

Approved \_\_\_\_\_

Date 3-8-91 sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

1:30 /a./m./p.m. on March 4, 1991 in room 423-S of the Capitol.

All members were present except:

Representative Tom Bishop, excused

Committee staff present:

Emalene Correll, Research

Bill Wolff, Research

Norman Furse, Revisor

Sue Hill, Committee Secretary

Conferees appearing before the committee:

Joseph F. Kroll, Director/Bureau of Adult/Child Care, Department of Health/Environment

Chairperson Carol H. Sader called meeting to order noting minutes for two meetings ready for corrections or approval.

Rep. Flower moved to approve minutes for February 25, and February 26th, as presented. Motion seconded by Rep. Scott. Motion carried.

Chair made the announcement that Executive Director of Kansas Board of Mortuary Arts, Mack Smith, is the proud father of a baby boy born just one day after the hearing on HB 2083. Mother and Baby Willie Smith doing fine.

Chair requested a staff briefing on HB 2529.

Ms. Correll gave a comprehensive briefing, noting the change requested in changing the word "finding" to "report". She explained rationale.

Discussion and questions followed briefing. Explanation was set out that "finding" means no conclusion, just the general results of an investigation.

Joseph Kroll, Director of Adult/Child Care/ Department of Health/Environment offered hand-out (Attachment No. 1). Mr. Kroll explained his handout, stating the Department of Health/Environment agrees there are inconsistencies in the language of HB 2529. In accordance with this concern, the Department of Health/Environment has changed the language earlier proposed in HB 2529. Mr. Kroll explained new language proposed in balloon provided in his attachment in section (a), line 25: to add "provided however, that the secretary shall not be required to conduct a hearing in cases which are forwarded to appropriate state authority pursuant to section (b)." He noted, with this change, it is their belief this language will clarify the system of investigative hearings. He noted also the Department requests to replace the word "finding" in line 35 on page 1. They apologize for making an earlier recommendation they now cannot recommend. He answered questions, i.e., it is not the intent of the Department to restrict anyone, just to give the Department of Health/Environment the authority to forward reports of complaints to the appropriate Boards so the hearing process can be continued.

Chair set out an example of investigative process and asked Mr. Kroll to walk committee through this process. He did so.

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 4, 1991

Discussion and questions continued. It was stated it is the responsibility of the Department of Health/Environment to determine if, in fact abuse has taken place when investigating a report of abuse,, but not the responsibility of Health/Environment to carry out disciplinary measures.

Mr. Kröll detailed the extent of present authority of the Department of Health/Environment, noting it does not seek the authority to continue proceedings against a physician or nurse and do not wish to compromise due process for any individual.

HEARINGS CLOSED ON HB 2529.

Chair directed discussion to begin on HB 2073.

Chair requested staff to highlight policy issues in HB 2073.

It was noted concerns had been expressed in regard to: page 2, new language on lines 5-10 which would allow Pharmacy Board to revoke/suspend/or limit licensure; no cap specified in unpaid renewal fees. A further policy issue on page 6, line 33, language is, "plus a penalty", and staff suggests it is actually "plus a penalty fee".

Discussion ensued. Chair requested staff for examples of language to address these issues. Mr. Furse outlined choices for addressing policy issues. Mr. Furse indicated one possibility is to say, "fixed by Rules and Regs of the Board pursuant to:- on Page 7 sec. (4) where other fees are set out, you could provide for several of these fees that are placed in the statutes in this particular bill on page 4, line 31 and 40, and on page 5, line 33, by placing those fees on page 7 in the fee schedule as has been done in an earlier bill discussed for the Board of Healing Arts. Mr. Furse noted further, in the Pharmacy Act, most fees are in the fee schedule. Some are not, however, so you could say, "as fixed by the Board in accordance with K.S.A. 65-1900/K.S.A. 65-1645." Further, he drew attention to amend section (3) to include language, "penalty fees".

At this point, Rep. Neufeld moved to amend HB 2073, conceptionally, to address policy concerns discussed, and also to amend on page 6, line 33 to state the maximum fee not to exceed \$250.00. Motion seconded by Rep. Cribbs. Motion carried. On HB 2073 as a whole, Rep. Cribbs moved to pass HB 2073 out favorably, as amended. Seconded by Rep. Wiard. No discussion. Vote taken, motion carried.

Chair drew attention to HB 2075.

Rep. Love offered an amendment to HB 2075 (Attachment No. 2) that would provide a safeguard to keep a person from being medically overprescribed. He cited a specific case. He detailed suggested language he proposed. Lengthy discussion ensued, i.e., language proposed in Attachment No. 2 would be an administrative nightmare; patients are already protected by a patient profile; this broad language would set up an outcry from both the medical and pharmacy people.

No motion to amend was made.

Rep. Amos moved to pass HB 2075 and have it placed on the consent calendar. Motion seconded by Rep. Flower. Motion carried.

Chair opened discussion on HB 2083.

It was noted a grandfather clause in sec. 1 of the bill had been discussed in regard to educational requirements. Staff was consulted in regard to appropriate language.

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 4, 1991

DISCUSSION BEGAN ON HB 2083.

Mr. Furse offered suggested language options.

Rep. Amos moved to amend HB 2083 conceptionally with language to provide for grandfather clause in regard to educational requirements. Motion seconded by Rep. Cribbs. No discussion. Motion carried.

On HB 2083 as a whole, Rep. Amos moved to pass HB 2083 favorably as amended. Seconded by Rep. Cribbs. No discussion. Vote taken, motion carried.

Rep. Cribbs will carry HB 2083.

Chair opened discussion on HB 2336.

A lengthy discussion on i.e., definitions of "enclosed office space" "private office space"; when office space is shared a smoking or non-smoking policy should be set; some not willing to take right to smoke away from smokers; current smoking policy in other state buildings. Several language changes were suggested.

Rep. Praeger moved to amend HB 2336 in line 20 (b), by inserting "enclosed" before "offices", and striking "or parts of offices". Motion seconded by Rep. Wagle. Discussion continued, i.e., some legislators concerned about rights of secretaries who smoke; many offices have a current policy that seems to be working well; leadership is flexible in allowing people to office where smoking choices can be made; some feel it is time to tighten up the smoking policy in capitol building.

Question called for, vote taken, motion carried.

Rep. Cribbs recorded as "NO" vote.

On HB 2336 as a whole. Rep. White moved to report HB 2336 out favorably as amended. Seconded by Rep. Scott. Motion carried.

Rep. Cribbs reported as "NO" vote.

Rep. White agreed to carry HB 2336 on the floor of the House.  
Note: this was later changed. Rep. Helgerson will carry the bill.

Chair asked for attention of members and requested Mr. Furse to comment on correspondence received.

Mr. Furse stated he had received correspondence from the Board of Pharmacy relating to wholesale drug distribution registration. He noted there are Federal regulations relating to drug distribution and the Kansas law is close, but doesn't quite come up to Federal standards. It has been suggested legislation could be drafted that would clarify this problem.

At this point, Chairperson Sader noted a bill could be drafted and sent to an exempt committee, and later re-referred back to Public Health/Welfare Committee.

Rep. Neufeld moved to have Mr. Furse draft legislation to address concerns in regard to Federal/State regulations on drug distribution by wholesalers. Seconded by Rep. Flower. No discussion. Motion carried.

Chair adjourned the meeting at 3:10 p.m.





# State of Kansas

Joan Finney, Governor

## Department of Health and Environment Division of Health

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

Landon State Office Bldg., Topeka, KS 66612-1290

FAX (913) 296-6231

Testimony Presented to the  
House Public Health and Welfare Committee  
on  
House Bill 2529

### Background

House Bill 2529 was introduced at the request of the Kansas Department of Health and Environment. The Department seeks clarification of procedures which must be followed in referring persons alleged to have committed abuse, neglect, or exploitation to appropriate state authority when such person is licensed, registered, or otherwise authorized to provide services in this state.

One of the significant provisions of 1990 House Bill 2800 was the transfer from the Department of Social and Rehabilitation Services to the Department of Health and Environment responsibility for investigating allegations of abuse, neglect, or exploitation affecting residents of adult care homes and medical care facilities. Recognizing that abuse, neglect, or exploitation could be committed by a licensed or registered professional, such as a doctor or nurse, House Bill 2800 also authorized the Department to forward such allegations to the appropriate state authority with provision that the appropriate authority could consider that information in any disciplinary action taken with respect to that provider. This is also in accordance with federal requirements of the 1987 Nursing Home Reform Act.

### Description of the Issues

During the process of developing policies and procedures for the implementation of this new responsibility, we became aware that information regarding allegations of abuse, neglect, or exploitation alleged to have been committed by a licensed or certified provider could not be forwarded to the appropriate board without KDHE first conducting an administrative hearing. The basis for this determination is found on line 21 of page one, which mandates findings of the Department be subject to notice and appeals procedures and the provision on line 34 which authorizes the Department to forward any finding to other appropriate state authorities. KDHE, having been closely involved with 1990 House Bill 2800 does not believe it was legislative intent that KDHE be responsible to provide administrative hearings only for the purpose of forwarding allegations of abuse, neglect, or exploitation to other appropriate state authorities.

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3-4-91  
Attn # 1.*

Initially, KDHE felt the issue could be resolved by simply replacing the word "finding," as found on line 34, with the word "report," which is how House Bill 2529 has been drafted. However, with publication of the bill and preparation of testimony, it became evident this was not the solution. Accordingly, the Department is proposing an amendment attached to this testimony. The amendment would add the following statement to section (a), line 25:

"provided however, that the secretary shall not be required to conduct a hearing in cases which are forwarded to appropriate state authority pursuant to section (b)."

We believe this language solves the problem.

It is important to note that KDHE does not seek nor think it appropriate to deny any person due process prior to any disciplinary action. On the contrary, KDHE believes that due process can best be provided by the state authority which has the authorization to discipline such provider. If the issue House Bill 2529, before you now, is not addressed, persons licensed or registered who are alleged to have perpetrated abuse, neglect, or exploitation will be subject to two administrative appeals processes before any decision is made regarding discipline that might be appropriate. This would also most certainly compromise the sanctioning of inappropriate behavior by licensed persons 1990 House Bill 2800 sought to address.

Recommendation

In order to address the issue identified above, the Kansas Department of Health and Environment recommends that House Bill 2529 be amended as proposed by the attached amendment and favorably passed.

Testimony

Presented by: Joseph F. Kroll, Director  
Bureau of Adult and Child Care  
Kansas Department of Health and Environment  
March 4, 1991

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Attm # 1-2

HOUSE BILL No. 2529

By Committee on Public Health and Welfare

2-27

10 AN ACT concerning reporting of abuse, neglect or exploitation of  
11 certain residents; amending K.S.A. 1990 Supp. 39-1411 and re-  
12 pealing the existing section.  
13

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

15 Section 1. K.S.A. 1990 Supp. 39-1411 is hereby amended to read  
16 as follows: 39-1411. (a) The secretary of health and environment shall  
17 maintain a register of the reports received and investigated by the  
18 department of health and environment under K.S.A. 39-1402 and  
19 39-1403, and amendments to such sections, and the findings, eval-  
20 uations and actions recommended by the department with respect  
21 to such reports. The findings, evaluations and actions shall be subject  
22 to such notice and appeals procedures as may be adopted by rules  
23 and regulations of the secretary of health and environment, which  
24 rules and regulations shall be consistent with any requirements of  
25 state or federal law relating thereto. The register shall be available  
26 for inspection by personnel of the department of health and envi-  
27 ronment as specified by the secretary of health and environment and  
28 to such other persons as may be required by federal law and des-  
29 ignated by the secretary of health and environment by rules and  
30 regulations. The secretary of health and environment shall forward  
31 a copy of any report of abuse, neglect or exploitation of a resident  
32 of an adult care home to the secretary of aging.

33 (b) The secretary of health and environment shall forward any  
34 ~~finding report~~ finding of abuse, neglect or exploitation alleged to be com-  
35 mitted by a provider of services licensed, registered or otherwise  
36 authorized to provide services in this state to the appropriate state  
37 authority which regulates such provider. The appropriate state reg-  
38 ulatory authority may consider the finding in any disciplinary action  
39 taken with respect to the provider of services under the jurisdiction  
40 of such authority. The secretary of health and environment may  
41 consider the finding of abuse, neglect or exploitation in any licensing  
42 action taken with respect to any adult care home or medical care  
43 facility under the jurisdiction of the secretary.

provided however, that the secretary shall not  
be required to conduct a hearing in cases which  
are forwarded to appropriate state authority  
pursuant to section b.

finding

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1 (c) If the investigation of the department of health and environ-  
2 ment indicates reason to believe that the resident is in need of  
3 protective services, that finding and all information relating to that  
4 finding shall be forwarded by the secretary of health and environment  
5 to the secretary of social and rehabilitation services.

6 (d) Except as otherwise provided in this section, the report re-  
7 ceived by the department of health and environment and the written  
8 findings, evaluations and actions recommended shall be confidential  
9 and shall not be subject to the open records act. Except as otherwise  
10 provided in this section, the name of the person making the original  
11 report to the department of health and environment or any person  
mentioned in such report shall not be disclosed unless such person  
specifically requests or agrees in writing to such disclosure or unless  
4 a judicial or administrative proceeding results therefrom. In the event  
15 that an administrative or judicial action arises, no use of the infor-  
16 mation shall be made until the judge or presiding officer makes a  
17 specific finding, in writing, after a hearing, that under all the cir-  
18 cumstances the need for the information outweighs the need for  
19 confidentiality. Except as otherwise provided in this section, no in-  
20 formation contained in the register shall be made available to the  
21 public in such a manner as to identify individuals.

22 Sec. 2. K.S.A. 1990 Supp. 39-1411 is hereby repealed.

23 Sec. 3. This act shall take effect and be in force from and after  
24 its publication in the statute book.

*PAW*  
*3-4-91*  
*Allen 1-4*



PROPOSED AMENDMENT HOUSE BILL No. 2075

Be amended:

On page 2, following line 28, by inserting the following:

"Sec. 2. K.S.A. 1990 Supp. 65-1642 is hereby amended to read as follows: 65-1642. (a) Each pharmacy shall be equipped with proper pharmaceutical utensils, in order that prescriptions can be properly filled and United States pharmacopoeia and national formulary preparations properly compounded, and with proper sanitary appliances which shall be kept in a clean and orderly manner. The board shall prescribe the minimum of such professional and technical equipment which a pharmacy shall at all times possess, and such list shall include the latest revisions of the United States pharmacopoeia dispensing information and all supplements thereto. The ratio of supportive personnel performing nonjudgmental functions in the compounding area of the pharmacy under the direction of a pharmacist, excluding pharmacist interns, to licensed pharmacists shall not exceed a one-to-one ratio.

(b) Each pharmacy shall keep a suitable book or file which records every prescription order filled at the pharmacy and a medication profile record system as provided under subsection (c). The book or file of prescription orders shall be kept for a period of not less than five years. The book or file of prescription orders shall at all times be open to inspection by members of the board, the secretary of health and environment, the duly authorized agents or employees of such board or secretary and other proper authorities.

(c) (1) A medication profile record system shall be maintained in all pharmacies for persons for whom prescriptions are dispensed. The following information shall be recorded: (A) The name and address of the patient for whom the medication is intended; (B) the prescriber's name, the original date the

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prescription is dispensed and the number or designation identifying the prescription; and (C) the name, strength and quantity of the drug dispensed and the name of the dispensing pharmacist. In addition, the prescriber shall provide to the pharmacist as part of the prescription order the name and strength of any other current prescriptions which the prescriber has prescribed for the patient, and the pharmacist shall request from the patient information concerning any other prescriptions which are currently prescribed for the patient.

(2) Upon receipt of a prescription order, the pharmacist shall examine the patient's medication profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction to the medication. Upon recognizing a potential harmful drug interaction or reaction to the medication, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the prescriber. The pharmacist shall be responsible only for information provided to the pharmacist under this subsection.

(3) A medication profile record shall be maintained for a period of not less than five years from the date of the last entry in the record.

(d) No registration shall be issued or continued for the conduct of a pharmacy ~~until--or~~ unless the pharmacy is in compliance with the provisions of this section have-been-complied with.";

And by renumbering sections and changing the repealer and the title accordingly;

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