

Approved _____

Date 3-8-91

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

1:30 / a.m./p.m. on March 5, 1991 in room 423-S of the Capito

All members were present except:

Representative Love, excused absence.

Committee staff present:

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

Conferees appearing before the committee:

Larry Buening, General Counsel/ State Board Healing Arts
Chip Wheelen, Kansas Medical Society
Harold Riehm, Kansas Association of Osteopathic Medicine
Tuck Duncan, Occupational Therapy Association
Don Conyers, Respiratory Therapy Association
David Hanzlick, Kansas Dental Association
Dr. Tom Krauss, Forensic Dentist from Phillipsburg, Kansas
Carl Carlson, Kansas Bureau of Investigation (Fingerprint Division)
Jeff DeGraffenreid, Kansas Peach Officers

Chairperson Sader called meeting to order, drawing attention to minutes for 2 meetings ready for corrections and approval.

Rep. Bishop moved to approve minutes from February 27, and February 28, 1991 as presented. Seconded by Rep. Weiland. Motion carried.

Chair called attention to HB 2168.

Mr. Furse gave a comprehensive briefing on HB 2168. He outlined all changes proposed and explained each in detail. He answered numerous questions.

HEARINGS BEGAN ON HB 2168.

Larry Buening, General Counsel, Ks. Board of Healing Arts, offered hand-out (Attachment No. 1). He noted all changes proposed and gave rationale for each. (There were numerous changes and they are indicated in hand-out). He answered numerous questions, i.e., selection of review board; current authority of Board does not allow them to order a drug screening or a preview of a physician's mental capacity; drastic differences between revocation of physician's license who has questionable conduct vs. one who simply failed to renew his license on time; use of the term "patient records" rather than "medical records" would cover all licensees under the Board's authority; use of the term Chiropractic physician by chiropractors is misleading and deceptive and possible grounds for disciplinary action, therefore the rationale to change physician to licensee whereby both of these concerns could be clarified.

Chip Wheelen, Kansas Medical Society, offered hand-out (Attachment No. 2), noting concerns in HB 2168 i.e., manner in which a drug screen may be conducted; wording pertaining to recording of patient records. He gave a detailed explanation of amendments proposed by the Medical Society in hand-out. He explained rationale. Mr. Wheelen noted since physicians deal with life and death situations, impairment by a physician cannot be tolerated, discussed intervention and, when appropriate, treatment for physician. However, the constitutional rights of all licensees should be properly considered.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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 5, 1991

HEARINGS CONTINUED ON HB 2168:-

Harold Riehm, Executive Director, Ks. Association of Osteopathic Medicine, offered hand-out (Attachment No. 3). He explained rationale for requesting amendments to language in HB 2168 in respect to an impaired provider to specifically empower impaired provider committees to determine whether reasonable suspicion of inability exists, and to specifically be empowered to order tests to help make that determination. He outlined proposed language changes in his hand-out and gave rationale. He noted this proposed language is comparable to that suggested by Ks. Medical Society.

Tuck Duncan, Kansas Occupational Therapy Association, offered handout (Attachment No. 4). He stated the amendment offered for HB 2168 is necessary in order to provide the authority to the Board of Healing Arts to issue temporary licensure for qualifying applicants. He explained rationale, noting, from April to July, an applicant cannot take the exam since it is not offered in this time frame.

Dan Conyers, Kansas Respiratory Care Society, offered hand-out (Attachment No. 5) noted their Society has the same concerns as those just expressed by Mr. Duncan of the Occupational Therapy Association. The required examination is given three times a year, and results are not available for an additional six to eight weeks. He requests HB 2168 be amended to include temporary licensure for those who meet requirements. He noted there are concerns that many of the qualified therapists are leaving the state because they seek immediate employment after graduation. Many leave and do not return to Kansas to practice. He detailed his proposed amendment.

Chairperson **CLOSED HEARINGS ON HB 2168.**

Chair noted a fiscal note has been made available to members this date. It is recorded as (Attachment No. 6).

Chair drew attention to HB 2363.

Chair requested a brief explanation on HB 2363.

Mr. Furse gave a comprehensive explanation of HB 2363.

HEARINGS BEGAN ON HB 2363.

David Hanzlick, Kansas Dental Association, stated support for HB 2363. He then introduced Dr. Thomas Krauss.

Thomas C. Krauss, D.D.S. (Forensic Consultant) offered hand-out (Attachment No. 7). He called attention to his Curriculum Vitae which accompanied his testimony. He gave a general background of his professional credentials. As an expert in forensic odontology, he noted it is vital proper identification is made during a forensic examination. He cited specific cases where adequate detail in identification was not available because after the initial examination was done, cremation had been performed on the body. He noted visual identification is often unreliable in some circumstances. More and more medical examiners are additionally requiring scientific person identification. He noted HB 2363 will apply to a very small number of cases. However, it is necessary legislation. He urged support. He answered numerous questions, i.e., there are only 5 crematories in the state; with less fillings in today's dentistry, criminal labs are having to rely more and more on the anatomy for identification.

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 5, 1991

HEARINGS CONTINUED ON HB 2363:---

Carl Carlson, Kansas Bureau of Identification offered hand-out (Attachment No. 8). He drew attention to amendments proposed in his attachment giving an explanation and rationale. He answered numerous questions and was asked to give an explanation of "ridge structure". He did so, indicating on his own hands the ridges on the palm of the hand. These ridges indicate specific characteristics as do fingerprints.

Jeff DeGraffenreid, Kansas Peace Officers Association, stated support for HB 2363, and for the amendments proposed today.

Other attachments in reference to HB 2363 are recorded as follows:-

James G. Bridgens, M. D., Pathologist for Johnson County Coroner, (Attachment No. 9).

Alan C. Hancock, M. D. Wyandotte County Coroner's office (Attachment No. 10).

Ronald E. Gier, D.M.D.m Professor/Dept. of Oral Diagnosis, University of Missouri/Kansas City (Attachment No. 11).

William Eckert, M. D., Kansas Coroner's Association (Attachment No.12).

Fiscal Note (Attachment 13)
Meeting adjourned 3:10 p.m.

Office of

State of Kansas

RICHARD G. GANNON, EXECUTIVE DIRECTOR
LAWRENCE T. BUENING, JR., GENERAL COUNSEL
STEVE A. SCHWARM, LITIGATION COUNSEL
MICHELLE M. TORRES, DISCIPLINARY COUNSEL
SUSAN M. LAMBRECHT, LICENSING SUPERVISOR



Kansas State Board of
Healing Arts

235 S. TOPEKA BLVD
TOPEKA, KS 66603
913-296-7413
FAX: 913-296-0852

Board of Healing Arts

MEMORANDUM

To: House Committee on Public Health & Welfare
From: Lawrence T. Buening, General Counsel
Re: Testimony on HB 2168
Date: March 5, 1991

Thank you for the opportunity to appear before you today and provide testimony in support of HB 2168. As you may recall, this bill was requested by the State Board of Healing Arts and introduced through this Committee. The bill amends several statutes under the Healing Arts Act and serves as a kind of omnibus bill for both some rather minor changes as well as major changes to the Act.

Section 1 of the bill amends the statute which regulates the renewal of licenses under the Healing Arts Act - medical doctors, osteopathic doctors and chiropractic doctors. At lines 12 and 13 on page two, reference to not entering an Order of Revocation if a license is renewed within 30 days of the date of expiration is deleted. The new language simply specifies that the license will not be cancelled during this 30 day period if it has not been previously renewed. At lines 16 and 17 on page two, reference that

*ONHW
3-5-91
action #1*

MEMBERS OF BOARD

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KENNETH D. WEDEL, M.D., MINNEAPOLIS
RON ZOELLER, D.C., TOPEKA

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a license will lapse for non-renewal is replaced with the words that it would "be cancelled".

Section 2 of the bill makes three changes to the statute that sets forth the grounds for revocation or other disciplinary action against a license to practice one of the three branches of the healing arts. The new language at lines 11 and 12 on page three would make these same grounds applicable for denial of an application for license or for reinstatement of a license. I should note that this bill would also repeal K.S.A. 65-2805 which presently reads as follows:

"The board may refuse to grand a license to any person, otherwise qualified, upon any of the grounds for which a license may be revoked under the provisions hereinafter contained."

License is defined at present for all statutes under the Healing Arts Act in K.S.A. 65-2802 as "a license to practice the healing arts granted under this act". Also of note are the amendments made to K.S.A. 65-2844 which deal with reinstatement of a license made by 1991 HB 2141 which has now passed the House by a vote of 124 to 0.

At lines 31 through 34 on page three, two sections which presently constitute grounds for disciplinary action are to be deleted. These deal with the failure to pay annual renewal fees and the completion of post-graduate work. It is felt that K.S.A.

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3-5-91
att #1-2

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1990 Supp. 65-2809(a) adequately provides for payment of annual renewal fees. Section (b) of that same statute also imposes the requirement that a program of continuing education be satisfactorily completed. Therefore, under the provisions of K.S.A. 65-2809, the Board has the ability to cancel a license if the licensee fails to renew. Including failure to pay renewal fees and take post-graduate work as grounds for discipline seems somewhat contradictory and certainly confusing.

The third amendment to K.S.A. 1990 Supp. 65-2836 is set forth on page four of the bill. The present language on page four regarding the procedure to require submission to mental or physical examinations or drug screen was enacted by the 1989 Legislature. Present language resulted from compromised amendments to the original bill due to concerns as to who could actually make a determination of reasonable suspicion and direct that an order for examination or drug screen be obtained. However, this existing language requires that information be submitted to a review committee and that the determination of whether reasonable suspicion of impairment exists is vested entirely within these review committees. The new language is intended to return this decision-making process to the Board or someone approved by the Board.

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attm 1-3

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Section 3 of the bill makes amendments to K.S.A. 1990 Supp. 65-2837 which defines "unprofessional conduct". Lines 20 through 23 on page eight and line 1 on page nine deal with accuracy of patient records. It is not felt that any of the existing grounds for disciplinary action under K.S.A. 1990 Supp. 65-2836 or the present definitions of unprofessional conduct adequately address this issue. At lines 30 through 32 on page eight, minor amendments are made in the requirement that patient records be transferred upon the request of the patient. The term physician is not defined in the Healing Arts Act and Attorney General Opinion No. 87-42 has raised questions as to whether this term is proper for utilization by chiropractic licensees. Therefore, the changes made at lines 30 through 32 on page eight are intended to clearly require that all three branches of licensees under the Healing Arts Act are required to so transfer patient records.

On page nine, the terms "licensee" and "license" are defined for purposes of determining grounds for disciplinary action. The Board presently issues temporary permits under K.S.A. 65-2811 and special permits under K.S.A. 65-2811a. Neither of the statutes which authorize the issuance of temporary or special permits specify grounds for which the Board may take disciplinary action against those permits. By including these types of credentialing

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3-5-91
attm #1-4*

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within the definition of license and licensee for purposes of discipline, the Board clearly would be given the ability to take disciplinary action against holders of these types of credentialing which are not "licenses" as that term is presently understood.

Section 4 of the bill simply adds drug screens to K.S.A. 65-2842. It is felt that this was inadvertently omitted when the 1989 amendments were made to K.S.A. 65-2836(k).

Section 5 of the bill on page ten would delete the requirement that all administrative proceedings under any statute contained within article 28 of chapter 65 be conducted in accordance with the Kansas Administrative Procedure Act (KAPA). 1991 HB 2141, which has already passed the House, would make, if enacted, all proceedings conducted on an application for reinstatement of a license to be held in accordance with KAPA. Furthermore, the present language of K.S.A. 65-2838 makes any action for revocation, suspension or limitation of a license subject to KAPA. The applicability of KAPA to all administrative proceedings conducted by the Board has created some difficulties. K.S.A. 77-502, which is part of KAPA, defines an order as any agency action of particular applicability that determines legal rights, duties, privileges, etc. K.S.A. 77-511 discusses the processing of an application for order. K.S.A. 77-512 includes the refusal to renew

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attm # 1-5

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a license as an action to which KAPA would apply. The State Board of Healing Arts conducts many determinations and hearings on applications or requests made by various individuals. As you might recall, 1991 HB 2128 would, if enacted, require the Board to approve all education and training programs for physicians' assistants. Also, the cancellation of a license for non-renewal as specified in K.S.A. 65-2809 (see section 1) certainly would have an effect on an individual's legal rights and privileges. Even though K.S.A. 65-2809 would appear to allow simple cancellation for non-renewal, the present applicability of KAPA would seem to indicate to the contrary and would require proceedings in accordance with KAPA. Similarly, the Board approves all of the schools for the healing arts and the examinations required for licensure. Further, many people apply for licensure who fail to meet the statutory qualifications. With the applicability of KAPA to all of the statutes of the Healing Arts Act, the Board would have to meet the specific technical and procedural requirements of KAPA in making these determinations. Certainly, it is not the desire of the Board to deny anyone due process. As above stated, disciplinary actions by the Board, actions on the reinstatement of revoked licenses and actions for denial of a license due to past conduct by the applicant will all continue to be conducted in

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attm #1-6

accordance with KAPA. Further, the ability to seek judicial review of any action taken by the Board, likewise, will continue.

It is my understanding that there will be at least some proposed amendments to HB 2168. Therefore, I would like to take this opportunity to request that the Committee consider amending HB 2168 by inserting language which would result in the repeal of K.S.A. 65-2830 and K.S.A. 65-2853. The repeal of these two statutes was included in a bill draft which was not submitted to this Committee for introduction. K.S.A. 65-2830 presently provides as follows:

"65-2830. The examination under this act shall be given and graded by members of the Board who hold a license in the branch of the healing arts in which the applicant seeks to be licensed."

K.S.A. 65-2853 provides as follows:

"65-2853. Any applicant whose application is rejected shall be allowed the return of his fee except ten dollars (\$10) thereof, which shall be retained by the board."

It is felt that these statutes are both now outdated and should no longer remain within the Healing Arts Act. The Board presently administers uniformly accepted national examinations for licensure as well as accepts certain examinations administered by other testing agencies as being acceptable for licensure. The days

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3-5-91
attn #1-7*

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when the Board prepared, administered and graded these examinations have long since past. Similarly, K.S.A. 65-2853 would seem to no longer have a rational basis. The rejection of an application for license will, in almost every instance, result in more staff time and administrative proceedings than an application which is fully complete and is approved. Therefore, there would not seem to be a basis for returning the application fee due to the denial of the license whether that be for lack of statutory qualifications for past conduct of the individual, or for present unfitness.

In conclusion, the Board is very supportive of HB 2168 and asks for your favorable consideration of it. If you have any questions, I would be happy to respond.

LTB:lw

JN/4W
3-5-91
attm 711-8



KANSAS MEDICAL SOCIETY

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

March 5, 1991

TO: House Public Health and Welfare Committee
FROM: Kansas Medical Society *Chip Wheelen*
SUBJECT: House Bill 2168; Healing Arts Act Amendments

Thank you for this opportunity to express our reservations about the wording of HB 2168. We cannot support the bill in its current form, but have attached to this statement suggested amendments which would make the bill acceptable.

Our first concern relates to the changes in the manner in which a drug screen may be conducted by a designee of the Board of Healing Arts. This language is found at lines 8-14 of page 4. This is a very sensitive issue and we prefer to handle this in a manner that preserves to the extent possible the due process rights of the licensee. We acknowledge that because physicians deal with life and death situations, impairment of a licensee must not be tolerated. Intervention and sometimes treatment is indeed appropriate but must be handled in a fashion that will not intrude upon the constitutional rights of the physician.

The original wording of the bill would have allowed the board to delegate decisionmaking authority to any person for purposes of conducting a drug screen of a licensee. We believe that this language is far too broad and should be restricted to basically three categories of decisionmaker: (1) The Board as a whole, (2) the duly-elected statutory officers of the Board, or (3) an impaired provider committee under contract with the Board. In this last instance, we would recommend that the Executive Director of the Board should approve any decision by an impaired provider committee.

Our second concern relates to the wording pertaining to the recording of patient records. Unfortunately, there are instances when patient records are inaccurately recorded, and then it is later discovered through quality assurance or otherwise that the records were inaccurate. This happens moreso when there is a team of health care providers documenting information. It is for this reason that we respectfully request an amendment at line 22 of page 8 to make it clear that only in the event of intentional falsifying of a patient or a medical care facility record, shall the licensee be subject to disciplinary action by the Board.

We respectfully request that you adopt these amendments as outlined in our balloon-style draft before taking any action on HB 2168. Thank you for considering our concerns.

/cb

*PK & W
3-5-91
attm #12*

draft

1 use of drugs, controlled substances, chemical or any other type of
 2 material or as a result of any mental or physical condition. In de-
 3 termining whether or not such inability exists, the board, upon
 4 reasonable suspicion of such inability, shall have authority to compel
 5 a licensee to submit to mental or physical examination or drug screen
 6 by such persons as the board may designate. To determine whether
 7 reasonable suspicion of such inability exists, the investigative infor-
 8 mation shall be presented to a review committee established pur-
 9 suant to K.S.A. 65-2840e and amendments thereto the board as
 10 a whole or to ~~a person or entity approved by the board~~ and the
 11 determination shall be made by a majority vote of the review com-
 12 mittee board as a whole or the ~~person or entity approved by the~~
 13 ~~board~~. Information submitted to the review committee and its
 14 board ~~as a whole or the person or entity approved by the board~~
 15 and all reports, findings and other records shall be confidential and
 16 not subject to discovery by or release to any person or entity. The
 17 licensee shall submit to the board a release of information authorizing
 18 the board to obtain a report of such examination or drug screen. A
 19 person affected by this subsection shall be offered, at reasonable
 20 intervals, an opportunity to demonstrate that such person can resume
 21 the competent practice of the healing arts with reasonable skill and
 22 safety to patients. For the purpose of this subsection, every person
 23 licensed to practice the healing arts and who shall accept the privilege
 24 to practice the healing arts in this state by so practicing or by the
 25 making and filing of an annual renewal to practice the healing arts
 26 in this state shall be deemed to have consented to submit to a mental
 27 or physical examination or a drug screen when directed in writing
 28 by the board and further to have waived all objections to the ad-
 29 missibility of the testimony, drug screen or examination report of
 30 the person conducting such examination or drug screen at any pro-
 31 ceeding or hearing before the board on the ground that such tes-
 32 timony or examination or drug screen report constitutes a privileged
 33 communication. In any proceeding by the board pursuant to the
 34 provisions of this subsection, the record of such board proceedings
 35 involving the mental and physical examination or drug screen shall
 36 not be used in any other administrative or judicial proceeding.

37 (j) The licensee has had a license to practice the healing arts
 38 revoked, suspended or limited, has been censured or has had other
 39 disciplinary action taken, or an application for a license denied, by
 40 the proper licensing authority of another state, territory, District of
 41 Columbia, or other country, a certified copy of the record of the
 42 action of the other jurisdiction being conclusive evidence thereof.

43 (k) The licensee has violated any lawful rule and regulation

the officers of the board selected in accordance with K.S.A. 65-2818 and amendments thereto

officers of the board. The board may delegate authority to determine that reasonable suspicion of such inability exists to an impaired provider committee under contract with the board pursuant to K.S.A. 1990 Supp. 65-4924 and amendments thereto. Any determination of reasonable suspicion of inability made by an impaired provider committee must be reviewed and approved by the executive director of the board before a mental or physical examination or drug screen may be required of a licensee.

, the officers of the board, or an impaired provider committee

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3-5-91
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Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka
Topeka, Kansas 66612
(913) 234-5563

March 5, 1991

To: Chairperson Sader and Members, House Public Health Committee
From: Harold Riehm, Executive Director, KAOM
Subject: Support for, and Proposed Conceptual Amendment to H.B. 2168

Thank you for this opportunity to present our views on H.B. 2168. KAOM supports this Bills but suggests a change in language on Page 4.

The purpose of the language and specific inclusion of reference to the respective impaired provider committee of professions to which this Bill applies, is to specifically empower impaired provider committees to determine whether reasonable suspicion of inability exists, and to specifically be empowered to order tests requisite to making that determination.

Our suggested conceptual language (subject to refinement) is as follows:

Conceptual amendment - using language like or similar to this.

Page 4, Lines 2 through 15.

HB 2168

1 use of drugs, controlled substances, chemical or any other type of
2 material or as a result of any mental or physical condition. In de-
3 termining whether or not such inability exists, the board, upon
4 reasonable suspicion of such inability, shall have authority to compel
5 a licensee to submit to mental or physical examination or drug screen
6 by such persons as the board may designate. To determine whether
7 reasonable suspicion of such inability exists, the investigative infor-
8 mation shall be presented to a review committee established pur-
9 suant to K.S.A. 65-2840e and amendments thereto the board as
10 a whole or to a person or entity approved by the board and the
11 determination shall be made by a majority vote of the review com-
12 mittee board as a whole or the person or entity approved by the
13 board. Information submitted to the review committee and its
14 board as a whole or the person or entity approved by the board
15 and all reports, findings and other records shall be confidential and
16 not subject to discovery by or release to any person or entity. The

. . . To determine whether reasonable suspicion of such inability exists, any existing investigative information shall be presented to the board as a whole, to a person or entity approved by the board, or to the impaired provider committee representing the profession of the provider being investigated. In the course of determining whether or not there is a reasonable suspicion of such inability, either the board as a whole, a person or entity approved by the board, or the impaired provider committee representing the profession of the provider being investigated, shall have authority to compel a licensee to submit to mental or physical examination or drug screen by such persons as may be designated by the board, by a person or entity approved by the board, or by the impaired provider committee representing the profession of the provider being investigated. Information submitted to the board as a whole, the person or entity approved by the board, or the impaired provider committee representing the profession of the provider being investigated, and all reports. . .

PH/LL
3-5-91
Attn # 3



KANSAS OCCUPATIONAL THERAPY ASSOCIATION

To: House Committee on Public Health and Welfare

From: R.E. "Tuck" Duncan
Kansas Occupational Therapy Association

On behalf of the Kansas Occupational Therapy Association it is respectfully requested that HB 2168 be amended as follows:

[by adding a new section amending K.S.A. 65-5408(d) and the bill's title to reflect that this enactment applies to the Board of Healing Arts]

K.S.A. 65-5408. Waiver of examination and other requirements; when waived; temporary registration
* * *

(d) The board may issue a temporary registration to an applicant for registration as an occupation therapist or as an occupational therapy assistant who applies for temporary registration on a form provided by the board, who meets the requirements for registration, except for examination, and who pays to the board the temporary registration fee as required under K.S.A. 1986 Supp. 65-5409 and amendments thereto. ~~Such temporary registration shall expire on the date the board acts on the application for registration.~~ Such temporary registration shall authorize the person so registered to provide patient services within the limits of his or her temporary registration until the date the results of the examination become available, but no more than one such temporary registration shall be permitted to any one person without the majority approval of the members of the board. ++

The necessity for this modification came to KOTA's attention just last week and thus we present it to you now after having discussed this matter with the Board of Healing Arts.

This amendment is necessary to provide statutory authority so the Board of Healing Arts may issue temporary registrations,

++ the underlined language is taken from K.S.A. 65-2896d found in the Board of Healing Arts Act.

-over-

PHW
3-5-91
Attn # 4

as has been its practice, during the interim before an O.T. examination is given. A recent review of the interpretation of the law by the Board has determined that the issuance of a temporary registration during the interim may not be statutorily allowed. The examination is only given twice a year in January and July. Exam results are issued six to eight weeks thereafter. Currently 130-140 persons each year are affected. There are openings in the field in need of these graduates awaiting their examination inasmuch as there is a shortage of occupational therapists in Kansas. O.T. graduates, who have completed all other requirements, need to have issued their temporary registration, like many other professionals, until they can submit to the examination and before permanent registration, otherwise they might not be allowed to accept available positions.

Thank you for your attention to and consideration of this matter.

PXW
3-5-91
Att# 2

Testimony of Kansas Respiratory Care Society
February 5, 1991

The Kansas Society for Respiratory Care respectfully requests that HB 2168 be amended as follows [by adding a new section amending K.S.A. 65-5508 (e) and the bill's title and repealer section]:

KANSAS RESPIRATORY THERAPY ACT

K.S.A. 65-5508. Waiver of examination and other requirements; when waived; special permits; temporary registration.

(e) The board may issue a temporary registration to an applicant for registration as a respiratory therapist who applies for temporary registration on a form provided by the board, who meets the requirements for registration, or all of the requirements except examination, and who pays to the board the temporary registration fee as required under K.S.A. 1986 Supp. 65-5509 and amendments thereto. Such temporary registration shall expire ~~on the date that the board acts on the application for registration~~ one year from the date of issue or on the date that the board approves the application for registration, whichever comes first. No more than one such temporary registration shall be permitted to any one person, without the majority approval of the members of the board.

This amendment is necessary to provide statutory authority to the Board of Healing Arts to issue a temporary registration to respiratory therapists who meet the requirements for registration except for examination. The required examination is only given three times a year, and the results are not available for an additional six to eight weeks. A shortage of 100 to 150 respiratory therapists has persisted in Kansas for the past five years. Our citizens need these respiratory therapists on the job as soon as possible. Some of our Kansas graduates have been forced to leave the State to find employment after graduation. The Board of Healing Arts suggested that we appear today to offer an amendment to fill this gap in the registration process.

The Kansas Respiratory Care Society thanks you for your consideration of this proposal, which will assist us in obtaining the manpower needed to provide Kansans with quality respiratory care.

DAN CONYERS, R.R.T., R.C.P.
Kansas Respiratory Care Society
913-588-3335

*DNH
3-5-91
ctm #5*

STATE OF KANSAS



DIVISION OF THE BUDGET

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

(913) 296-2436
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JOAN FINNEY, GOVERNOR
Gary Stotts, Acting Director

February 20, 1991

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

Dear Representative Sader:

SUBJECT: Fiscal Note for HB 2168 by Committee on Public Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2168 is respectfully submitted to your committee.

HB 2168 amends KSA 65-2842, 65-2851a, 1990 Supp. 65-2809, 65-2836 and 65-2837 and repeals KSA 65-2805, all concerning the healing arts, by making minor language changes and by subjecting denial of reinstatement of licenses to the same conditions used for denial of licensure, revocation, suspension, limitation or public or private censure. The amendments clarify to whom investigative information may be presented. The amendments add the inaccurate recording, falsifying or altering of a patient or medical care facility record under the definition of unprofessional conduct as well as defining licensee and license. Finally, the amendments provide for drug screen testing as it would affect the time frame provided for under the Kansas Administrative Procedure Act.

The bill has no fiscal impact.

Sincerely,

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

Louis S. Chabira
Deputy Director

*PNHW
3-5-91
attn #6*

cc: Dr. Richard Gannon, Board of Healing Arts

2580



Thomas C. Krauss, D.D.S. - Forensic Consultant

252 F Street, Phillipsburg, KS 67661 913-543-2123 (Res.) 913-543-5678

Good afternoon. Madam chairman, I would like to thank you and your committee for the opportunity to speak in support of House Bill No. 2363.

I will attach a complete curriculum vitae to my written testimony, but may I briefly summarize my background and qualifications as they relate to this bill. I have been a general dentist for thirty-seven years and have been involved with forensic dentistry for approximately seventeen years. I am a board certified diplomate of the American Board of Forensic Odontology and have served as president of that organization. In 1987 I was president of the American Society of Forensic Odontology. I have served as chairman of the Kansas Dental Association's Ad Hoc Forensic Dentistry committee, and have attained the rank of fellow in the American Academy of Forensic Science, American Academy of General Dentistry and the International College of Dentists. To date I have provided forensic consultations and testimony in twelve states.

As an expert in Forensic Odontology, it has become apparent to me that victim identification is being questioned more frequently in criminal cases. In a criminal case if the victim identification is questioned, the availability of the basic evidence for review is crucial. This is not a subject that is evident to the general population, however mistakes are made in identification and if it happens just once, it is once too many. I would like to share with you some cases that brought this to my attention.

Two years ago a defense attorney in a homicide trial asked me to review a dental identification made of a homicide victim. The dental ID had been done by a physician and created legitimate doubts concerning its validity. Unfortunately, his photographs were out of focus and did not document the dental work in adequate detail. The remains had been cremated preventing re-examination of the victim's dental structures, making legitimate confirmation or denial of the identification impossible. It was a very bad situation, but for other reasons the attorney elected not to pursue the matter.

PHW
3-5-91
att #7

Possibly you remember a case in Wichita where a parolee murdered a young man and was transporting him to southeastern Kansas when he hit a pickup truck with two individuals in it. The passenger in the pickup was thrown clear. The ensuing fire burned the three remaining individuals beyond recognition. The local authorities were satisfied to visually identify the pickup passenger, and they were going to identify the pickup driver by circumstantial evidence. The assisting KBI agent influenced them to seek a forensic autopsy and identification. All three burned bodies were identified by dental means. The pickup driver was then cremated, making me realize that without the intervention of the KBI agent, later his identity could have been legitimately challenged.

At the present time, I have been consulted by an attorney handling the appeal of a murder conviction. He realized that the dental identification done by a general dentist was very questionable and possibly should be challenged. Reviewing the trial transcript, it is evident that there is reason to doubt the basis for the ID. Fortunately, there wasn't a cremation and presently he is attempting to get the skull for my examination. If there had been a cremation, there is no doubt that there could be a serious questioning of the victim's identification, possibly leading to a reversal of the trial verdict.

The question of visual identification by relatives is a difficult one. Visual recognition has been commonly accepted, however, more and more medical examiners are additionally requiring scientific person identification. There have been several instances where serious mistakes have been made using visual identification. One case that comes to mind occurred in Iowa. Two young women of the same age traveling together were in an automobile accident. One survived and was hospitalized in a coma. The other died and was visually identified by her family. Following a funeral service, she was buried. When the hospitalized girl regained consciousness, it became evident that there had been a tragic misidentification. A dramatic demonstration of the danger in visual identifications. Several jurisdictions routinely conduct a dental identification or retain the jaws unless there is well established, overwhelming circumstantial evidence and unquestioned visual recognition. In mass disasters, it is considered the least desirable method of identification.

PX/4W
3-5-91
attn # 7-2

This bill will apply to a very small number of cases meeting the following conditions: an unnatural death (accident, suicide, homicide, and undetermined), where there will be or there is reason to believe there will be a criminal investigation and when the evidence will be destroyed by cremation. The bill is intended to help eliminate a victim misidentification defense in criminal cases. I would like to point out an inadvertant ommision in the bill. It should apply only when the body is to be cremated. In those instances where the jurisdiction does not want to store the biological evidence, they may elect to obtain an appropriately documented forensic dental examination and then retain the report, photographs, and x-rays in the case file. I would certainly endorse any amendment that would include the use of fingerprinting as a scientific method of identification. It would be important to insure quality control of the printing as suggested by the fingerprint community.

Enactment of this bill will not place an unreasonable burden on any Kansas citizen or governmental body. It insures that when a body is cremated, dental identification evidence is retained until all criminal issues are resolved. It is my understanding that this bill is supported by the Kansas Coroners Association, the Kansas Funeral Directors and I speak in favor of it for the Kansas Dental Association. For humanitarian reasons and in the interest of justice, may we urge you to act favorably on this bill.

I will be happy to answer any questions. Thank-you.

PHW
3-5-91
attn #7-3

Thomas C. Krauss, D.D.S. Curriculum Vitae 3/1/91

Office: 252 F Street, Phillipsburg, KS 67661
 Phone-913-543-2123
 Residence: Rt. 2 Box 188, Phillipsburg, KS 67661
 Phone-913-543-5678
 Social Security number-356-26-9860

Education

West Rockford High School, Rockford, Illinois-1949
 University of Wisconsin, Madison, Wisconsin-1949-'51
 Northwestern University Dental School, Chicago, Illinois-(D.D.S.
 -1955)

Professional History

U.S Army Dental Corps-(Captain)- Ft. Riley, KS--1955-'58;
 JTF-7, Eniwetok Atol, Marshall Islands--1958-'59;
 Fitzsimmons General Hospital, Denver, Colorado--1959-'60.
 Private Dental Practice--Grand Junction, Colorado--1960-'77
 (Colorado license number 2519); Phillipsburg,KS--1977-
 present (Kansas license number 5336)
 Board Certification-American Board of Forensic Odontology-
 1976(certificcate number-22)

Teaching

University of Colorado School of Dentistry--Clinical Assistant
 Professor-1977-'89
 American Academy of Forensic Science
 Academic papers presented at Annual Meeting-
 1979,'80,'82,'83,'85,'86,'87,'88,'89,'90,&'91
 Annual Bitemark Breakfast--Lecturer-1988
 American Society of Forensic Odontology Annual Training
 Seminar--Lecturer-1982
 Kansas Bureau of Investigation--lecturer-1977
 Northwestern University Traffic Institute Graduate Seminar--
 Lecturer-1977
 Kansas Law Enforcement Training Center--Lecturer-1978,'82,'84
 Nebraska Law Enforcement Center--Lecturer-1987,'89
 FBI National Academy of Retraining (KS-MO Chapter) --
 Lecturer-1980
 National Foundation of Funeral Service--Lecturer-1980

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 3-5-91
 attm #7-4*

National Law Enforcement Institute--Lecturer-1980,'82
Kansas County and District Attorney's Assn.--Lecturer-1982
Kansas Trial Lawyers Assn.--Lecturer-1983
Kansas State Board of Indigent Defense Services (Criminal
defense seminar)--Lecturer-1987
Univ. of Nebraska Medical School (Pathology Dept.)--Lecturer-1987
Mid-Western Association of Forensic Scientists--Lecturer-1985
Nikon Law Enforcement Photography Course--Lecturer-1986
Kansas State University--Lecturer-1981,'89
Curso Intesive De Odontologia Forense, Mexico City, D.F.(five
day course) sponsored by: The Mexican Academy of Forensic
Science, Post Graduate Law School, Pan Amaerican Univ.,
National Institute of Criminalistics, and Medical Examiner of
Mexico City--Principal Lecturer-1988
Curso Intensivo De Odontologia Forense, Queretaro, Qro., Mexico(five
day course) sponsored by State of Queretaro Attorney General and
Autonomous University of Queretaro Medical Faculty--Principal
Lecturer--1990
Western Crime Conference (Wichita, KS)--Lecturer-
1988,'89,'90
Kansas City Community College, Mortuary Science Dept.--
Lecturer-1982
Garden City Junior College, Criminal Justice Dept.--Lecturer-1990
Metropolitan Denver Dental Society Regional Meeting--Lecturer-
1986
International Association for Identification-Kansas, Colorado, and
Nebraska Divisions Joint Conferance--Lecturer-1989

Profesional Affiliations

American Dental Assocation--Member-1952-present
Colorado Dental Association--Member-1960-1977
Kansas Dental Association--Member-1978-present
[Ad Hoc Forensic Committee chairman and member-1987]
American Academy of Forensic Sciences--Fellow-1975-present
American Society of Forensic Odontology--Member-1975-
present [Board of directors- 1978-1986, President-1984]
American Board of Forensic Odontology--Diplomate-1976-
present [Board of Directors-1979-1986; Vice-President-
1983-'84; President-1988-'89; Chairman-BitemarkWorkshop
1984]
International College of Dentists--Fellow-1977-present
Academy of General Dentistry--Fellow-1972-present

*PN4W
3-5-91
attn #7-5*

(President Kansas Chapter-1983)
 Editorial Board-The American Journal of Forensic Medicine and Pathology--1990-present
 Kansas Attorney General's Task Force on Missing and Exploited Children--member-1984-'86
 Kansas Governor's Commission on Health Care--member -1990
 International Association for Identification-Colorado and Kansas division--member-1975-present
 Columbine Periodontal Study Club--Member-1962-'77
 Western Slope Dental Study Club --Organizer and Member -1960-'77
 Mesa College Assistant and Expanded Function Advisory Committee--Program coordinator and member-1975-'77

Publications

Forensic Dentistry-Colorado Dental Association Journal, May 1975
Forensic Odontology in Missing Persons Cases: Journal of Forensic Sciences, Vol.21, No.4 ,Oct. 1976
Bite Marks: A Viable Adjunct to Justice- Kansas Div. of International Assn. for Identification Newsletter, Rocky Mountain Div. Newsletter, and Identification News, Vol. 30 No. 6 , June 1980-(page 13)
Forensic Odontology- A Team Approach in Education and Service- Journal of The Colorado Dental Assn.-May 1980
Uniform Designations for Services Needed in the Profession- Dental Economics - November 1980, Vol. 70, No.11
Aging of Deceased through Forensic Odontology-FORENSIC ODONTOLOGY WORKBOOK, American Society of Forensic Odontology-1980
Photographic Techniques of Concern in Metric Bitemark Analysis- Journal of Forensic Sciences, Vol.29, No.2, April 1984
The Forensic Science Use of Reflective Ultraviolet Photography -Thomas C. Krauss and Steven C. Warlen-Journal of Forensic Sciences- Vol. 30, No.1, January 1985-(page 262)
"The Missing Person"- A New Dimension in Your Practice- Journal of the Kansas Dental Assn., Vol.69, No.4, Oct. 1985
Kansas is Not Immune- Journal of the Kansas Dental Assn., Vol.71, No.2, April 1987
The Bite Mark Standard Reference Scale- ABFO No. 2-W.G. Hyzer and Thomas C. Krauss, Journal of Forensic Science,

PN4W
 3-5-91
 attm # 7-6

JFSCA, Vol.33, No. 2, March 1988-(page 498-506)
Close-up Medical Photography: Forensic Considerations and
 Techniques - LEGAL MEDICINE-1989-Cyril Wecht,
 Butterworth Legal Publishers -(pages 93-111)
Bitemarks: Reflective Ultraviolet Photography &
 ABFO No.2 Reference Scale-MANUAL OF
FORENSIC ODONTOLOGY-1991-David C. Averill, D.D.S.
 (American Society of Forensic Odontology)

Expierence

Provided Forensic Consultation in the following states:
 Colorado, South Dakota, Nebraska, Kansas, Oklahoma, Iowa,
 Missouri, Arkansas, Florida, Virginia, New York, and New Jersey
 Testified as an expert in:
 18th Judicial District of Kansas--Wichita
 28th Judicial District of Kansas--Salina
 13th Judicial Circuit of Florida--Tampa
 30th Judicial District, Commonwealth of Virginia--Wyse
 Camden County Superior Court--Camden, New Jersey
 Osage County District Court-Pawhuska, Oklahoma
 Primary Expert in Kansas Bitemark case of first impression
 (Kansas v. Peoples)
 Co-originator of the ABFO No.2 referance scale--accepted by
 the American Board of Forensic Odontology for bitemark
 photography (produced and marketed world wide by
 Lightning Powder Co.)

PN 4W
 3-5-91
 altm # 7-7

Amendments to House Bill 2363

Line 11 After the end of the sentence add:

Further providing for the recording of the entire ridge structure of the hands and feet and the retention of such records or evidence.

Line 16 Between words the and district, insert:

county or
to read (the county or district coroner. . .)

Line 22-23 After subsection (2) add subsection (3).

(3) the clear recording of the complete ridge structure that may be present on the hands and feet of the body.

Line 28 After the word section, add:

and recordings of ridge structure obtained pursuant to this section, shall be preserved and retained in evidence, by the county or district coroner,

PA/KW
3-5-91
attm # 8

James G. Bridgens, M.D.**Forensic Pathology • Medical-Legal Consultation**

The Honorable Eugene P. Amos
State Capitol, Room 174 W
Topeka, KS 66612

4 Mar 91

Re: House Bill No. 2363

Dear Gene:

Following are my comments regarding the proposed amendment to K.S.A. 22a-231:

The bill as proposed is an approach to the identification of deceased individuals falling under the purview of the coroner, however the wording is too broad for practical purposes. Since the identification of the vast number of subjects is established at the outset or shortly thereafter there is little rationale to mandate extensive dental examination. This would impose a significant, and in most cases an unnecessary expense, on the responsible counties.

The proposal limits the examination to criminal investigations and excludes mutilated victims of fires, aircraft or other accidents in which no criminal action is considered or contemplated. Moreover, there is no mention of the need for such examination prior to cremation of bodies falling under the proposed mandates.

Identification can be usually be established by the circumstances of discovery, finger prints, physical descriptors, absence of organs, residual disease processes and personal effects. In the absence of such identifiers, dental examination on occasions can be helpful. It would seem redundant to require the effort and expense of such examination on all cases.

A dental examination or the removal of the complete maxilla and mandible should be performed on those cases in which identity poses a question or there is extensive mutilation, either by fire, trauma or decomposition when the usual means of identification is compromised. Such items should be examined by a dentist competent to evaluate and compare them with dental records of the deceased if and when they become available.

*PNW
3-5-91
attm# 9*


Amos
No. 2363
Page 2

The bill requires that two copies of the report of the dental examination be prepared. There is no designation as to the destination of these reports. In keeping with the Coroner's Statutes, they should be filed with the Clerk of the District Court as a part of the coroner's report.

There should be a time limitation for retention of the removed maxilla and mandible. In the event that identification is established, there is little need to retain them beyond the 3 years designated in the existing law. The filed records of examination, ante-mortem dental records and x-rays should suffice for subsequent purposes.

Since there is a wide variation in the aspects of each case, this requirement should not be mandated by law, but done at the discretion of the local coroner. When a proposal requiring routine examination is mandated there are cases that fall through the cracks because of omission. In addition, the mandate will create problems in subsequent court procedures in those instances that such examination had not been conducted. The identity problem, if such exists, can be better handled by education of the coroners to the use of such measures to insure identification of those questionable cases prior to burial or cremation.

Sincerely,


James G. Bridgens, M. D.

Pathologist for Johnson County Coroner

JHYW
3-5-91
attn #9-2

FAXED TO TOPEKA 3-3-91

Rep. Gene Amos

Dear Mr. Amos,

I am writing in opposition to House Bill No. 2363.

As this bill is written, it would require forensic dental examination or removal of the maxilla and mandible on all bodies in which a criminal investigation is likely to be conducted. This would include all suspected homicides and about one-half of the fatal automobile accidents. In Wyandotte County alone, this would be over fifty cases per year.

I discussed this bill briefly by telephone with Keith Rowe, the sponsor of the bill. He indicated that his intent was to preserve dental evidence in bodies which were to be cremated. If this were the way the bill was written it would be better, but still objectionable.

The statutes now make the coroner responsible for identification of bodies and preservation of evidence. They should continue to allow him to do so using whatever means are available in each case.

Dental examination is essential in bite mark evidence, but does not need to be preserved for this reason if it is apparent that the victim did not bite his assailant.

Dental evidence is only one of many methods used to identify a body. Other methods include, but are not limited to: fingerprints, genetic fingerprinting, tattoos, and old fractures.

As to the concern of preservation of identifiable material prior to cremation of an unidentified body, I would never allow the cremation of a body of which the identity was not certain. As you know, a body cannot be cremated in Kansas unless a cremation permit is signed by the coroner. If identification cannot be made after a reasonable period of time, the body is buried. In these cases, I normally retain the maxilla, mandible, skeletal x rays and if possible, photographs of the body with special attention to scars and tattoos.

In summary, I believe that this bill should be killed and that the law should remain as it is, making the coroner responsible for identification of bodies but not requiring him to use specific methods in a world of rapidly changing scientific knowledge.

Sincerely,

Alan C. Hancock M.D.

JNAW
3-5-91
att # 10



UNIVERSITY OF MISSOURI-KANSAS CITY

School of Dentistry

650 East 25th Street
Kansas City, Missouri 64108-2795
(816) 276-2100
FAX (816) 276-2157

March 4, 1991

Honorable Eugene P. Amos
Rep. 18th District
Fax 913-296-1154

Dear Honorable Amos:

^{Jim}
Dr. ~~Tom~~ Bridgens brought House Bill 2363 to my attention. As a practicing forensic odontologist, I have severe reservations about the bill as written.

I think the idea behind the bill is to get a dental evaluation of all unidentified coroner cases. This I would enthusiastically support.

As written requiring dental evaluation of all coroner cases, the bill is overkill and unworkable. The cost would also be a factor.

No mention is made in the bill about bite mark evaluation which is a matter that should be addressed but, left to the Medical Examiners discretion.

I teach at UMKC and live and practice in Kansas.

Very truly yours,

Ronald E. Gier, D.M.D., M.S.D.
Professor
Dept. of Oral Diagnosis

REG:ps
CLL-0491

JHG
3-5-91
attm # 11

MEDICOLEGAL AND FORENSIC SCIENCES INTERNATIONAL

WILLIAM G. ECKERT, M.D.
DIRECTOR

P.O. BOX 8282 / WICHITA, KANSAS 67208 / (316) 685-7612

3-4-91

Chairman of the Health Committee
Representative SADER
House of Representative of Kansas
State Capitol, Topeka, Ks.

Re: Bill regarding Forensic Dentistry

Dear Rep. SADER

As one of the two Forensic Pathologists practising in Kansas and the Secretary of the Kansas Coroners Association I strongly support this measure. We have so few Forensic Experts in our State and Dr Krauss is the only Dentist who has a national Reputation in this specialty. The FBI uses him as I do and they should also speak for this bill.

I understand that there has been opposition by Dr Bridgens from the Overland Park area. He is not a certified or trained Forensic Pathologist and although he has the right to give an opinion he has no basis for expertise in this subject.

I am Sincerely Yours



William G. Eckert MD
Secty, Ks Coroners Assn
Forensic Pathologist.

P N & W
3-5-91
atm #12

STATE OF KANSAS

115-5



DIVISION OF THE BUDGET

JOAN FINNEY, GOVERNOR

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

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

February 28, 1991

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

Dear Representative Sader:

SUBJECT: Fiscal Note for HB 2363 by Committee on Public
Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2363 is respectfully submitted to your committee.

HB 2363 is a new act which requires district coroners, in
cases where a criminal investigation into a death is likely, to
require a complete forensic dental examination of the body or
the removal and preservation of the complete maxilla and
mandible.

There is no fiscal impact to state revenues or expenditures.

Sincerely,

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

Louis S. Chabira
Deputy Director

cc: Mack Smith, Mortuary Arts
Cynthia Barrett, Dental Board

3069

PN4W
3-5-91
att # B