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Date

3-29-89
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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at
Chairperson

1:30 /a.m./p.m. on March 23, 1989 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Research
Norman Furse, Revisor
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Richard Gannon, Executive Director, Ks. Board Healing Arts
Dr. Lois Scibetta, Executive Administrator, Ks. Board of Nursing
Charles Simmons, Department of Corrections
Wayne Probasco, Kansas Podiatric Medical Society
Chip Wheelen, Kansas Medical Society
Harold Riehm, Kansas Association of Osteopathic Medicine
Robert Hiller, Attorney for Department of Social Rehabilitation Services

Chair called meeting to order, and drew attention to Hearings scheduled this date on SB 182, and SB 304.

HEARINGS BEGAN ON SB 182.

Richard Gannon, Executive Director of Ks. Board of Healing Arts explained rationale for proposed changes they seek in SB 182. He drew attention to a rough draft of an amendment, noting the final language would be dependent on what happens to SB 23. Their Board would like ability to discipline physicians for failure to adequately supervise and direct actions of an ARNP. He explained balloons offered on other sections of SB 182. (Four balloons offered, and he detailed proposed changes), i.e., flexibility as to length of time a license should be revoked; insert language which would impose criminal penalties for violations of the Healing Arts Act; add language to enable a first year resident to take required examination the following June after commencing his residency program on July 1 as he (she) remains on a temporary permit until exam is graded and results determined; our intent is not to regulate the ARNP's, but retain jurisdiction over the physicians. He cited specifics in regard to circumstances where a physician might not be giving proper supervision to ARNP's or PA's, and the Board would like this practice to not re-occur.

Dr. Lois Scibetta, Executive Administrator, Ks. Board of Nursing, spoke to SB 182, in regard to a telephone poll they had conducted today by calling every member of their ARNP Committee in regard to language proposed by Mr. Gannon. Their Board has determined they are in support of what the Board of Healing Arts is trying to do, but have concerns with proposed language, as it seems to limit the ARNP's. She answered questions.

It was noted at this time the concerns with the Board of Nursing had had their language recommendations inserted into the language provided by Mr. Gannon this date in balloons. (See Attachment No.1).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 A.M./P.M. on March 23, 1989

HEARINGS CONTINUED ON SB 182:--

Charles Simmons, Department of Corrections, (Attachment No.2), noted support for SB 182, Section 5, lines 312-335. Their Department recently contracted with Correctional Medical Systems, Inc., to deliver medical services to all correctional institutions, and the proposed amendment is to extend to their personnel eligibility for license to deliver such treatment. We propose, he said, an amendment to extend the license to those who are employed pursuant to a contract with Department of Corrections or Social Rehabilitation Services and work within an institution of the DOC and SRS. It is our understanding that the Board of Healing Arts does not oppose this amendment. He answered questions along with Mr. Gannon, and Mr. Buening, both of Board of Healing Arts, i.e., a physician that is fully licensed must also be licensed with the Correctional Medical System (COS); COS is a National Organization out of St. Louis, Missouri; a physician licensed with the COS is not required to take the FLEX exam and is not required to have the Post Graduate training approved by the Board. Many have obtained their residency outside the United States. There was discussion in regard to the differences between a person who is not licensed to practice medicine and one who has had his licensed revoked, and it was determined there was no difference.

Wayne Probasco, Kansas Podiatric Medical Society, noted they had concerns with repealing Statutes 65-2830, but after conferring with the Board of Healing Arts, have no longer concerns. He wanted to make that formal statement this date.

Chip Wheelen, Kansas Medical Society, (Attachment No. 3) noted their Society appreciates that the Ks. Board of Healing Arts is taking an aggressive posture in disciplining physician ranks. They have collaborated with the Board in regard to language 62-68 to establish an acceptable compromise in regard to the drug screening of physicians. He noted there may be extenuating circumstances in regard to which waiving the three year period to reapply for reinstatement of license might be considered. This is in Section 3. In Section 4 of SB 182, they have concerns with regard to penalties for those who practice medicine and surgery and simply forgot to renew the license could spend a sentence in jail, or imprisoned. He noted these concerns have been discussed since hearings in the Senate Public Health and Welfare Committee where he did not draw attention to them at that time. He recommended committee take these concerns under consideration as they discuss SB 182. He noted also they agree with placing Anabolic Steroids on the controlled substances list. He answered questions.

Harold Riehm, Kansas Association of Osteopathic Medicine noted their Association had concerns with the original version of SB 182, but since Senate Committee, those concerns have been resolved. He is now in support of SB 182.

HEARINGS CLOSED ON SB 182.

HEARINGS BEGAN ON SB 304.

Bob Hiller, Attorney for SRS, offered hand-out, (Attachment No. 4). He noted SB 304 recommends 59-2006 be amended to delete the three year limitation of payment for maintenance. This would conform it to other SRS civil recovery Statutes. He noted recoveries should gradually increase because more civil suits are likely to be filed, and the number of affirmative defenses allowed in future suits is likely to decrease. He recommended favorable passage. He answered questions, i.e., yes, we do have the authority to hire outside attorneys, however we have not yet done so, he said. We do use outside Collection Agencies if the person is missing or lives out of State. There was discussion in regard to a minor becoming a financial liability on parents by signing

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 1:30 a/m/p.m. on March 23, 1989

HEARINGS CONTINUED ON SB 304:--

into a State Facility. Mr. Hiller noted they use good discretionary judgments, and he thought it would be difficult to address this problem in the Statutes. Mr. Hiller felt the amendment proposed on sB 304 would not address this concern however.

HEARINGS CLOSED ON SB 304.

Chair drew attention to the fact this was the last scheduled hearing on bills for this Committee. Discussion and Action on all bills that have been heard will begin on Monday, March 27th.

Chair thanked all Committee members for their attention and interest during hearings this Session.

Chair Congratulated Representative Sader on the birth of her new Grandson.

Meeting Adjourned.

State of Kansas

Office of

RICHARD G. GANNON, EXECUTIVE DIRECTOR
CHARLENE K. ABBOTT, ADMINISTRATIVE ASSISTANT
LAWRENCE T. BUENING, JR., GENERAL COUNSEL
JOSEPH M. FURJANIC, DISCIPLINARY COUNSEL



Landon State Office Building

900 S.W. JACKSON, SUITE 553
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Board of Healing Arts

TO: House Committee on Public Health & Welfare

FROM: Richard G. Gannon, Executive Director

DATE: March 23, 1989

RE: TESTIMONY ON SENATE BILL NO. 182

I appreciate the opportunity to appear before you on behalf of Senate Bill 182. This bill was requested by the Board to be introduced and includes a number of provisions that it is felt would assist the Board in carrying out its statutory duties and obligations.

Section 1 of the bill amends three subsections of K.S.A. 1988 Supp. 65-2836. Over the last several years, the legislature has made a concerted attempt to increase the various grounds for which the Board may take disciplinary action. In working with the statutes, we have discovered several areas which we feel would, if amended, improve the Board's abilities in this area. Section 1 would amend subsection (k) of K.S.A. 1988 Supp. 65-2836 to enable the Board to obtain drug screens from those individuals who may be impaired by alcohol or drugs. Further, this subsection would be amended to reduce the evidentiary proof required to either order an evaluation or obtain a drug screen from probable cause to reasonable suspicion. This is in accordance with the action taken by the legislature last session regarding the Governor and other certain sensitive positions. Subsection (u) would be expanded to include sanctions by governmental agencies or departments as being prima facie proof of a violation of the Healing Arts Act for which disciplinary action could be taken. At present, sanctions by either the United States Department of Health & Human Services or the State Department of Social & Rehabilitation Services are not automatically grounds for disciplinary action. Instead, the Board must obtain the information from each of these governmental agencies and proceed to determine if the conduct which led to the sanctions are grounds for which disciplinary action could be taken. The amendment proposed would enable the Board to take disciplinary action more expeditiously against an individual who had been sanctioned by such a governmental agency. K.S.A. 1988 Supp. 65-2836(w) also is amended to add surrender authority to utilize

MEMBERS OF BOARD

REX A. WRIGHT, D.C., PRESIDENT
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KENNETH D. WEDEL, M.D., MINNEAPOLIS
JOHN P. WHITE, D.O., PITTSBURG

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Approved
Action #1
3-23-89

controlled substances and voluntary limitation or restriction of hospital privileges as grounds for disciplinary action. At present, voluntary surrender of a DEA registration or voluntarily limiting hospital privileges in lieu of formal action by the hospital do not constitute grounds for which the Board may initiate disciplinary proceedings.

Section 2 of the bill would make it unprofessional conduct for a licensee to prescribe or otherwise utilize anabolic steroids for body building purposes. This is a companion to SB 181 on which you heard testimony yesterday and which is basically aimed towards the use and possession of anabolic steroids by unlicensed individuals.

Section 3 of the bill as presently drafted would increase the time for which a license is revoked from one year to the three years.

As presently drafted, Section 4 of the bill classifies violation of the Healing Arts Act by any person on the first offense as a class A misdemeanor and on subsequent offenses as a class E felony. The present statute has been found to be not punitive enough and the local county and district attorneys have not shown a great deal of interest in prosecuting individuals for the unlawful practice of the healing arts when the maximum penalty that can be imposed is \$200. By adopting these amendments, it is felt that both the Attorney General and the local county and district attorneys will have a greater interest in prosecuting unlawful practice cases.

Section 5 would enable persons who are not directly employed by either the Department of Corrections or the Department of Social and Rehabilitation Services to obtain an Institutional License if they were employed by a third party who has a contract to provide medical services at the institutions run by either of these two departments. This amendment was proposed as a result of the change in which the Department of Corrections is presently staffing its prison facilities.

Since introduction of this bill and hearings in the Senate Committee, several questions and concerns have been raised. To address these, four proposed balloons have been prepared and are attached to this testimony.

The first balloon has been prepared in rough draft. The exact language of this proposed amendment will depend upon the action taken by the legislature on SB 23. The desire of the Board in offering this balloon is to insure the Board of Healing Arts has the ability to discipline physicians for failure to adequately supervise and direct the actions of an ARNP. Whether the statutory ability to discipline a physician can only relate to inadequate supervision of an ARNP in the manner ARNPs are authorized to

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Testimony RE: SB 182
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transmit prescription orders or the overall medical acts performed by an ARNP will depend on the language which is inserted in SB 23 and the legislative intent and policy behind such language.

The second balloon is intended to give the Board some flexibility as to the length of time a license should be revoked. The balloon would enable a physician whose license has been revoked to apply for reinstatement after one year. However, if the Board denied the reinstatement application, the Board would not be required to have any further hearings on reinstatement for an additional two-year period.

The third balloon is intended to totally repeal the existing language of K.S.A. 65-2862 and insert language which would impose criminal penalties for violations of the Healing Arts Act only on unlicensed individuals and those whose licenses are revoked or surrendered. The original intent of the Board in asking for this amendment as now drafted was to create stiffer penalties for the unlicensed practice of the healing arts. It is felt that the administrative penalties the Board can impose on licensees for a violation of the Healing Arts Act are sufficiently punitive without additional imposition of criminal sanctions.

Finally, the fourth balloon would add a new section to the bill to amend K.S.A. 1988 Supp. 65-2811(a)(3). The proposed new sentence in this statute would enable a first year resident who commenced the residency program on July 1, as is normally the case, to take the required basic and clinical examination the following June and remain on the temporary permit issued under section a(3) until there is an opportunity for the test to be graded and the results determined.

The Board strongly supports SB 182 as amended by the Senate and with the further amendments hereby proposed and requests your favorable action on it.

Thank you very much for the opportunity to appear before you and I am happy to answer any questions you might have.

RGG:LTB:sl

Attachments

P. H. W.
Attn #1
093
3-23-9

rough draft

*Patrol #1
Attm #4
3-23-9*

56 association or society while under investigation for acts or conduct
157 similar to acts or conduct which would constitute grounds for dis-
158 ciplinary action under this section.

159 (x) The licensee has failed to report to the board surrender of
160 the licensee's license or authorization to practice the healing arts in
161 another state or jurisdiction or surrender of the licensee's member-
162 ship on any professional staff or in any professional association or
163 society while under investigation for acts or conduct similar to acts
164 or conduct which would constitute grounds for disciplinary action
165 under this section.

166 (y) The licensee has an adverse judgment, award or settlement
167 against the licensee resulting from a medical liability claim related
168 to acts or conduct similar to acts or conduct which would constitute
169 grounds for disciplinary action under this section.

170 (z) The licensee has failed to report to the board any adverse
171 judgment, settlement or award against the licensee resulting from a
172 medical malpractice liability claim related to acts or conduct similar
173 to acts or conduct which would constitute grounds for disciplinary
174 action under this section.

175 (aa) The licensee has failed to maintain a policy of professional
176 liability insurance as required by K.S.A. 40-3402 or 40-3403a and
177 amendments thereto.

178 (bb) The licensee has failed to pay the annual premium surcharge
179 as required by K.S.A. 40-3404 and amendments thereto.

180 (cc) The licensee has knowingly submitted any misleading, de-
181 ceptive, untrue or fraudulent representation on a claim form, bill or
182 statement.

183 (dd) The licensee as the responsible physician for a physician's
184 assistant has failed to adequately direct and supervise the physician's
185 assistant in accordance with K.S.A. 65-2896 to 65-2897a, inclusive,
186 and amendments thereto, or rules and regulations adopted under
187 such statutes.

188 Sec. 2. K.S.A. 1988 Supp. 65-2837 is hereby amended to read
189 as follows: 65-2837. As used in K.S.A. 65-2836 and amendments
190 thereto and in this section:

191 (a) "Professional incompetency" means:

192 (1) One or more instances involving failure to adhere to the

as per Lois S. Recommendation



(ee) The licensee has failed to adequately direct and supervise medical acts delegated to an advanced registered nurse practitioner which constitute the practice of the healing arts not otherwise authorized by K.S.A. 65-1113 and amendments thereto in accordance with rules and regulations adopted by the board.

267 nent findings, examination results and test results.

268 (26) Delegating professional responsibilities to a person when the
269 licensee knows or has reason to know that such person is not qualified
270 by training, experience or licensure to perform them.

271 (27) Using experimental forms of therapy without proper in-
272 formed patient consent, without conforming to generally accepted
273 criteria or standard protocols, without keeping detailed legible rec-
274 ords or without having periodic analysis of the study and results
275 reviewed by a committee or peers.

276 (28) *Prescribing, dispensing, administering or distributing an an-*
277 *abolic steroid or human growth hormone for other than a valid*
278 *medical purpose. Bodybuilding, muscle enhancement or increasing*
279 *muscle bulk or strength through the use of an anabolic steroid or*
280 *human growth hormone by a person who is in good health is not*
281 *a valid medical purpose.*

282 (c) "False advertisement" means any advertisement which is false,
283 misleading or deceptive in a material respect. In determining
284 whether any advertisement is misleading, there shall be taken into
285 account not only representations made or suggested by statement,
286 word, design, device, sound or any combination thereof, but also
287 the extent to which the advertisement fails to reveal facts material
288 in the light of such representations made.

289 (d) "Advertisement" means all representations disseminated in
290 any manner or by any means, for the purpose of inducing, or which
291 are likely to induce, directly or indirectly, the purchase of profes-
292 sional services.

293 Sec. 3. K.S.A. 1988 Supp. 65-2844 is hereby amended to read
294 as follows: 65-2844. At any time after the expiration of one year
295 ~~three years~~, application may be made for reinstatement of any li-
296 censee whose license shall have been revoked, ~~and such application~~
297 ~~shall be addressed to the board. The board may adopt such rules~~
298 ~~and regulations concerning notice and hearing of such application as~~
299 ~~considered necessary.~~

300 ~~Sec. 4. K.S.A. 65-2862 is hereby amended to read as follows:~~
301 ~~65-2862. Any person violating any of the provisions of this act, except~~
302 ~~as specific penalties are herein otherwise imposed, shall be deemed~~
303 ~~guilty of a class A misdemeanor and upon conviction thereof shall~~

one year ←

on a form provided by the board and by payment of the prescribed fee. After administrative proceedings conducted in accordance with the Kansas administrative procedure act, the board may reinstate the license without limitation, reinstate the license with limitations or deny reinstatement. The board may deny any application for reinstatement filed within two years from the effective date of any prior order on an application for reinstatement issued following administrative proceedings conducted pursuant to the Kansas administrative procedure act without notice or hearing and without conducting administrative proceedings pursuant to said act.

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304 pay a fine of not less than fifty dollars (\$50) nor more than two
 305 hundred dollars (\$200) for each separate offense, and a person
 306 ~~for a second or subsequent violation of any of the provisions of this~~
 307 ~~act, wherein another specific penalty is not expressly imposed, shall~~
 308 ~~be deemed guilty of a misdemeanor and upon conviction thereof~~
 309 shall pay a fine of not less than one hundred dollars (\$100) ————
 310 nor more than five hundred dollars (\$500) for each separate
 311 offense ~~class E felony.~~

New Section 4. Any person not licensed to practice the healing arts and any licensee whose license to practice the healing arts is revoked or suspended who violates any of the provisions of the Kansas healing arts act, except as specific penalties are otherwise imposed, shall be guilty of a class A misdemeanor, and a person for a second or subsequent violation of any of the provisions of the Kansas healing arts act wherein another specific penalty is not expressly imposed, shall be guilty of a class E felony.

312 Sec. 5. K.S.A. 1988 Supp. 65-2895 is hereby amended to read
 313 as follows: 65-2895. (a) There is hereby created a designation of
 314 institutional license which may be issued by the board to a person
 315 who is a graduate of an accredited school of the healing arts or a
 316 school which has been in operation for not less than 15 years and
 317 the graduates of which have been licensed in another state or states
 318 which have standards similar to Kansas and who is employed by the
 319 department of social and rehabilitation services or, employed by any
 320 institution within the department of corrections or employed pur-
 321 suant to a contract entered into by the department of social and
 322 rehabilitation services or the department of corrections with a third
 323 party. An applicant for an institutional license shall pass an exam-
 324 ination in the basic sciences approved by the board. The institutional
 325 license shall confer upon the holder the right and privilege to practice
 326 that branch of the healing arts in which the holder of the institutional
 327 license is proficient and shall obligate the holder to comply with all
 328 requirements of such license. The practice privileges of institutional
 329 license holders are restricted as follows: The institutional license shall
 330 be valid only during the period in which the holder is employed by
 331 the department of social and rehabilitation services or, employed by
 332 any institution within the department of corrections or employed
 333 pursuant to a contract entered into by the department of social and
 334 rehabilitation services or the department of corrections with a third
 335 party, and only within the institution to which the holder is assigned.
 336 (b) An institutional license shall be valid for a period of two years
 337 after the date of issuance and may be renewed if the applicant for
 338 renewal is eligible to obtain an institutional license under this section,
 339 has successfully completed the examination required under subsection
 340 (a)(3) of K.S.A. 65-2873 and amendments thereto and has sub-

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New Section:

K.S.A. 1988 Supp. is hereby amended to read as follows: 65-2811. (a) The board may issue a temporary permit to practice the appropriate branch of the healing arts to any person:

* * *

The temporary permit may be extended until the results of the basic and clinical examination taken during the permit period and required for a temporary permit under paragraph (2) of subsection (a) are issued.

(3) Who has been accepted in or appointed to a full-time, approved postgraduate training program in this state; has made proper application upon forms provided by the board; has paid the prescribed fees as established by the board for the application for and granting of the temporary permit; is a graduate of an accredited school of the healing arts or a school which has been in operation for not less than 15 years and the graduates of which have been licensed in another state or states which have standards similar to Kansas; and has not previously engaged in a postgraduate training program in this state. The temporary permit issued under this paragraph (3) shall be valid for a period of one year following the date of issuance. No more than one temporary permit shall be issued under this paragraph (3) to any person.

*PHC
Attn #1
Pg 7.
3-23-9*



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Mike Hayden
Governor

Roger V. Endell
Secretary

March 23, 1989

To: House Committee on Public Health and Welfare

RE: SENATE BILL 182

The Department of Corrections supports the amendments found in Section 5, lines 312-335. These amendments are proposed to K.S.A. 1988 Supp. 65-2985. This statute concerns institutional licenses for medical personnel. At the current time such licenses are only awarded to a doctor "employed" by an institution of the Department of Corrections or Social and Rehabilitation Services. As you may know, the Department of Corrections recently contracted with Correctional Medical Systems, Inc., to deliver medical services to all correctional institutions. The purpose of this amendment is to extend to their personnel eligibility for this type of license. We propose an amendment to extend the license to those who are employed pursuant to a contract with DOC or SRS and work within an institution of the DOC or SRS. It is our understanding that the Board of Healing Arts does not oppose this amendment.

PH:ell

Attn # 2
3-23-9



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

March 23, 1989

TO: House Public Health and Welfare Committee
FROM: Kansas Medical Society *Chip Steelman*
SUBJECT: Senate Bill 182, As Amended by Senate Committee

The Kansas Medical Society appreciates this opportunity to express a few comments about the provisions of SB 182. Because this bill amends several sections of the statutes which govern licensure and regulation of physicians, we obviously have some concerns.

Section 1 of SB 182 as it was originally drafted, would have allowed the Board to conduct drug screens of licensees upon reasonable suspicion of inability. This refers, of course, to the suspicion of impairment, because of the abuse of substances or some other reason, such as mental disability. Under current law, the standard for conducting examinations of licensees of the Healing Arts requires that there be probable cause that there is some inability, before an examination may be conducted. Because this change would lessen the burden of proof required in order to conduct an examination of a licensee, our concerns pertain to whether or not there are constitutional rights to be considered. Our members agree, however, that because of the nature of the medical profession, there may be times when a drug screen would be appropriate in order to guarantee that the public may not be harmed by an impaired provider. For this reason, we collaborated with the staff of the Board of Healing Arts to develop the amendatory language, which we believe is an acceptable compromise. The language contained at lines 62-68 would require that the investigative information be presented to a peer review committee established pursuant K.S.A. 652840C. Such peer review committees already exist and there are separate committees for chiropractors, osteopaths and medical doctors.

We also have concerns pertaining to section 3 of the bill, which would require that a licensee whose license is revoked, must wait a minimum of three years before applying for reinstatement of the license. We did not express this concern to the Senate Committee, but since that time, a number of our members have questioned whether there should be possibility for waiving the three year requirement in extenuating circumstances. A good example would be a situation in which a licensee may be suffering from temporary mental illness but could be fully recovered in a somewhat short period of time.

Finally, we do also have concerns about the provisions of section 4 of the bill. It is our understanding that it is the intent of the Board of Healing Arts to strengthen the penalties for individuals who practice medicine and surgery without a license. The proposed amendment to current law would prescribe the penalty for a class A misdemeanor for a first offense and the penalty for a class E felony for the second offense. Taken to the hypothetical extreme, this would mean that a licensee who forgot to renew his or her license on time could spend a sentence in the county jail. Furthermore, if this individual forgot to renew

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attm #3
3-23-9*

House Public Health and Welfare Committee
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their license a second time and had to be notified of such, hypothetically, could be imprisoned for a minimum of one year. Obviously, these kind of situations would not arise, but we do believe that clarification of legislative intent is very important in this case. Again, we did not bring this problem to the attention of the Senate Committee because it has been since that time that the questionable language has been further analyzed.

We sincerely appreciate your attention to our concerns and hope that action will be taken to remedy these problems prior to recommending SB 182 for passage. Thank you very much.

CW:lg

PH&W
attm # 3
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3-23-9

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary

Statement regarding: SB 304

TITLE: An Act concerning patients in certain state institutions; relating to payment for the maintenance, care and treatment thereof; amending K.S.A. 1988 Supp. 59-2006 and repealing the existing section.

PURPOSE: To amend K.S.A. 59-2006 in such a way that the three-year time limitation is deleted.

BACKGROUND: The present wording of K.S.A. 59-2006(b) states that "no action shall be commenced by the secretary . . . unless such action is commenced within three years after the date of such written demand." (Written demands are required "periodically and not less than once each fiscal year".)

The amendment proposes to delete any reference to the three year time limitation in order to bring the statute into conformance with other S.R.S. civil recovery statutes and applicable Kansas case law.

Examples of other S.R.S. civil recovery statutes (which do not contain any time limitation) are 1) K.S.A. 39-719b (recovery of public assistance obtained by ineligible recipients, 2) K.S.A. 39-719a (medical assistance subrogation recoveries, and 3) 39-718b (liability of parent or guardian for assistance provided to a dependent child).

Case law states that statutes of limitation do not run against a state agency unless specifically provided by statute. See State ex rel Schneider v. McAfee, 2 Kan.App. 2d 274(1978).

Case law also states that statutes of limitation do not run against the state when the action arises out of the performance of a governmental function. See U.S.D. No. 490 v. Celotex Corp., 6 Kan. App. 2d 346 (1981).

Effect of passage: The bill merely brings this statute into compliance with other S.R.S. civil recovery statutes now on the books. A side effect will be that K.S.A. 59-2006 recoveries should gradually increase because 1) more civil suits are likely to be filed in the future and 2) the number of affirmative defenses allowed in future suits is likely to decrease.

Recommendation: The bill should be passed.

P.H.W.
Attn # 4
3-23-9