

Approved \_\_\_\_\_

Date

3-5-91  
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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

1:30 ~~am~~/p.m. on February 28, 1991 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Representative Joan Wagnon  
Gordon Risk, American Civil Liberties Union of Kansas (printed testimony only).  
Theresa Hodges, Sr. Laboratory Scientist/Department of Health/Environment  
Robert M. Day, Superintendent of Ks. Neurological Institute

Chairperson Sader called meeting to order, drawing attention to minutes ready for corrections or approval from members.

Rep. Amos moved the minutes of February 21, 1991, be approved as presented, seconded by Rep. Cribbs. Motion carried.

Chair called for discussion on HB 2018 and the report from the sub-committee.

Rep. Carmody presented the committee report and recommendations on HB 2018. (Attachment No. 1) He gave a detailed explanation of the committee report. (Steps are written in comprehensive detail in Attachment No. 1). The focus of the sub-committee, Rep. Carmody, Rep. Love, Rep. White, with Rep. Carmody as Chairman, was to combine three thoughts, i.e., a minimum \$7000 for every health clinic; funding distribution based on population; and some type of local effort acquired. He noted Rep. Love had some reservations with recommendations and that will be addressed.

He explained language changes section by section, (See balloon on HB 2018 in his hand-out). He noted counties with lower populations will receive \$7000, but are not required to match this amount.

At this point, Rep. Love expressed his concern in regard to distribution of funds based on a formula for need of services and wealth, rather than on population figures. He stated the wealthier counties should perhaps receive less funding than counties that are poor.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S, Statehouse, at 1:30 ~~xxm~~/p.m. on February 28, 1991

Representative Carmody continued with explanation of recommendations in balloon. He drew attention to the quarterly payments from the State to fiscal year July to June, will not direct the State to make one payment at the beginning of the county fiscal year, (January). This would allow the counties to have the funds available for the entire year. There were concerns in this regard expressed by Representative Love, i.e., interest paid would be less, and more money would need to be appropriated to allow for the yearly allocation to be given to the counties.

Rep. Carmody also detailed the explanation for meeting the matching funds.

A lengthy discussion ensued on amendments proposed to HB 2018.

Rep. Cribbs made a motion to pass favorably the recommendations presented by sub-committee in balloon offered on HB 2018. Motion seconded by Rep. White.

Discussion continued. Chair noted at this point, perhaps a Resolution might be considered to recommend a study on what really is the role of the Public Health Departments and concerns expressed here today.

Vote taken on motion to amend per balloon. Motion carried.

Rep. Love recorded as "NO" vote.

Rep. Carmody agreed to carry HB 2018 to the floor of the House.

Chair thanked the sub-committee for hard work on HB 2018.

Chair drew attention to HB 2226.

Norman Furse gave a comprehensive explanation of HB 2226, explaining all changes proposed. He noted key words in line 21, "probable cause". He detailed procedures set out, talked of safe-guards, responsibility of costs for tests. He then answered numerous questions.

At this point, Mr. Furse read directly from statutes to clarify concerns in regard to what mental health facilities are involved in requirements in HB 2226.

Chair drew attention to fiscal note on HB 2226 distributed today to members (Attachment No. 2).

HEARINGS BEGAN ON HB 2226.

Rep. Wagon stated her reasons for introducing HB 2226, i.e., the Kansas Neurological Institute is in her District, and she has been made aware of problems of inappropriate behavior of some staff members. HB 2226 will provide safe-guards and give the authority for testing for substance abuse of employees. She is also concerned about employee rights, as well as the rights of the patients who deserve care provided by the highest quality person. The language in the bill tries to focus on both of these points. When drafting the bill, they tried to keep it basic, and not too broad. Rep. Wagon noted there is an Advisory Commission Report currently in Labor and Industry Committee and she will provide that for members along with her written testimony from today.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 423-S, Statehouse, at 1:30 ~~xx~~/p.m. on February 28, 1991.

Gordon Risk, American Civil Liberties Union was present early in proceedings as he was scheduled to appear as a conferee. However, he had to leave for a patient appointment, but requested that members read and consider his remarks. See (Attachment No. 3).

Theresa Hodges, Senior Laboratory Scientist/Department of Health/Environment offered hand-out (Attachment No. 4). She noted the 1988 Legislature had established strengthened requirements for Kansas laboratories performing tests for prenatal syphilis, immunodeficiency virus, and controlled substances. The purpose of this regulatory responsibility is to ensure accuracy and reliability of tests. It is recommended any employee testing program required by statute be required to utilize a laboratory approved by the Secretary of Health/Environment. The only confirmatory test permitted in Kansas-approved laboratories is gas chromatography/mass spectrometry. This is the only universally recognized confirmatory test procedure for controlled substance testing.

She noted the Department has concerns regarding what action Institutions might take regarding a single positive drug test. There must be some safe-guards established for the benefit of the employee, perhaps those already stipulated in K.S.A. 75-4362, she noted. She answered questions, i.e., tests cost from \$30 to \$50 each; some tests show positive when in fact other causes have determined the test positive.

Robert M. Day, President of Ks. Neurological Institute offered hand-out (Attachment No. 5). He cited specifics in numbers of persons in their facility and a wide range of mental health problems. The Institute employees almost 900 people, and he made it clear there is a problem with substance abuse ranging from use of alcohol in the work place to individuals charged with possession with intent to sell controlled substances. The Institute has an employee assistance program designed to help employees free themselves of dependency. He would be extremely interested in proposed legislation and the test explained by Mrs. Hodges. Their department wants accurate test results. He noted their employees are involved in sensitive work with patients, so good judgment is vital. He feels testing would be a good step forward. He answered numerous questions.

Mr. Day offered hand-out (Attachment No. 6) the position of Department of SRS. This statement from Dr. Robert Harder was in support of HB 2226.

HEARINGS CLOSED ON HB 2226.

Chair opened discussion on HB 2127.

Chair recognized Mr. Furse who explained a conflict in language appearing in HB 2127 on page 2, new section 3.

Rep. Wiard moved to amend HB 2127 by deleting "this act" and inserting "Kansas healing arts act" in all places on given lines that say "this act", but for line 7 on page 2. Motion seconded by Rep. Cribbs. Motion carried.

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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S, Statehouse, at 1:30 ~~xx~~ p.m. on February 28, 1991.

Rep. Carmody expressed concerns in regard to a serious felony crime being created and he feels the Judiciary Committee, not the Committee on Public Health/Welfare should hear language proposed, especially in section 3.

At this point, Rep. Carmody made a motion to table HB 2127, motion seconded by Rep. Flower. Lengthy discussion ensued. Staff noted, for informational purposes only, most of many bills that deal with infractions of statutes in acts that relate to the health care practitioners are handled by Committee on Public Health and Welfare.

Vote taken, motion failed.

Rep. Wagle moved to amend HB 2127 as proposed by Kansas Medical Society, per attachments distributed on February 21, 1991. (Balloon is enclosed this date as (Attachment 7). Motion seconded by Rep. Flottman. Discussion continued. Question called for, vote taken. Motion carried.

Rep. Carmody moved to strike new section 3 in HB 2127, which would eliminate the felony. Motion seconded by Rep. White. Discussion continued.

Rep. Carmody said again, "He feels that HB 2127 belongs in Judiciary Committee". Discussion continued, i.e., focus on the word "intent"; explanations given on penalties of Class C misdemeanor and Felony crimes.

Vote taken, motion carried.

On HB 2127 as a whole, Rep. Carmody moved to pass HB 2127 out of committee favorably, as amended, seconded by Rep. Neufeld. Motion carried.

Chair adjourned meeting at 3:10 p.m.

Next meeting scheduled for Monday, March 4, 1991



NB 2018

Rep Carmody  
Chair of Sub-Committee  
report

state financial assistance shall be distributed to local health departments as follows:

(a.) First, each local health department shall, upon application therefor, receive \$7,000. If sufficient funds are not available to make this distribution then the funds which are available shall be divided equally among those local health departments making application therefor.

(b.) Second, if any funds are available after the distribution required in (a.) the secretary shall distribute such funds as follows:

(1.) A figure equal to the total amount of state financial assistance available for distribution, before deduction for the distribution in (a.), shall be determined.

(2.) The figure determined in (b.) (1.) shall be allocated to local health departments making application for assistance based on the proportion that the population of the county or counties comprising the local health department applying for such assistance bears to the total population of all counties comprising local health departments which have applied for such financial assistance.

(3.) If any health department making appli-

1 Section 1. K.S.A. 65-241 is hereby  
2 amended to read as follows: 65-241. As  
3 used in K.S.A. 65-241 to 65-246,  
4 inclusive; (a) "Local health department"  
5 means any county, city-county or  
6 multicounty department of health.

7 (b) "Secretary" means secretary of  
8 health and environment.

9 (c) "Fiscal year" means the period  
10 commencing January 1 of any year and  
11 ending December 31 of the same year.

12 (d) "State financial assistance"  
13 means the total amount of money available  
14 for distribution to local health  
15 departments under this act.

16 Sec. 2. K.S.A. 65-242 is hereby  
17 amended to read as follows: 65-242. ~~(a)~~

18 For the purpose of insuring that adequate  
19 public health services are available to  
20 all inhabitants of the state of Kansas,  
21 the state shall ~~participate from and~~  
22 ~~after January 1, 1991~~ in the financing of  
23 the operation of local health departments.

24 ~~Subject to appropriations therefor, each~~

25 ~~local health department which applies for~~  
26 ~~state financial assistance under this act~~  
27 ~~shall receive an amount of money equal to~~  
28 ~~the amount of money which the local health~~  
29 ~~department receives from local tax~~  
30 ~~revenues and from federal revenue sharing~~  
31 ~~funds, except that state financial~~  
32 ~~assistance to any one local health~~  
33 ~~department shall not exceed (1) an amount~~  
34 ~~equal to \$.75 multiplied by the number~~  
35 ~~equal to the population of the county, if~~  
36 ~~the local health department is a county or~~  
37 ~~city-county department of health, or~~  
38 ~~counties, if the local health department~~  
39 ~~is a multicounty department of health, in~~  
40 ~~which the local health department is~~

PAH  
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Attn #1

cation for assistance would receive less than \$7,000 using the formula in (b.) (2.), then such department shall be paid in accordance with (a.) only. If any health department making application for assistance would receive more than \$7,000 using the formula in (b.) (2.) then such departments shall be paid based on the the proportion of the population served by the county or counties comprising such local health department bears to the total population of all counties comprising local health departments which have made application for assistance, except for departments receiving funds under (a.) above. Provided, however, that in no case shall the assistance distributed under this section (b.) to a local health department exceed the amount that the local health department receives from local tax revenues for the fiscal year in which the state financial assistance is paid.

1 ~~located or (2) an amount equal to \$7,000,~~  
 2 ~~if the local health department is a county~~  
 3 ~~or city-county department of health, or~~  
 4 ~~\$7,000 multiplied by a number equal to the~~  
 5 ~~number of counties in which the local~~  
 6 ~~health department is located, if the local~~  
 7 ~~health department is a multicounty~~  
 8 ~~department of health, whichever amount~~  
 9 ~~computed under (a)(1) or (a)(2) is the~~  
 10 ~~larger amount.~~  
 11 ~~(b) Notwithstanding any limitation~~  
 12 ~~placed by subsection (a) on the amount of~~  
 13 ~~state financial assistance which any one~~  
 14 ~~local health department may receive, if~~  
 15 ~~any money remains after the first~~  
 16 ~~computation of state financial assistance~~  
 17 ~~under subsection (a), such money shall be~~  
 18 ~~distributed to each local health~~  
 19 ~~department which will receive state~~  
 20 ~~financial assistance under subsection (a)~~  
 21 ~~in proportion that the number equal to the~~  
 22 ~~population of the county, if the local~~  
 23 ~~health department is a county or~~  
 24 ~~city-county department of health, or~~  
 25 ~~counties, if the local health department~~  
 26 ~~is a multicounty department of health, in~~  
 27 ~~which the local health department is~~  
 28 ~~located bears to the total population of~~  
 29 ~~all counties in which local health~~  
 30 ~~departments which will receive state~~  
 31 ~~financial assistance under subsection (a)~~  
 32 ~~are located.~~  
 33 ~~(c) If the amount of money~~  
 34 ~~appropriated for state financial~~  
 35 ~~assistance under subsection (a) of this~~  
 36 ~~section is not adequate to provide each~~  
 37 ~~local health department which applies for~~  
 38 ~~state financial assistance with the~~  
 39 ~~maximum amount of state financial~~  
 40 ~~assistance the local health department is~~  
 41 ~~eligible to receive under subsection (a).~~

*P.H.W.*  
*2-28-91*  
*Attmt # 1-2*

1 the secretary shall prorate the money  
 2 appropriated for such purpose among all  
 3 local health departments applying for such  
 4 financial assistance in proportion that  
 5 the amount of state financial assistance  
 6 each such local health department would  
 7 have received if the amount of money  
 8 appropriated for state financial  
 9 assistance under subsection (a) had been  
 10 adequate to provide each such local health  
 11 department with the maximum amount of  
 12 state financial assistance the local  
 13 health department was eligible to receive  
 14 under subsection (a) bears to the total  
 15 amount of money which would need to be  
 16 appropriated under subsection (a) to  
 17 provide all such local health departments  
 18 with the maximum amount of state financial  
 19 assistance the local health departments  
 20 were eligible to receive under subsection  
 21 (a)

22 Sec. 3. K.S.A. 65-243 is hereby  
 23 amended to read as follows: 65-243. (a)  
 24 The governing board of any local health  
 25 department may apply for the financial  
 26 assistance provided under K.S.A. 65-242,  
 27 by submitting annually to the secretary  
 28 ~~the budget of the local health department~~  
 29 ~~for the fiscal year immediately following~~  
 30 ~~the date the budget is submitted showing~~  
 31 ~~the amount of money the local health~~  
 32 ~~department will receive from local tax~~  
 33 ~~revenues and from the federal revenue~~  
 34 ~~sharing fund and such other information as~~  
 35 ~~the secretary may require.~~

[an application form provided by the secretary AND such other information as

36 (b) The secretary shall use official  
 37 state population figures based upon  
 38 population figures available from the  
 39 United States bureau of the census to  
 40 determine the population of counties for  
 41 computing state financial assistance under

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 2-28-91  
 Attm 1-3



1 K.S.A. 65-242. [and amendments thereto

2 (c) The secretary may adopt rules and  
3 regulations necessary for the  
4 administration of this act.

5 Sec. 4. K.S.A. 65-244 is hereby  
6 amended to read as follows: 65-244. (a)

7 Prior to the beginning of each fiscal year  
8 and after review of the [annual budget] [application

9 submitted under K.S.A. 65-243, the [and amendments thereto

10 secretary shall determine the amount of  
11 state financial assistance due to each  
12 local health department which has applied  
13 for such financial assistance.

[Payments shall be computed and made based on the  
county fiscal year.

14 (b) The state financial assistance  
15 due to each local health department  
16 applying therefor shall be paid [in four

[as provided in this section

17 quarterly installments]. The moneys  
18 received in any quarter may be used at any  
19 time during the year. [Installments] shall

[The state financial assistance due to each local  
health department

20 be paid as follows: [January 1 for the  
21 quarter beginning January 1 and ending  
22 March 31; April 1 for the quarter

[For calendar year 1991, on

23 beginning April 1 and ending June 30; July  
24 1 for the quarter beginning July 1 and  
25 ending September 30; and October 1 for the

[; and for calendar year 1992 and for each calendar year  
thereafter, the total amount of state financial assis-  
tance due to each local health department during that  
fiscal year shall be paid on January 10

26 quarter beginning October 1 and ending  
27 December 31].

28 (c) The secretary shall certify to  
29 the director of accounts and reports the  
30 total amount of state financial assistance  
31 due each quarter to each local health  
32 department which has applied for such  
33 financial assistance. The director of  
34 accounts and reports shall draw warrants  
35 on the state treasurer payable to the  
36 governing board of each such local health  
37 department upon vouchers executed as  
38 provided by law and approved by the  
39 secretary.

40 Sec. 5. K.S.A. 65-245 is hereby  
41 amended to read as follows: 65-245. In the

*PHW*  
*2-28-91*

*Attn # 1-4*

1 event any local health department is paid  
 2 more than it is entitled to receive under  
 3 any distribution made under this act, the  
 4 secretary shall notify the governing board  
 5 of the local health department of the  
 6 amount of such overpayment, and such  
 7 governing board shall remit the same to  
 8 the secretary. The secretary shall remit  
 9 any moneys so received to the state  
 10 treasurer, and the state treasurer shall  
 11 deposit the same in the state treasury.  
 12 If any such governing board fails to  
 13 remit, the secretary shall deduct the  
 14 excess amount paid from future payments  
 15 becoming due to such local health  
 16 department. In the event any local health  
 17 department is paid less than the amount to  
 18 which it is entitled under any  
 19 distribution made under this act, the  
 20 secretary shall pay the additional amount  
 21 due at any time within the year in which  
 22 the underpayment was made or within 60  
 23 days after the end of such year.  
 24 Sec. 6. K.S.A. 65-246 is hereby  
 25 amended to read as follows: 65-246. (a)  
 26 available under this act for financial  
 27 assistance to local health departments  
 28 shall not be substituted for or used to  
 29 reduce or eliminate moneys available to  
 30 local health departments from the federal  
 31 government or substituted for or used to  
 32 reduce or eliminate moneys available from  
 33 local tax revenues. Nothing in this act  
 34 shall be construed to authorize a  
 35 reduction or elimination of moneys  
 36 available to local health departments from  
 37 the federal government or to authorize the  
 38 reduction or elimination of moneys made  
 39 available by the state to local health  
 40 departments in addition to moneys  
 41 available under this act.

[to the credit of the state general fund

[fiscal

[fiscal

(a)

(b) Nothing in this section or in the provisions of  
 K.S.A. 65-241 through 65-246, and amendments thereto,  
 shall be construed to require any county or local  
 health department to maintain a base amount of tax  
 resources or expenditures, or both, for a local health  
 department from one fiscal year to the next or to re-  
 quire any county or local health department to maintain  
 a level of local financial effort for the funding of  
 local health departments except as provided in Sec.

2(b.).

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2-28-91

Attm<sup>th</sup> 1-5

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1578

JOAN FINNEY, GOVERNOR  
Gary Stotts, Acting Director

(913) 296-2436  
FAX (913) 296-0231

February 27, 1991

The Honorable Carol Sader, Chairperson  
Committee on Public Health and Welfare  
House of Representatives  
Third Floor, Statehouse

Dear Representative Sader:

SUBJECT: Fiscal Note for HB 2226 by Representative Wagon

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2226 is respectfully submitted to your committee.

HB 2226 would permit the Secretary of the Department of Social and Rehabilitation Services to establish an alcohol and drug testing program for employees of the state mental health and retardation institutions. If implemented, testing would be permitted only if there were probable cause to suspect an employee of use, possession or impairment while at work. Testing procedures are set forth in the bill, and the employee could have a portion of the test sample retested, at the employee's expense, at a laboratory of his or her choice. The results of any tests would be confidential.

The Department of Social and Rehabilitation Services estimates 120 tests per year at \$100 per test for a total of \$1,200 would be required. No funding in addition to the *FY 1992 Governor's Budget Report* would be required.

Sincerely,

A handwritten signature in cursive script, appearing to read "Louis S. Chabira".

Louis S. Chabira  
Deputy Director

cc: Karen DeViney, SRS

2962

*PJKW*  
*2-28-91*  
*Attn # 2*

ACLU on H.B. #2226

I am Dr. Gordon Risk representing the Civil Liberties Union of Kansas.

This bill would establish the important principle that drug testing, if it is to take place, would occur "only if there is probable cause to believe that the employee used, had possession of or was impaired by alcohol or a controlled substance while engaged in the employee's employment." This comports with the provisions of the Fourth Amendment to the Constitution. To ensure that the employee's right to due process is not violated, we think that there should be an independent evaluation by another employee of the institution, who has been trained to recognize drug and alcohol impairment, prior to any testing. The supervisor who has made the determination of probable cause should be required to provide the employee with a written statement describing the objective facts and inferences that are the grounds for the test. The employee should have an opportunity to make available to the laboratory confidential information with regard to prescription and nonprescription medication taken, which might affect the test results. A blood sample should not be required. Treatment programs should be available to employees who acknowledge a drug or alcohol problem. We think these additions would improve this bill.

Our position is that the employer and the employee would be better served by performance testing, rather than drug or alcohol testing. Drug and alcohol testing does not catch those individuals whose performance may be impaired for other reasons, but who nevertheless pose a threat to the safety of others. Testing that would evaluate the individual's ability to perform his job would be the most useful to all concerned.

PAW  
2-28-91  
Attn #3



State of Kansas  
Joan Finney, Governor



*J. Hodge*

Department of Health and Environment  
Kansas Health and Environmental Laboratory

Forbes Field, Bldg. 740, Topeka, KS 66620-0002

(913) 296-1620

FAX (913) 296-6247

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

Testimony presented to  
House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2226

In the absence of a comprehensive state laboratory licensure law, the 1988 Legislature established and strengthened specific requirements for those Kansas laboratories performing tests for prenatal syphilis, immunodeficiency virus, and controlled substances. The purpose of this regulatory responsibility is to ensure the accuracy and reliability of laboratory tests which are especially important to the health care, insurability, and/or employability of any Kansas citizen. Resulting laboratory approval programs are now operational and do monitor the analytical capability of these laboratories through on-site evaluation of several specific laboratory components which are essential to the production of accurate laboratory results including required participation in quarterly unknown performance evaluation tests.

It is recommended that any employee testing program required by statute be required to utilize a laboratory approved by the secretary of health and environment. Such approval process includes appropriate sample collection, chain of custody, test methodology, and confirmation. The only confirmatory test permitted in Kansas approved laboratories in gas chromatography/mass spectrometry. This is the only universally recognized confirmatory test procedure for controlled substance testing.

Additionally, we have some concerns regarding action that an institution might take regarding a single positive drug test. Laboratory tests are not infallible. There must be some safeguards established for the benefit of the employee, perhaps those stipulated in K.S.A. 75-4362 (c).

Testimony presented by: Theresa L. Hodges, M.A., M(ASCP)  
Senior Public Health Laboratory Scientist  
Kansas Health and Environmental Laboratory  
February 28, 1991

*PHH*  
*2-28-91*  
*Attm # 4*



State of Kansas  
Mike Hayden, Governor

*Amos*

Department of Health and Environment  
Kansas Health and Environmental Laboratory  
Forbes Field, Bldg. 740, Topeka, KS 66620-0002

(913) 296-1620  
FAX (913) 296-6247

Stanley C. Grant, Ph.D., Secretary

June 22, 1990

Major Walter Way  
Johnson County Sheriff's Department  
Courthouse  
Olathe, Kansas 66061

Dear Major Way:

The Kansas Administrative Regulation, 28-33-12, promulgated to implement K.S.A. 65-1,107 is intended to regulate laboratories analyzing biological specimens (e.g., urine, blood, tissue, etc.) for the presence of controlled substances. The checklist for approval for tests for controlled substances, the sample collection criteria, and the approved external proficiency programs referred to in K.A.R. 28-33-12 are limited to testing of biological specimens (enclosures).

The Kansas Department of Health and Environment has not, nor does it intend to, promulgate rules and regulations governing laboratories which identify unknown substances or compounds other than biological specimens. Therefore, your laboratory does not violate our regulations by the continued analyses and identification of samples relating to controlled substances as long as biological specimens are not analyzed for controlled substances.

If you have any questions, please contact me at (913) 296-1640.

Sincerely,

*Theresa L. Hodges*

Theresa L. Hodges, M.A., M(ASCP)  
Senior Public Health Laboratory Scientist

TLH:bc

*PHW  
2-28-91  
attn #4-2*

**Testimony Presented by Robert M. Day  
on House Bill 2226**

KNI serves 365 handicapped children and adults. The majority of the clients at KNI are totally dependent on the care provided by over 500 direct service employees and an additional 300 support staff. The nature of the work performed requires employees to make critical and, in some cases, life or death decisions in stressful and fluid environments. In addition, the very nature of the work requires that the staff blend and work well together as a team, each dependent and trusting of the other. The days of warehousing mentally retarded in large institutions with minimal service are gone. Our direct service employee, in order to attain permanent status, must complete nine credit hours of training coordinated through Washburn University. This training is similar to methods courses taught to undergraduate education majors. I point this out as a prelude to discussing the issues related to House Bill 2226.

I have been superintendent at KNI for a little over two years now. During that period of time I have come to realize the pervasiveness of the problems involved in substance abuse. The problems I have encountered have ranged from use of alcohol in the work place to individuals charged with possession with intent to sell controlled substances. Since I came to KNI we have started an Employee Assistance Program designed primarily to assist our employees to free themselves of chemical dependency. We sponsor two NA (Narcotics Anonymous) groups and provide an ongoing drug awareness program. We do this for two reasons. 1. Quality of care our clients receive requires that employees be at work and in possession of their full faculties. 2. One cannot help but realize that we all have a responsibility to help those whose lives have been devastated by substance abuse.

Let me present two short anecdotes related to employee cases I have confronted. The first was a young mother who began to present a time problem. Her pattern of abuse was clear; for several days after payday she did not come to work. She appeared before me on an appeal of a suspension. At that time she denied that she had any problem with substance abuse despite the fact we had good reason to believe otherwise. She agreed her time would be corrected and she would be at work as scheduled. One month later the pattern appeared again. This time we proposed dismissal. She appeared before me at that time, admitting that she had a crack problem, but she stating that could solve this problem on her own and did not need our assistance. We allowed her to come back to work, but in the end she could not solve the problem; we were forced to dismiss her. Eventually her two children were removed from her by the court.

The second case involved perhaps a more hopeful story. The young man appeared before me for dismissal action for habitual absenteeism. He was twenty years old. His mother appeared with him. His mother pleaded his case, and the individual said little. The mother noted that her son was a crack addict and had become addicted

*PH/LO  
2-28-91  
Attn # 5*

when attending Highland Park High School. This was not new information to us as we had been informed of this by a number of employees. His mother noted he had recently purchased a new car which he had given to his dealer. Sad as it was and painful as it was, we followed through with the dismissal. It has been over a year since the incident occurred. The individual came to us two months ago, having completed treatment and having established a good work history in a fast food job. We thought there was reason to give him a chance and hired him as a temporary. He has now been hired as a permanent employee because of his sterling record over the last two months.

These are just a two of the almost continuous situations we face in the workplace. At present we have no method to assure that we can produce a drug-free workplace. Substance abusers address their addiction by massive denial. Few substance abusers correct their problem without some pressure being exerted either from the work place or family and friends. The bill before us is at best a starting point...a starting point for us to assure ourselves that: 1. With drug testing we can address the issue of the employee who chooses to come to work impaired and thus endanger the clients and other workers. 2. It presents us with "The Hammer", the evidence to confront them with to try to get them to voluntarily seek treatment. Without the ability to test for illegal substances, we are left with little recourse in dealing with employees we believe are impaired in their performance. We can send them home until they "feel better", but beyond this there is little else we can do to address issues of substance abuse.

I feel we have an obligation to our employees and our clients to assure that we have a drug-free workplace. I do not think we can take seriously any discussion of war on drugs if we are not willing to make some effort to make sure employees in such critical positions as mental health and mental retardation work are in full possession of their facilities.



KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
TESTIMONY BEFORE THE HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE  
HOUSE BILL 2226

We are pleased to lend our support to this legislation. The seven state hospitals managed by the Division of Mental Health and Retardation Services currently have 2,250 clients who rely on 4,850 state employees to provide them with the care and treatment that they need. The testing program described in this bill would give our Superintendents the tools to verify alcohol and/or substance abuse if they have probable cause that a particular staff member is involved with these substances.

It is our position that our clients deserve to have high quality care provided by staff who are physically and mentally prepared to perform, and that these staff are not impaired because of substance or alcohol abuse. Our clients' families and guardians need to have confidence that the state uses employees who are not impaired. Finally, this program will also be the means to help us direct our staff who are involved with these substances into treatment programs for themselves. Any program would be handled in a confidential manner that protects the rights of our employees.

The fiscal impact of this program is not great, about \$1,200 spread among the seven state hospitals.

Presented by Bob Day  
for  
Dr. Robert Harder

February 28, 1991

*PNW  
2-28-91  
Attn #6*

# HOUSE BILL No. 2127

By Committee on Public Health and Welfare

2-4

*draft*  
PH&W  
2-28-91  
Attn #7  
*[Signature]*

8 AN ACT concerning the healing arts; relating to crimes for unlicensed  
9 practice of the healing arts; amending K.S.A. 65-2803 and 65-  
10 2867 and repealing the existing sections; also repealing K.S.A. 65-  
11 2868.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 65-2803 is hereby amended to read as follows:  
15 65-2803. No person shall engage in the practice of any branch  
16 of the healing arts, as hereinafter defined, unless he shall have  
17 obtained from the board a license for that purpose. (a) It shall  
18 be unlawful for any person who is not licensed under this act or  
19 whose license has been revoked or suspended to engage in the prac-  
20 tice of the healing arts as defined in this act. ←

21 (b) Violation of this section is a class B misdemeanor.

22 Sec. 2. K.S.A. 65-2867 is hereby amended to read as follows:  
23 65-2867. The opening of an office for the practice of the healing  
24 arts, the announcing to the public in any way the intention to  
25 practice the healing arts, the use of any professional degree,  
26 or designation, or any sign, card, circular, device, or adver-  
27 tisement as a practitioner, or as a person skilled in the same,  
28 shall be prima facie evidence of engaging in the practice of  
29 said healing arts as defined in this act. (a) It shall be unlawful  
30 for any person who is not licensed under this act or whose license  
31 has been revoked or suspended to open or maintain an office for  
32 the practice of the healing arts as defined in this act or to announce  
33 or hold out to the public the intention, authority or skill to practice  
34 the healing arts as defined in this act by the use of any professional  
35 degree or designation, sign, card, circular, device, advertisement or  
36 representation. ←

37 (b) Violation of this section is a class C misdemeanor.

38 New Sec. 3. (a) It shall be unlawful for any person who is not  
39 licensed under this act or whose license has been revoked or sus-  
40 pended, to engage in the practice of the healing arts as defined in  
41 this act and which either:

- 42 (1) Inflicts great bodily harm to any person;
- 43 (2) causes any disfigurement or dismemberment to or of any

← This section shall not apply to any person licensed by the board whose license has inadvertently lapsed or to any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident as authorized by K.S.A. 65-2891 and amendments thereto.

PH&W  
2-28-91  
Attn #7

*R. How*  
*2-28-91*  
*Attn #7-2*

*draft*  
*PHK*  
*2-21-91*  
*Attn #24*

1 person; or

2 (3) is done in any manner whereby great bodily harm, disfig-  
3 urement, dismemberment or death can be inflicted.

4 ~~(c) (b)~~ Violation of this section is a class C felony.

5 Sec. 4. K.S.A. 65-2803, 65-2867 and 65-2868 are hereby  
6 repealed.

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

(b) This section shall not apply to any person licensed by the board whose license has inadvertently lapsed or to any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident as authorized by K.S.A. 65-2891 and amendments thereto.