescribe or administer laetrile, as such constitutes the practice of medicine.)

The Kansas Chiropractic Association (KCA) has submitted material to us in support of their contention that chiropractors have the right to refer to themselves as "chiropractic physicians." It is argued that the term "physician" is not limited to a particular branch of the healing arts and that several Kansas statutes recognize a chiropractor as a physician. Another argument is that the word "physician" used in conjunction with the term "chiropractic" is not misleading to the public. The KCA also maintains that doctors of chiropractic are qualified as physicians.

Several Kansas statutes define the term "physician" to include chiropractors. For example, for purposes of the physician-patient privilege, a physician is "a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts" K.S.A. 60-427(a). Under the workmen's compensation act, the term physician means any "person licensed . . . to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry or podiatry." K.S.A. 44-508(i).

It has been contended that the term "physician" is a general term which applies to all branches of the healing arts unless specifically limited by statute. Examination of the Kansas statutes, however, shows that "physician" is a specific term unless applied in a general manner. It is reasonable to conclude that one would look to chapter 65 (Public Health) of the Kansas statutes to determine the meaning of "physician." In the following statutes the term physician is specifically defined to mean a person licensed to practice medicine and surgery: K.S.A. 65-5a01(c) (care of crippled and chronically

ill children); 65-2897a(b) (physician's assistants); 65-28,102(d) (Natural Death Act); 65-2901 (practice of physical therapy); 65-3209(g) (Uniform Anatomical Gift Act); K.S.A. 1986 Supp. 65-4003(17) (Alcoholism and Treatment Act); K.S.A. 65-4202(b) (practice of mental health technology); 65-4301 et seq. (Emergency Medical Services Act); 65-1,114(a) (concerning diabetes); 65-6b01(a) (prescribing and administering laetrile); K.S.A. 1986 Supp. 65-5502(e) (Respiratory Therapy Practice Act). Various statutes outside chapter 65 also limit the term physician to mean a person licensed to practice medicine and surgery. See K.S.A. 1986 Supp. 8-1001(c) (withdrawal of blood for chemical blood test); 17-2707(b) (professional corporations); 59-2902(j) (Treatment Act for Mentally Ill Persons); K.S.A. 72-5208(e) (school health tests and inoculations); K.A.R. 28-34-1(12) (hospital regulations).

The KCA argues that, to the extent statutes define physician so as to exclude chiropractors, the designation "chiropractic physician" would not bring chiropractors within these statutes. Hence, the scope of chiropractic is not enlarged and the public would not be misled. However, not all statutes concerning public health which use the word "physician" limit it to mean persons licensed to practice medicine and surgery. Chiropractors, then, are not specifically excluded. See K.S.A. 65-448 (examining victims of sex offenses); 65-2401 et seq. (vital statistics, duty of physician attending births and deaths); 65-2892 (examination and treatment of minors for venereal disease); 65-2892a (examination and treatment of minors for drug abuse); 65-2893 (performing autopsies). The content of these statutes makes it clear that "physician" can only mean persons licensed to practice medicine and surgery. Thus, the term physician has a specific meaning unless it is defined otherwise, such as in the worker's compensation statute (K.S.A. 44-508) and the patient-physician privilege rule of evidence (K.S.A. 60-427).

The KCA maintains that only when the word "physician" is used standing alone does it mean a person who practices medicine and surgery; therefore, chiropractors may be called chiropractic physicians. In the Kansas statutes "physician" is used in conjunction with another word in at least two instances: "physician's assistants" and "osteopathic physicians." There is an important distinction between these terms and "chiropractic physician." Physician's assistants may practice medicine and surgery under the direction and supervision of a physician licensed to practice medicine and

surgery. K.S.A. 65-2897a. - Osteopaths are also licensed by statute to practice medicine and surgery. K.S.A. 65-2870. Chiropractors, however, may not practice medicine and surgery. K.S.A. 65-2871. Under the Kansas statutes, when the term "physician" is used in conjunction with another word, the health care provider is one licensed to practice medicine and surgery.

Kansas recognizes "the practice of chiropractic as one of the healing arts in certain special areas of examination and treatment related to the human body, including X-ray diagnosis." Taylor v. Maxwell, 197 Kan. 509, 511 (1966). K.S.A. 65-2871 provides that the practice of chiropractic includes examination, analysis, and diagnosis of the human living body. See K.S.A. 40-2101 (if included in an insurance policy, any service within the lawful scope of chiropractic must be reimbursed or indemnified); 40-3103(k) (chiropractic is a medical benefit under the Automobile Injury Reparations Act); 44-508(i) (chiropractic benefits are authorized for accidental injuries arising out of and in the course of employment); 74-4916 (a chiropractor may perform physical examinations to qualify public employees for disability compensation).

The KCA argues that doctors of chiropractic qualify as physicians because chiropractic is a healing art, they are authorized to perform examinations, and they must complete an extensive education in health care. There is no doubt that today's chiropractor is well-trained to practice his or her profession. However, the fact that a chiropractor can examine, diagnose, and treat within the scope of chiropractic does not qualify a chiropractor as a physician. Since the practice of medicine and surgery is beyond the scope of chiropractic, the term "chiropractic physician" is contradictory and misleading. It is inconsistent to say that when used alone the term "physician" means a person licensed to practice medicine and surgery, but that when used with another word means a person licensed to practice the healing arts.

The term "physician" is defined in Black's Law Dictionary 1033 (rev. 5th ed. 1979) as follows:


"A practitioner of medicine; a person duly authorized or licensed to treat diseases; one lawfully engaged in the practice of medicine."

A definition of "chiropractor" is found in 70 C.J.S. Physicians and Surgeons §1:

"One who practices the system of chiropractics. Chiropractors are not physicians, and ordinarily are not specialists regarding the diseases of the internal organs."

The common meaning of physician is medical doctor or surgeon. As used in the Kansas statutes, physician means a person licensed to practice medicine and surgery. The term "chiropractic physician," then, implies that a doctor of chiropractic is licensed to practice beyond the scope of the statutory definition of chiropractic. This is misleading to the public. For this and the other reasons stated in this opinion, we must conclude that doctors of chiropractic may not represent themselves as "chiropractic physicians."

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Rita L. Noll
Assistant Attorney General

RTS:JLM:RLN:bas

tion (c) and shall be announced by the secretary in conjunction with the published announcement of the maximum weekly benefit, also as provided in subsection (c). The minimum weekly benefit amount so determined and announced for the twelve-month period beginning July 1 of each year shall apply only to those claims which establish a benefit year filed within that twelve-month period and shall apply through the benefit year of such claims notwithstanding a change in such amount in a subsequent twelve-month period. If the minimum weekly benefit amount is not a multiple of \$1 it shall be reduced to the next lower multiple of \$1.

(e) *Weekly benefit payable.* Each eligible individual who is unemployed with respect to any week shall, except as to final payment, be paid with respect to such week a benefit in an amount equal to such individual's determined weekly benefit amount, less that part of the wage, if any, payable to such individual with respect to such week which is in excess of \$8 and if the resulting amount is not a multiple of \$1, it shall be computed to the next higher multiple of \$1, except that for all weeks payable after June 30, 1983, it shall be reduced to the next lower multiple of \$1. For the purpose of this section, remuneration received for services performed on a public assistance work project shall not be construed as wages.

(f) *Duration of benefits.* Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of 26 times such individual's weekly benefit amount, or 1/3 of such individual's wages for insured work paid during such individual's base period. Such total amount of benefits, if not a multiple of \$1, shall be computed at the next higher multiple of \$1, except that for new claims filed after June 30, 1983, such total amount of benefits, if not a multiple of \$1, shall be reduced to the next lower multiple of \$1.

(g) For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of subsection (h) of K.S.A. 44-703 and amendments thereto with respect to becoming an employer.

Sec. 2. K.S.A. 1984 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) Beginning with the week in which the valid initial claim

is filed and for the 10 consecutive weeks which immediately follow such week and shall forfeit benefit entitlement equal to 10 times the individual's determined weekly benefit amount, but not less than an amount equal to such individual's determined weekly benefit amount. If the individual left the last work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall have left work voluntarily with good cause for either work related or personal reasons; not be disqualified under this subsection (a) if:

(1) After pursuing all reasonable alternatives, the circumstances causing the separation were of such urgent, compelling or necessitous nature as to provide the individual with no alternative but to leave the work voluntarily; or

(2) the reasons for the separation were of such nature that a reasonable and prudent individual would separate from the employment under the same circumstances. If an individual leaves work by the individual's own action because of domestic or family responsibilities, not including pregnancy, self-employment or to retire because of disability or old age, or to attend school such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings of at least eight times such individual's weekly benefit amount. No individual shall be denied benefits for leaving

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing physician and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "physician" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

excerpt from 1985 session Laws