

Approved _____

Date

2-26, 1991
shv

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Carol H. Sader at _____
Chairperson

1:30 4:44 p.m. on February 20, _____, 1991 in room 423-S of the Capitol.

All members were present except:

Representative Tom Bishop, excused

Committee staff present:

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

Conferees appearing before the committee:

Art Schumann, Comptroller for Department of Health and Environment

Chairperson Sader called meeting to order drawing attention to minutes for February 13, and 14th. She asked that members read them over carefully.

A suggested change on page 2 of February 13th minutes was suggested by staff, on line 4 of Ms. Correll's comments, after the word "act" to insert, "is defined for the purpose of this bill differently but otherwise".

Rep. Amos moved to correct the minutes of February 13, 1991, by inserting suggested language on page 2, 4th line, seconded by Rep. Lynch, motion carried.

Rep. Amos moved the adoption of minutes of February 13, 1991 with the correction stated, and minutes of February 14th, as presented, seconded by Rep. Samuelson, motion carried.

Chair extended a very warm welcome back to Vice-Chairman Theo Cribbs. He was welcomed also by committee members with applause. Rep. Cribbs stated he is very pleased to be back.

Chair welcomed all in attendance, and thanked them for their interest.

Chair drew attention to agenda for the day, and recognized Rep. Heineman who offered a bill request.

Rep. Heineman offered draft of his request (Attachment No. 1). He explained rationale noting language dealing with a new type of crime, i.e., sexual exploitation. Language deals with persons making "sexual contact" in inappropriate situations. A basic change in the proposal does not allow a victim in this instance to consent. He noted last year very graphic testimony had been given on this issue and he feels it is vital legislation and urged support for his request.

Rep. Neufeld moved to introduce this request as a committee bill, seconded by Rep. Amos, motion carried.

Chair noted copies of information distributed at Joint Committee Meeting on February 19th were available for those Representatives who did not obtain them at the meeting. (These hand-outs not recorded as attachments this date.)

Chair called attention to a hand-out distributed this date, prepared by Local Health Departments (Attachment No. 2), Preventing Low Birthweight Summary.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 a.m./p.m. on February 20, 1991.

Chair recognized Rep. Elaine Wells for a bill request.

Rep. Wells offered draft of a bill request (Attachment No. 3). She gave a comprehensive explanation of the draft, requesting a provision to establish a woman's educated choice and informed decision act relating to abortions. She detailed the draft, section by section. Rep. Wells then answered numerous questions.

Rep. Flower moved to introduce Rep. Well's request as a committee bill, seconded by Rep. Wagle, motion carried.

DISCUSSION BEGAN THIS DATE ON HB 2018: Chair called on staff members to update committee on HB 2018.

Ms. Correll noted committee at this point is trying to deal with the differences in current law, and interpretations being given to those laws. It appears the amendments from Department of Health/Environment on HB 2018, would write into current law the interpretation of that Department. Other issues relate to the fiscal year situation, i.e., whether or not the counties must be required to conform to the state's fiscal year.

Chair asked staff to comment on policy issues related to HB 2018.

Ms. Correll noted the basic issues are, i.e., the removal of the cap; how funds can be allocated to the counties. Lengthy discussion ensued. It was determined by staff members and the Department of Health/Environment that present language relating to the allocation formula is contradictory.

Mr. Art Schumann, Comptroller of Department of Health/Environment, also offered comments at the request of the Chair (Attachment No. 4).

Mr. Schumann detailed the attachment, then answered numerous questions concerning: matching funds; breakdown of funding for counties; state funding matched by local funding; maintenance of effort. Department of Health/Environment has applied maintenance of effort only to local tax revenues, not to a mill levy; there is a list of 23 counties that have had problems coming up with matching funds last year published in the Appropriation Committee report, and Mr. Schumann offered to supply that to committee. He explained "maintenance of effort" as he views it.

After lengthy questions and answers, Chair suggested, "based on remarks from Mr. Schumann and information provided by staff members, she would direct staff to prepare amendments that might conform to some of the policy issues discussed this date". After this balloon is prepared, Chair will direct committee to discuss HB 2018 further.

It was suggested that a clear determination be made as to whether or not to continue the \$7000 minimum, and if it is continued, how will the pro-rating be handled.

Discussion continued concerning interpretations of the statute: some want \$7000 floor minimum to stay; some felt the income of persons using local health departments is important data in figuring how the funding is appropriated, perhaps the income rather than population figures is the key factor; fiscal year concerns; perhaps the Department of Health and Environment might go over budgets with counties after they have received funding for the following calendar year, and if this is done, perhaps the quarterly payments to the counties will no longer be necessary. Other recommendations, i.e., use the recommendation from Health/Environment in regard to reconciling inconsistencies that arise with the removal of the per capita cap in the balloon amendment. It was noted the current method of allocating state funds is matching funds, so clarification is necessary as to whether to use matching funds or population alone.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 a.m. on February 20,, 1991

At this time, Mr. Schumann was requested to provide to committee a list of breakdown of funding by counties. He responded it would take some time to prepare a list of this type.

Chair noted at this point, since there is still a number of confused issues, it would be wise to wait for newly drawn amendments. Committee can then resume deliberation of HB 2018.

Chair adjourned meeting.

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

Date February 20, 1991

Name	Organization	Address
Jan Bergman	KSNA	1011 Wemphal Seneca, Ks. 66538
Helen Crane	Washburn	2722 Lee Ct. Topeka KS 66604
Orville Votr	SHL	Lawrence, K.
Helen Watt		
John Schray	SHL	N. Newton
Arthur Schuman	KDHE	Topeka
Michelle Leston	John Peterson & Associates	Topeka,
Mary E. Heile	CPAAA - Board member Helg. Batten Co.	R2 #156 Augusta, KS 67010
Paul Postlethwaite	CPAAA - Council on Aging advg co Bd member	4751 N Woodlawn Wichita, KS 67220
Beth Powers	Kc Choice Alliance	Topeka
Loris A. Habegger	Harvey Co Council on Aging	N. Newton, Ks
Evelyn Habegger	" " " " " "	" " "
Trevor & Fay Lehman	CPAAA & Harvey Co Council on Aging	Newton Kansas
Art & Ruth Schmidt	Harvey Co Council on Aging CPA + A	Walter, Ks.
Magaret M. Fugh	Adviser Council on Aging	4700 W 13th, 3-3 Wichita, KS 67212
Lella Coomes	Mid-America Nazarene College School of Nursing	12316 W. 52 Terr Shawnee KS 66214
Dorothy Thompson	Mid-America Nazarene College Olathe, KS	MANC Box 9076 Olathe, KS 66061
Flora Hunter	Mid-America Nazarene College Olathe, KS	Box 9076 Olathe, KS
Mary Kraft	St. Mary's of the Plains College	P.O. Box 442305
Jean M. Stone	Sm PC with KSNA	Box 328 Atchison, KS 66002
Kim Silverdale	AREA Agency on Aging	Box 687 Newton
Miss Washington	La Co & Co-ord Bu Co	Edwards
Louise Burkhead	SHL	2404 Glen Oak Dr Wichita, KS 67216

D. Keenemore

HOUSE BILL NO. _____

AN ACT defining certain crimes relating to sexual exploitation by mental health service providers and prescribing punishments therefor; amending K.S.A. 21-3525 and K.S.A. 1990 Supp. 21-3501 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (1) As used in this section, the following words and phrases have the meanings respectively ascribed thereto:

(a) "Mental health service provider" means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services;

(b) "mental health service" means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including any intrapersonal or interpersonal dysfunction;

(c) "emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health service provider are such that the mental health service provider knows or has reason to know that the patient or former patient is significantly impaired in the ability to withhold consent to sexual contact or sexual intercourse by the mental health service provider;

(d) "patient" means a person who seeks or obtains mental health services from a mental health services provider and who is not married to the mental health services provider;

*PHW
2-20-91
Attn # 1.*

(e) "former patient" means a person who obtained mental health services from a mental health service provider prior to sexual contact with that mental health service provider, who was not obtaining mental health services from such mental health service provider at the time of such sexual contact, and who is not married to such mental health service provider at the time;

(f) "sexual contact" includes any lewd fondling or touching of the person of either the victim or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the victim or the offender, or both;

(g) "therapeutic deception" means a representation by a mental health service provider that sexual contact with the mental health service provider is consistent with or part of the patient's or former patient's treatment; and

(h) "personal contact" means any direct contact in person and does not mean any indirect contact or communication, whether or not written or oral or by means of the mail or telephone or any other telecommunications device.

(2) Sexual exploitation is sexual contact with a person under any of the following circumstances:

(a) The offender is a mental health service provider and the victim is a patient of the mental health service provider and the sexual contact occurred during the psychotherapy session;

(b) the offender is a mental health service provider and the patient or former patient is emotionally dependent upon the mental health service provider; or

(c) the offender is a mental health service provider and the victim is a patient or former patient and the sexual contact occurred by means of therapeutic deception.

Sexual exploitation is a class E felony.

(3) Aggravated sexual exploitation is sexual intercourse or sodomy under any of the circumstances described in subsection (2).

Aggravated sexual exploitation is a class D felony.

(4) Consent by the victim to sexual contact under any of the

PHW
4-20-91

Attn. #1-2

circumstances described in subsection (2) is not a defense to the crime of sexual exploitation. Consent by the victim to sexual intercourse or sodomy under any of the circumstances described in subsection (2) is not a defense to the crime of aggravated sexual exploitation.

(5) It is a rebuttable presumption that a former patient is not emotionally dependent upon a mental health service provider if there is a period of one year or more, prior to the sexual contact, sexual intercourse or sodomy, during which period there is no personal contact between a former patient and a mental health service provider.

(6) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 1990 Supp. 21-3501 is hereby amended to read as follows: 21-3501. The following definitions apply in this article unless a different meaning is plainly required:

(1) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

- (a) Generally recognized health care practices; or
- (b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(2) "Sodomy" means oral or anal copulation, including oral-genital stimulation between the tongue of a male and the genital area of a female; oral or anal copulation or sexual intercourse between a person and an animal; or any penetration of the anal opening by any body part or object. Any penetration, however slight, is sufficient to constitute sodomy. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

- (a) Generally recognized health care practices; or
- (b) a body cavity search conducted in accordance with K.S.A.

PHW
4-20-91
1-3

22-2520 through 22-2524, and amendments thereto.

(3) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

(4) "Unlawful sexual act" means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery ~~or~~, aggravated sexual battery, sexual exploitation or aggravated sexual exploitation, as defined in this code.

Sec. 3. K.S.A. 21-3525 is hereby amended to read as follows:
 21-3525. (1) The provisions of this section shall apply only in a prosecution for: (a) Rape, as defined by K.S.A. 21-3502 and amendments thereto; (b) indecent liberties with a child, as defined in K.S.A. 21-3503 and amendments thereto; (c) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504 and amendments thereto; (d) aggravated criminal sodomy as defined by K.S.A. 21-3506 and amendments thereto; (e) enticement of a child, as defined in K.S.A. 21-3509 and amendments thereto; (f) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511 and amendments thereto; (g) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (h) aggravated sexual battery, as defined in K.S.A. ~~1983--Supp-~~ 21-3518 and amendments thereto; (i) incest, as defined in K.S.A. 21-3602 and amendments thereto; (j) aggravated incest, as defined in K.S.A. 21-3603 and amendments thereto; (k) aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto, with intent to commit any crime specified above; (l) indecent solicitation of a child, as defined in K.S.A. 21-3510 and amendments thereto; (m) sexual battery, as defined in K.S.A. ~~1983-Supp-~~ 21-3517 and amendments thereto; ~~or~~ (n) sexual exploitation, as defined in section 1 and amendments thereto; (o) aggravated sexual exploitation, as defined in section 1 and amendments thereto; or (p) attempt, as defined in K.S.A. 21-3301 and amendments thereto,

PNW
 4-20-91
 1-4

or conspiracy, as defined in K.S.A. 21-3302 and amendments thereto, to commit any crime specified above in this subsection (1).

(2) Except as provided in subsection (3), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in the presence of the jury, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion must be made at least seven days before the commencement of the trial unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(3) In any prosecution for a crime designated in subsection (1), the prosecuting attorney may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(4) As used in this section, "complaining witness" means the

PHW
4-20-91
1-5

alleged victim of any crime designated in subsection (1), the prosecution of which is subject to this section.

Sec. 4. K.S.A. 21-3525 and K.S.A. 1990 Supp. 21-3501 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

PN&W
4-20-91
1-6

Distributed by the
Kansas Association of Local Health Departments

Preventing Low Birthweight

SUMMARY

Committee to Study the
Prevention of Low Birthweight
Division of Health Promotion and
Disease Prevention
INSTITUTE OF MEDICINE

NATIONAL ACADEMY PRESS
Washington, D.C. 1985

*Offered
1-19-91
2-20-91
attn # 2*

family planning providers should promote the use of educational materials encompassing these themes, particularly for their clients who are considering becoming pregnant. Private practitioners also should offer comprehensive health education related to reproduction, incorporating these same topics.

Of equal importance are the sex education and family life education curricula and teaching materials of schools. Although these issues may be discussed in some settings, the little information available on school-based health education suggests that they are of low priority.

The Role of Family Planning

Family planning services should be an integral part of overall strategies to reduce the incidence of low birthweight. Several studies suggest that family planning has made a considerable contribution to reducing the infant mortality rate in the United States over the past 20 years and has also played a role in the gradual decrease in the rate of low birthweight.

Family planning helps to decrease the occurrence of low birthweight by reducing the number of births to women with a variety of high-risk characteristics, including extreme youth or age, a large number of previous births, chronic severe hypertension, severe heart and kidney diseases, and other risk conditions. These services also reduce the probabilities of a low-weight birth by increasing the interval between births for many women; an interval of less than 6 months is associated with a sharply elevated risk of low birthweight.

The committee explored the concept that family planning also reduces low birthweight by increasing the proportion of pregnancies that are intended and wanted at the time of conception. It is apparent, for example, that both teenagers and unmarried women experience higher than average rates of low birthweight; they also report higher rates of unintended pregnancies. It has been suggested that a woman who has planned for and welcomes her pregnancy will follow the health practices necessary to increase the chances of a successful pregnancy outcome more adequately than a woman with an undesired pregnancy. Recent data from the 1980 National Natality Survey support this thesis. In the portion of that survey focused on married women only, wantedness of



PKW
2-20-91
Attmt # 2-2

pregnancy had a strong relationship to seeking prenatal care. Women who wanted a child at the time they became pregnant were more likely to receive care early in pregnancy than were those who would have preferred to have had a child at a later time. Women who had not planned to have another child showed the most delay in seeking prenatal care. These factors accounted for about a third of the black/white differential in the number of prenatal visits.¹⁴

Unmet Need for Family Planning

The large number of unintended pregnancies in the United States, the percentage of women at risk of unintended pregnancy who do not use contraception, and the number of abortions indicate that existing family planning strategies are not fully adequate. The reasons for this problem range from service inadequacies to the knowledge, attitudes, and practices of individual couples.

The unmet need appears to be largest among two groups at particularly high risk of low birthweight, the poor and the young. It has been estimated that in 1981, about 9.5 million low-income and 5 million sexually active teenagers needed subsidized (i.e., supported at least in part by public funds) family planning care, but over 40 percent of both groups did not obtain medically supervised contraceptive care.¹⁵

For this reason, the committee emphasizes the importance of Title X of the Public Health Service Act. Title X authorizes project grants to public and private nonprofit organizations for the provision of family planning services to all who need and want them, including sexually active teenagers, but with priority given to low-income persons. The committee urges that federal funds be made generously available to meet the documented need for family planning. The Title X program and family planning services generally should be regarded as important parts of the public effort to prevent low birthweight.

The prevention of unwanted pregnancies in sexually active adolescents, particularly those under 17 who are unmarried, should receive special attention. Infants born to members of this group have substantially higher rates of low birthweight, neonatal mortality, and postneonatal mortality and morbidity than infants born to older mothers.

THE IMPACT OF PRENATAL CARE

After a comprehensive review of the literature on the value of prenatal care, the committee concluded that the overwhelming weight of the evidence is that prenatal care reduces low birthweight. This finding is strong enough to support a broad, national commitment to ensuring that all pregnant women in the United States, especially those at medical or socioeconomic risk, receive high-quality prenatal care.

PN&W
2-20-91
2-3

Rep. Wells

HOUSE BILL NO. _____

By

AN ACT establishing the woman's educated choice and informed decision act; establishing requirements of educated choice and informed decisions relating to abortions; amending K.S.A. 1990 Supp. 65-2837 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 through 5, and amendments thereto, of this act shall be known and may be cited as the woman's educated choice and informed decision act.

New Sec. 2. As used in this act:

(a) "Abortion" means an act, procedure or use of any instrument, medicine or drug which is supplied or prescribed for or administered to a pregnant woman with the intent and result of producing the premature expulsion, removal or termination of the life of the preborn child within the womb of the pregnant woman, except that in cases in which the preborn child's life is threatened by the continuation of the pregnancy, early delivery after viability shall not be construed as abortion.

(b) "Preborn child" means the offspring of human beings existing from the moment of fecundation of the ovum by the spermatozoa, through every stage of development until birth.

(c) "Viable" means that stage of the preborn child's development when the preborn child's life may be continued indefinitely outside the womb by natural or artificial life-supporting systems.

(d) "Physician" means any person licensed to practice medicine and surgery under the laws of this state.

(e) "Qualified person assisting the physician" means a physician, psychologist, licensed social worker, registered

PHW
2-20-91
Attn # 3

professional counselor or registered nurse.

New Sec. 3. (a) An abortion otherwise permitted by law shall not be performed or induced except:

(1) With the written acknowledgment of the woman upon whom the abortion is to be performed that she has been orally informed, by the physician who will perform the abortion or a qualified person assisting the physician, of the public and private agencies available to assist her in her decision as to whether or not to have an abortion;

(2) with the written acknowledgment of such woman that she was counseled by such a public or private agency under subsection (a)(1) or that she waived such counseling; and

(3) with the written acknowledgment of the woman that she has been orally informed, by the physician who will perform the abortion or a qualified person assisting the physician, of the availability of individuals, public and private agencies and services to assist her during her pregnancy and after the birth of her child, if she decides not to have the abortion, whether she wishes to keep her child or place her child for adoption, and that upon her request her physician, or a qualified person assisting the physician, will provide her with a list of such individuals, agencies and services available.

(b) The disclosure of information required herein upon the request of such woman shall be made to the woman on an individual basis, in private, in order to protect her confidentiality and ensure that the information she receives focuses on her individual circumstances. The information relating to public or private counseling agencies under subsection (a)(1) and public and private agencies and services under subsection (a)(3) shall be prepared by the department of health and environment, shall be updated periodically and shall be provided to physicians for the purposes of this act by the secretary of health and environment.

(c) Prior to performing or inducing the abortion, the attending physician performing or inducing the abortion shall receive the written acknowledgments required under subsection (a)

PK/LLW
2-20-91
Attn # 3-2

and shall provide the pregnant woman with a duplicate copy of the acknowledgments required under subsection (a).

(d) A written acknowledgment under subsection (a) which is signed as provided under subsection (a), shall be presumed to be valid. This presumption, however, may be subject to rebuttal upon proof that the signature on the acknowledgment was obtained by fraud, deception, misrepresentation or omission of a material fact.

New Sec. 4. The provisions of this act shall not apply when the physician who will perform or induce the abortion, utilizing experience, judgment and professional competence, determines that any delay in performing or inducing the abortion would endanger the life of the pregnant woman. Such determination made by the physician, shall be in writing and shall state the medical reasons upon which the determination is based that the delay would endanger the life of the pregnant woman.

New Sec. 5. Nothing in this act shall be construed as creating or recognizing a right to legal abortion.

Sec. 6. K.S.A. 1990 Supp. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836 and amendments thereto and in this section:

(a) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

(2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.

(3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

P. Hall
2-20-91

Attn. # 3-3

-
- (2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.
 - (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.
 - (4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.
 - (5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.
 - (6) Willful betrayal of confidential information.
 - (7) Advertising professional superiority or the performance of professional services in a superior manner.
 - (8) Advertising to guarantee any professional service or to perform any operation painlessly.
 - (9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.
 - (10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107 and amendments thereto.
 - (11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a and amendments thereto.
 - (12) Conduct likely to deceive, defraud or harm the public.
 - (13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of

PHW
2-20-91

Attn 3-4

the body or mind.

(14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.

(15) Allowing another person or organization to use the licensee's license to practice the healing arts.

(16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.

(17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts.

(18) Obtaining any fee by fraud, deceit or misrepresentation.

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer medical records to another physician when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering, distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person

PH&W
2-20-91

Attn # 3-5

when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them such responsibilities.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

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

(29) Performing or inducing an abortion in violation of the provisions of the woman's educated choice and informed decision act.

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

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

Sec. 7. K.S.A. 1990 Supp. 65-2837 is hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

PAW

2-20-91

Attn # 3-6

Clarification of Legislative Intent for HB2018

- o Present Statutes and HB2018 appear to be clear as to the mission to be accomplished "...For the purpose of insuring that adequate public health services are available to all inhabitants of the state of Kansas ..."
- o Is legislative intent of HB2018 to remove the present \$.75 per capita maximum per county?
- o Is legislative intent that funding appropriated under these statutes be allocated on the basis of county populations with a minimum of \$7,000 to each county that qualifies?
- o Is legislative intent to maintain a minimum of \$7,000 per county when appropriations provide less than \$.75 per capita?
- o Is legislative intent that State funding provided by these statutes be matched with local funding?
- o If State funding is to be matched by local funding, on what basis - receipts vs. expenditures, State fiscal year vs. calendar year?
- o Is legislative intent to require counties to maintain a base amount of local funding (maintenance of local financial effort).
- o If a local funding base is to be maintained, what will the base period be and to what will it be compared?

*PNW
2-20-91
altm #4*