

Approved 4-1-91
Date SA

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Carol H. Sader at
On a journalment of House Chairperson

1:30 /a.m./p.m. on March 22,, 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:

Chairperson Sader called meeting to order drawing attention to minutes for two committee meetings. Chair asked members to carefully read over the minutes. Rep. Cribbs moved to approve minutes of March 18th and March 19th, 1991 as presented. Motion seconded by Rep. Lynch. Motion carried.

Chair announced the draft of a bill being distributed by Mr. Furse is in reference to a drug formulary.

Mr. Furse noted this legislation will be introduced in Committee on Federal and State Affairs and will then be referred to Committee on Public Health and Welfare by next week. See (Attachment No. 1).

Chip Wheelen, Kansas Medical Society, offered hand-out (Attachment No.2). He requested that a House Concurrent Resolution setting out the week of October 6-12, 1991 as Mental Illness Awareness Week be introduced by Committee on Public Health and Welfare.

Rep. Wiard moved to introduce this Resolution as a Committee bill. Rep. Scott seconded the motion. Motion carried.

Chair made announcements. It will be necessary to schedule meetings in addition to our regular 1:30 p.m. Committee meeting. 5:00 p.m. meetings will be held on Monday and Wednesday in room 254-E On Friday, the meeting will be on call of the Chair.

Chair called attention to handout (Attachment No. 3). An Attorney General's Opinion that was requested through the Board of Healing Arts. This opinion is related to HB 2127.

Chair called for discussion on bills previously heard.

DISCUSSION BEGAN ON HB 2127.

Some noted concerns that midwives need to be held responsible for liability the same as physicians; people in rural areas depend on alternative services for childbirth since they live long distances from doctors and hospitals; an Interim study was proposed.

Rep. Cozine moved to amend HB 2127 as detailed in (Attachment No. 4). Motion seconded by Rep. Love. Discussion began.

It was noted statutes regarding the practice of healing arts have been copied by the Revisor/Research staff per request of Rep. Carmody. This is recorded as (Attachment No. 5).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
On adjournment of House
room 423-S Statehouse, at 1:30 a/m./p.m. on March 22, 1991

LENGTHY DISCUSSION ENSUED ON HB 2127.

It was noted that the state must assume financial responsibility of taking care of babies who might suffer damage at birth. Statistics were read from a study in regard to risk factors of at-home births assisted by midwives; an Interim Study on midwifery was suggested; there are only 6 nurse midwives in the state; the credentialing process is available to lay midwives; if HB 2127 is passed, the practice of lay-midwifery is still illegal; many people making the choice for home births with the assistance of a midwife live in rural areas; practice of midwifery goes back to the time of Moses; protection and the welfare of the public is the responsibility of this legislative body.

After an extremely long discussion, Rep. Cozine withdrew her amendment on HB 2127.

Rep. Amos asked permission to inquire of the Board of Healing Arts what its position is in regard to an Interim Study on midwifery.

Richard Gannon, Executive Secretary Board of Healing Arts, replied that the Board would not be in favor of an Interim Study on this subject. It has been studied to death in the past. A credentialing process is available.

Discussion continued, i.e., if HB 2127 is advanced it will indicate that this Committee is trying to make a point that the unlawful practice of the healing arts is punishable by a fine or a more severe penalty; midwifery is against the law, however, it is a service that is needed by some persons, which makes this a difficult issue; policy dealing with unlawful practice is already in place and HB 2127 will increase the fine for engaging in this unlawful practice; regulations are set out for attorneys, physicians, morticians; some members felt midwives should continue to be regulated. The question was asked by Rep. Scott, "who among the members of this Committee would have your daughter give birth to her baby at home"?

Rep. Love moved to recommend an Interim Study on HB 2127. Motion seconded by Rep. Cozine. At this point, Staff pointed out a Committee cannot specify whether or not an Interim Study is to be held. The final decision is up to the Legislative Coordinating Council.
Discussion continued. Vote taken. Motion failed.

Rep. Amos moved to amend HB 2127 per proposed language suggested by Kansas Medical Society's balloon distributed at an earlier meeting. Motion seconded by Rep. Bishop. Chair requested Mr. Furse to explain the balloon. Mr. Furse explained proposed language to amend by beginning in line 22 before the word "This" add (b). The bill would read, "This section shall not apply to any person licensed by the board whose license was expired or lapsed and reinstated within a six month period pursuant to K.S.A. 652809. (c) This section shall not apply 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. The same language would be inserted in Sec. 2, beginning on line 43, and re-letter and re-number sections as needed.

Note:-This amendment initially proposed in an attachment recorded on March 18th as (Attachment No. 10).

Vote taken, Motion carried.

Rep. Wagle moved to pass HB 2127 favorably as amended. Motion seconded by Rep. Neufeld. No further discussion. Vote taken. Motion carried. Rep. Cribbs and Rep. Love recorded as "NO" votes.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
On adjournment of House
room 423-S Statehouse, at 1:30 a.m./p.m. on March 22, 1991

DISCUSSION CONTINUED ON HB 2127.

Rep. Amos made a motion to recommend the subject of midwifery for an Interim Study. Motion seconded by Rep. Love. Discussion ensued. Vote taken. Chair in doubt, show of hands indicated 9 in favor, 9 against, Chair voted in favor. Motion carried.

Chair thanked all members of the Committee for their interest and cooperation as discussion has been held twice on HB 2127.

Chair will carry HB 2127 to the floor of the House.

DISCUSSION BEGAN ON HB 2104.

Chairperson Sader requested Chair of the sub-committee on HB 2104 give the recommendations of its findings.

Rep. Wiard, Chair of sub-committee, stated he, Rep. White, and Rep. Samuelson did the best they could with the time available to work the bill. He requested Mr. Furse explain the amendments proposed in balloon (Attachment No. 6). Mr. Furse gave a detailed explanation of the balloon. A lengthy discussion followed the explanation of proposed amendments.

Rep. White stated the sub-committee had made the effort to answer concerns of the Department of Health/Environment, Kansas Medical Society, and Speech/Hearing Pathologists Association. With this in mind, he recommended amending language "so long as such employee or persons does not hold themselves out to the public" where pertinent in order to keep language consistent.

Rep. Wiard moved to amend HB 2104 as proposed in the balloon along with suggestion of Rep. White to amend further on page 6, (f) add at the end of sentence in (f) "so long as such employee or person does not hold themselves out to the public by a title set forth in section 4". Motion seconded by Rep. Neufeld. Motion carried.

On HB 2104 as a whole, Rep. Neufeld moved to pass the bill out favorably as amended. Rep. Praeger seconded the motion. No further discussion. Vote taken. Motion carried.

Rep. Neufeld wished to be recorded as a "YES" vote for the first time on a credentialing bill. He stated HB 2104 is a good bill.

Rep. Wiard will carry HB 2104 to the floor of the House.

At this time, Chair reminded Rep. Wiard, Rep. White, and Rep. Samuelson they are to continue as a standing sub-committee on credentialing legislation. Chair thanked them for their hard work and recommendations brought forward.

DISCUSSION BEGAN ON HB 2485.

After a short discussion, Rep. Neufeld moved to pass HB 2485 out favorably and request it be placed on the consent calendar. Motion seconded by Rep. Scott. Motion carried.

Chair drew attention to hand-outs given to members. (Attachment No. 7), letter from Marjorie J. Turner, Director of SRS Employment Preparation Services. This is a follow-up on questions raised at an earlier meeting.

(Attachment No. 8) letter from John W. Alquest, Acting Commissioner of Income Support/Medical Services, Department of SRS to follow-up on questions asked of committee members at an earlier meeting.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
on adjournment of House
room 423-S Statehouse, at 1:30 ///a.m./p.m. on March 22, 1991

DISCUSSION BEGAN ON HB 2484.

It was noted many KanWork clients do attend institutions of higher learning. Also, many attend the vocational technical schools and adult basic education classes as well. The Department of SRS offered some alternatives, i.e., amend HB 2484 to include representatives from both the Department of Education and Board of Regents; language in the bill already includes a faculty member from school of social welfare, and that language could be broadened to have that person represent the Board of Regents as well; broaden language to include "appropriate courses" or "relevant courses"; Rep. Praeger moved to amend HB 2484 on page 1, line 21 after the word "courses" add language, "or other relevant academic disciplines". Motion seconded by Rep. Wiard. Motion carried.

On HB 2484 as a whole - Rep. Praeger moved to pass HB 2484 out favorably as amended. Motion seconded by Rep. Samuelson. Discussion continued.

It was suggested the program be called Work Force Training Council since they are dealing with the rehab program, skills program and Kanwork program; suggestions for broadened language for the Advisory Committee was offered.

Vote taken. Motion carried.

DISCUSSION BEGAN ON HB 2487.

Staff drew attention to a technical point in the words "ex officio", and that recommendations had been made to delege this language. Further discussion by members indicated the focus of the Department of SRS wishes to obtain top minds on the Committee; it was noted the meetings of this Committee had not been well attended.

Rep. Wiard made a motion to report HB 2487 unfavorably. Motion seconded by Rep. Carmody. Discussion continued, i.e., there would be a neglible fiscal impact; some felt the Department had a difficult time answering question regarding the Committee selection; this proposed legislation would simply place in the statutes the Advisory Committee.

Question called for by Rep. Wagle, seconded by Rep. Carmody. Vote taken. Motion carried.

Chair noted at this point (Attachment No. 9) receipt of a memo from John Grace, Kansas Association of Homes for the Aging, in response to questions raised at an earlier meeting.

Chair made announcements about future agenda.

Chair adjourned the meeting.

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HOUSE BILL NO. _____

By Committee on _____

AN ACT concerning registrations to deliver at wholesale any drugs; requiring certain information and qualifications relating thereto; amending K.S.A. 1990 Supp. 65-1645 and repealing the existing section.

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

New Section 1. (a) The board shall require an applicant for registration to deliver at wholesale any drugs under K.S.A. 65-1643 and amendments thereto, or an applicant for renewal of such a registration, to provide the following information:

(1) The name, full business address and telephone number of the applicant;

(2) all trade or business names used by the applicant;

(3) addresses, telephone numbers, and the names of contact persons for all facilities used by the applicant for the storage, handling and distribution of prescription drugs;

(4) the type of ownership or operation of the applicant;

(5) the name of the owner or operator, or both, of the applicant, including:

(A) If a person, the name of the person;

(B) if a partnership, the name of each partner, and the name of the partnership;

(C) If a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation;

(D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) such other information as the board deems appropriate.

Changes in any information in this subsection (a) shall be submitted to the board as required by such board.

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(b) In reviewing the qualifications for applicants for initial registration or renewal of registration to deliver at wholesale any drugs, the board shall consider the following factors:

(1) Any convictions of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(2) any felony convictions of the applicant under federal or state laws;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(5) suspension or revocation by federal, state or local government of any license or registration currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with registration requirements under previously granted registrations, if any;

(7) compliance with requirements to maintain or make available to the board or to federal state or local law enforcement officials those records required by federal food, drug and cosmetic act, and rules and regulations adopted pursuant thereto; and

(8) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

(c) After consideration of the qualifications for applicants for registration to deliver at wholesale any drugs, the board may deny an initial application for registration or application for renewal of a registration if the board determines that the granting of such registration would not be in the public interest. The authority of the board under this subsection to deny a registration to deliver at wholesale any drugs shall be in

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addition to the authority of the board under subsection (d) of K.S.A. 65-1627 and amendments thereto or subsection (e) of K.S.A. 65-1645 and amendments thereto.

(d) The board by rules and regulations shall require that personnel employed by persons registered to deliver at wholesale any drugs have appropriate education or experience, or both, to assume responsibility for positions related to compliance with state registration requirements.

(e) The board by rules and regulations may implement this section to conform to any requirements of the federal prescription drug marketing act of 1987 (21 U.S.C. 321 et seq.) in effect on the effective date of this act.

(f) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

Sec. 2. K.S.A. 1990 Supp. 65-1645 is hereby amended to read as follows: 65-1645. (a) Application for registrations or permits under K.S.A. 65-1643 and amendments thereto shall be made on a form prescribed and furnished by the board and. Applications for registration to deliver at wholesale any drugs shall contain such information as may be required by the board in accordance with the provisions of section 1 and amendments thereto. The application shall be accompanied by the fee prescribed by the board under the provisions of this section. When such application and fees are received by the executive secretary of the board on or before the due date, such application shall have the effect of temporarily renewing the applicant's registration or permit until actual issuance or denial of the renewal. However, if at the time of filing a proceeding is pending before the board which may result in the suspension, probation, revocation or denial of the applicant's registration or permit, the board may declare, by emergency order, that such application for renewal shall not have the effect of temporarily renewing such applicant's registration or permit. Separate applications shall be made and separate registrations or permits issued for each separate place at which is carried on any of the operations for which a registration or

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permit is required by K.S.A. 65-1643 and amendments thereto except that the board may provide for a single registration for a business entity registered to deliver at wholesale any drugs and operating more than one facility within the state, or for a parent entity with divisions, subsidiaries or affiliate companies, or any combinations thereof, within the state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(b) The fees required for the issuing of the registrations or permits required by K.S.A. 65-1643 and amendments thereto shall be fixed by the board as herein provided, subject to the following:

(1) Pharmacy, new registration not more than \$150, renewal not more than \$125;

(2) pharmacist, examination fee not more than \$250;

(3) pharmacist, examination fee for previously licensed pharmacist not more than \$250;

(4) manufacturer, new registration not more than \$500, renewal not more than \$400;

(5) wholesaler, new registration not more than \$500, renewal not more than \$400, except that a wholesaler dealing exclusively in nonprescription drugs, the manufacturing, distributing or dispensing of which does not require registration under the uniform controlled substances act, shall be assessed a fee for registration and reregistration not to exceed \$50;

(6) special auction not more than \$50;

(7) samples distribution not more than \$50;

(8) institutional drug room, new registration not more than \$40, renewal not more than \$35;

(9) retail dealer selling more than 12 different nonprescription drug products, new permit not more than \$12, renewal not more than \$12; or

(10) certification of grades for each applicant for examination and registration not more than \$25.

(c) For the purpose of fixing fees, the board may establish

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classes of retail dealers' permits for retail dealers selling more than 12 different nonprescription drug products, and the board may fix a different fee for each such class of permit.

(d) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall fix by rules and regulations the fees authorized for such year at the sum deemed necessary for such purposes. The fees fixed by the board under this section immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(e) The board may deny renewal of any registration or permit required by K.S.A. 65-1643 and amendments thereto on any ground which would authorize the board to suspend, revoke or place on probation a registration or permit previously granted pursuant to the provisions of K.S.A. 65-1643 and amendments thereto. Registrations and permits issued under the provisions of K.S.A. 65-1643 and 65-1644 and amendments thereto shall be conspicuously displayed in the place for which the registration or permit was granted. Such registrations or permits shall not be transferable. All such registrations and permits except retail dealer permits shall expire on June 30 following date of issuance. Retail dealers' permits shall expire on the last day of February. All registrations and permits shall be renewed annually. Application blanks for renewal of registrations and permits shall be mailed by the board to each registrant or permittee at least 30 days prior to expiration of the registration or permit. If application for renewal is not made before 30 days after such expiration, the existing registration or permit shall lapse and become null and void on the date of its expiration, and no new registration or permit shall be granted except upon payment of the required renewal fee plus a penalty equal to the renewal fee. Failure of any registrant or permittee to receive such application blank shall not relieve the registrant or permittee from the penalty hereby imposed if the renewal is not made as prescribed.

✓ Sec 3 -

✓ Sec 4 -

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Sec. 3. K.S.A. 1990 Supp. 65-1645 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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Attm # 1-6

DRAFT

House Concurrent Resolution No.

By Committee on Public Health and Welfare

A CONCURRENT RESOLUTION designating October 6 through 12, 1991, as Mental Illness Awareness Week.

WHEREAS, Advances in scientific knowledge have made it possible to effectively treat even the most incapacitating mental illnesses; and

WHEREAS, Proper diagnosis of mental illness with appropriate treatment is humane because of alleviated suffering and also cost-effective because of reduced social dependence; and

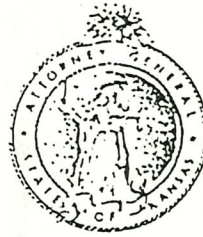
WHEREAS, Early intervention offers the most opportunity for successful treatment of mental illness; and

WHEREAS, Improved knowledge about mental illness benefits society in general as well as the victims of mental illness: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the week beginning October 6, 1991, is designated as Mental Illness Awareness Week, and the Governor is authorized and requested to issue a proclamation calling upon the people of the State of Kansas to observe such week with appropriate activities; and

Be it further resolved: That the Secretary of State be directed to send an enrolled copy of this resolution to the Governor of the State of Kansas.

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3-22-91
Attn # 2



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

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Curt T. Schneider
Attorney General

May 17, 1978

ATTORNEY GENERAL OPINION NO. 78-164

Mr. Michael J. Malone
Douglas County Attorney
Judicial and Law Enforcement Center
Lawrence, Kansas 66044

Re: I. Public Health--Healing Arts--Unlawful Practice of
Healing Arts: Midwifery
II. Crimes and Punishments--Crimes Against Persons--
Involuntary Manslaughter; Aiding and Abetting

Synopsis: 1. The practice of midwifery is a *per se* violation
of the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
2. A fetus unintentionally killed without malice in
the commission of a violation of the Kansas Healing
Arts Act is a violation of K.S.A. 21-3404: involuntary
manslaughter.
3. Any person who intentionally aids, abets, advises,
hires, counsels or procures midwives to practice ob-
stetrics may be charged with involuntary manslaughter.

* * *

Dear Mr. Malone:

I have your letter of March 14, 1978, wherein you request the
opinion of this office concerning the legality of persons per-
forming services generally referred to as midwifery, or assisting
pregnant women in childbirth. You advise that certain women in
Douglas County hold themselves out to the public as midwives and
have in fact assisted with more than one home childbirth, although
they possess no formal medical training regarding such practice.

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First, you specifically inquire whether the provisions of the Healing Arts Act, K.S.A. 65-2801, et seq. and as amended, prohibit the practice of midwifery by nonlicensed persons.

K.S.A. 1977 Supp. 65-2802 provides thus:

"For the purpose of this act the following definitions shall apply:

(a) The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic." [Emphasis supplied.]

K.S.A. 1977 Supp. 65-2869 further amplifies the foregoing provision thus:

"For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches." [Emphasis supplied.]

K.S.A. 65-2803 also provides:

"No person shall engage in the practice of any branch of the healing arts, as hereinafter defined, unless he shall have obtained from the board a license for that purpose."

As relates to the facts alleged in your letter the proscription of these statutes is clear: individuals not licensed under the

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Act may not engage in activities which entail duties incident to the practice of medicine or any of its branches. Thus, the question necessarily presented is whether assisting at childbirth or practicing midwifery is tantamount to the practice of a branch of medicine or, in other words, a branch of the healing arts.

"Midwifery" is defined by *Webster's New Third International Dictionary* as:

"1: the act of assisting at childbirth;
also obstetrics"

The term "obstetrics" is defined by the same source as:

"a branch of medical science that deals with
birth and with its antecedents and sequels."¹

That obstetrics or midwifery has long been recognized as a branch of medicine is evident from the following observation of the Supreme Judicial Court of Massachusetts:

"Both medical and popular lexicographers define midwife as a female obstetrician, and midwifery as the practice of obstetrics.

* * *

Although childbirth is not a disease, but a normal function of women, yet the practice of medicine does not appertain exclusively to disease, and obstetrics as matter of common knowledge has long been treated as a highly important branch of the science of medicine." [Emphasis supplied.] *Commonwealth v. Porn*, 196 Mass. 326, 82 N.E. 31 (1907).

1. See, *Stedman's Medical Dictionary* definitions for "midwifery" and "obstetrics," pp. 1004 and 1105 respectively.

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Accord, Bowland v. Municipal Court for Santa Cruz County, Etc.,
134 Cal.Rptr. 630, 556 P.2d 1081 (1977).

It is the opinion of this office therefore that an individual who assists with childbirth and who holds himself or herself out to the public as offering such assistance is overtly assuming the duties incident to the practice of a branch of medicine and thus a branch of the healing arts, i.e., obstetrics, and must accordingly hold the requisite license per K.S.A. 65-2803. To the extent that such activities are *per se* violations of the express language of the Act, it is not necessary to determine the effects of gratuitous midwife services or the nontrained medical status of the midwives. Nor does it appear necessary to address the exception to the act for gratuitous services in emergency situations provided at K.S.A. 1977 Supp. 65-2872(a).

You also ask what, if any, remedies exist in this Act regarding the unauthorized practice of healing arts aside from the injunction and quo warranto provisions of K.S.A. 1977 Supp. 65-2857. Your attention is directed to criminal charges which may be filed under K.S.A. 65-2862 which states:

"Any person violating any of the provisions of this act, except as specific penalties are herein otherwise imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each separate offense, and a person for a second violation of any of the provisions of this act, wherein another specific penalty is not expressly imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each separate offense."

Last, you ask concerning the applicability of K.S.A. 21-3404 to the situation which involves the midwives as previously discussed, where the fetus dies as a result of "such a practice," i.e. the activities of the midwives. K.S.A. 21-3404 provides thus:

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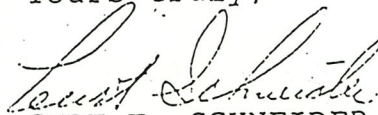
"Involuntary manslaughter is the unlawful killing of a human being, without malice, which is done unintentionally in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act in an unlawful or wanton manner. As used in this section, an 'unlawful act' is any act which is prohibited by a statute of the United States or the state of Kansas or an ordinance of any city within the state which statute or ordinance is enacted for the protection of human life or safety.

Involuntary manslaughter is a class E felony."

As opined, *supra*, practicing midwifery without the required license from the Board of Healing Arts is the commission of an unlawful act not amounting to felony. If the fetus under the circumstances you describe was in fact unintentionally killed without malice in the commission of the unlawful act, then it appears reasonable to conclude that the midwives and husband (if he was so involved) may be charged with involuntary manslaughter. Insofar as concerns the pregnant woman who attempted to give birth to the fetus, if she "intentionally aids, abets, advises, hires, counsels or procures" the husband or midwives to practice midwifery or obstetrics, then she likewise may be charged with violating K.S.A. 21-3404, pursuant to K.S.A. 21-3205.

Of course, the decision to prosecute for any of the above or similar acts must rest with the local prosecutors and their assessment of the specific facts presented to them.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

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Attn #
3-5

HOUSE BILL No. 2127

By Committee on Public Health and Welfare

2-4

9 AN ACT concerning the healing arts; relating to crimes for unlicensed
10 practice of the healing arts; amending K.S.A. 65-2803 and 65-
11 2867 and repealing the existing sections; also repealing K.S.A. 65-
12 2868

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

15 Section 1. K.S.A. 65-2803 is hereby amended to read as follows:
16 65-2803. No person shall engage in the practice of any branch
17 of the healing arts, as hereinafter defined, unless he shall have
18 obtained from the board a license for that purpose. (a) It shall
19 be unlawful for any person who is not licensed under ~~this~~ the Kansas
20 healing arts act or whose license has been revoked or suspended to
21 engage in the practice of the healing arts as defined in ~~this~~ the
22 Kansas healing arts act. This section shall not apply [to any person
23 licensed by the board whose license has inadvertently lapsed [or] to
24 any health care provider who in good faith renders emergency care
25 or assistance at the scene of an emergency or accident as authorized
26 by K.S.A. 65-2891 and amendments thereto.

[: (1)

[; or (2)

[; or (3) to any midwife assisting in the natural birthing process

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

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

[: (1)

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1 person licensed by the board whose license has inadvertently lapsed
2 ~~or~~ to any health care provider who in good faith renders emergency
3 care or assistance at the scene of an emergency or accident as
4 authorized by K.S.A. 65-2891 and amendments thereto.

or (2)

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

or (3) to any midwife assisting in the natural
birthing process

6 New Sec. 3. (a) It shall be unlawful for any person who is
7 not licensed under this act or whose license has been revoked
8 or suspended, to engage in the practice of the healing arts as
9 defined in this act and which either:

10 (1) Inflicts great bodily harm to any person;

11 (2) causes any disfigurement or dismemberment to or of any
12 person; or

13 (3) is done in any manner whereby great bodily harm, dis-
14 figurement, dismemberment or death can be inflicted.

15 (b) Violation of this section is a class C felony.

16 Sec. 4 3. K.S.A. 65-2803, 65-2867 and 65-2868 are hereby
17 repealed.

18 Sec. 5 4. This act shall take effect and be in force from and after
19 its publication in the statute book.

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KSA

65-2801. Definitions. For the purpose of this act the following definitions shall apply:

65-2801. Purpose. Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

History: L. 1957, ch. 343, § 1; July 1.

65-2802. License. A license to practice the healing arts shall be granted to any person who is qualified by education, training and experience to practice the healing arts and who is a resident of this state. The board shall determine the qualifications of the applicant and the board shall issue a license to the applicant if the board is satisfied that the applicant is qualified to practice the healing arts. The board shall also determine the terms and conditions of the license and the board shall have the power to suspend, revoke or annul a license if the board is satisfied that the licensee is not qualified to practice the healing arts or if the licensee is guilty of unprofessional, improper, unauthorized or unqualified practice of the healing arts or if the licensee is guilty of unprofessional conduct. The board shall also have the power to issue a license to a person who is not a resident of this state if the board is satisfied that the person is qualified to practice the healing arts and if the person is a resident of another state which has a law which is substantially similar to this act. The board shall also have the power to issue a license to a person who is not a resident of this state if the board is satisfied that the person is qualified to practice the healing arts and if the person is a resident of another state which has a law which is substantially similar to this act.

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65-2802. Definitions. For the purpose of this act the following definitions shall apply:

(a) The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic.


(b) "Board" shall mean the state board of healing arts.

(c) "License" shall mean a license to practice the healing arts granted under this act.

(d) "Licensed" or "licensee" shall mean a person licensed under this act to practice medicine and surgery, osteopathic medicine and surgery or chiropractic.

(e) Wherever the masculine gender is used it shall be construed to include the feminine, and the singular number shall include the plural when consistent with the intent of this act.

History: L. 1957, ch. 343, § 2; L. 1976, ch. 273, § 1; Feb. 13.

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204

65-2503. License prerequisite to practice of the healing arts. No person shall engage in the practice of any branch of the healing arts, as hereinafter defined, unless he shall have obtained from the board a license for that purpose.

History: L. 1957, ch. 343, § 3; July 1.

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KSA

65-2857. Injunction and quo warranto for unlawful practice of the healing arts. An action in injunction or quo warranto may be brought and maintained in the name of the state of Kansas to enjoin or oust from the unlawful practice of the healing arts, any person who shall practice the healing arts as defined in this act without being duly licensed therefor.

History: L. 1957, ch. 343, § 57; L. 1976, ch. 273, § 24; Feb. 13.

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65-2862. Penalties for violations of act; second conviction. Any person violating any of the provisions of this act, except as specific penalties are herein otherwise imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each separate offense, and a person for a second violation of any of the provisions of this act, wherein another specific penalty is not expressly imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each separate offense.

History: L. 1957, ch. 343, § 62; July 1.

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65-2866. Attorney general, county or district attorney to prosecute violations. Upon the request of the board, the attorney general or county or district attorney of the proper county shall institute in the name of the state or board the proper proceedings against any person regarding whom a complaint has been made charging him or her with the violation of any of the provisions of this act, and the attorney general, and such county or district attorney, at the request of the attorney general or of the board shall appear and prosecute any and all such actions.

History: L. 1957, ch. 343, § 66; L. 1976, ch. 273, § 28; Feb. 13.

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65-2869. Persons deemed engaged in practice of medicine and surgery. For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches.

(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings.

(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings.

History: L. 1957, ch. 343, § 69; L. 1969, ch. 299, § 14; L. 1976, ch. 273, § 30; L. 1988, ch. 251, § 5; July 1.

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65-2872. Persons not engaged in the practice of the healing arts. The practice of the healing arts shall not be construed to include the following persons:

(a) Persons rendering gratuitous services in the case of an emergency.

(b) Persons gratuitously administering ordinary household remedies.

(c) The members of any church practicing their religious tenets provided they shall not be exempt from complying with all public health regulations of the state.

(d) Students while in actual classroom attendance in an accredited healing arts school who after completing one (1) year's study treat diseases under the supervision of a licensed instructor.

(e) Students upon the completion of at least three (3) years study in an accredited healing arts school and who, as a part of their academic requirements for a degree, serve a preceptorship not to exceed ninety (90) days under the supervision of a licensed practitioner.

(f) Persons who massage for the purpose of relaxation, muscle conditioning, or figure improvement, provided no drugs are used and such persons do not hold themselves out to be physicians or healers.

(g) Persons whose professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under this act.

(h) Persons in the general fields of psychology, education and social work, dealing with the social, psychological and moral well-being of individuals and/or groups provided they do not use drugs and do not hold themselves out to be the physicians, surgeons, osteopathic physicians or chiropractors.

(i) Practitioners of the healing arts in the United States army, navy, air force, public health service, and coast guard or other military service when acting in the line of duty in this state.

(j) Practitioners of the healing arts licensed in another state when and while incidentally called into this state in consultation with practitioners licensed in this state, or residing on the border of a neighboring state, duly licensed under the laws thereof to practice a branch of the healing arts, but who do not open an office or maintain or appoint a place to regularly meet patients or to receive calls within this state.

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(k) Dentists practicing their professions, when licensed and practicing in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(l) Optometrists practicing their professions, when licensed and practicing under and in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(m) Nurses practicing their profession when licensed and practicing under and in accordance with the provisions of article 11 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(n) Podiatrists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(o) Every act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof.

(p) Pharmacists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 16 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(q) A dentist licensed in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated who administers general and local anesthetics to facilitate medical procedures conducted by a person licensed to practice medicine and surgery if such dentist is certified by the board of healing arts under K.S.A. 65-2899 to administer such general and local anesthetics.

History: L. 1957, ch. 343, § 72; L. 1976, ch. 273, § 33; L. 1976, ch. 276, § 2; July 1.

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~~*[Signature]*~~

724

65-2872a. Practice of certain naturopaths permitted without approval by board; certain activities prohibited. Any naturopath who is a graduate of a nationally recognized naturopathic college as approved by the state naturopath association and practicing in the state of Kansas as of January 1, 1982, shall be permitted to practice in Kansas without approval by the board of healing arts. No naturopath shall be permitted to practice surgery, obstetrics or write prescriptions for prescription drugs.

History: L. 1982, ch. 378, § 6; July 1.

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5-10

HOUSE BILL No. 2104

By Committee on Public Health and Welfare

2-1

Subcommittee Recommendations

Sub-committee
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Attn #6

8 AN ACT providing for licensure of speech-language pathologists and
9 audiologists; establishing a speech-language pathology and au-
10 diology commission and prescribing the powers and duties thereof; board
11 prohibiting certain acts and prescribing penalties for violations
12 thereof.
13

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

15 Section 1. As used in this act, the following words and phrases
16 shall have the meanings respectively ascribed to them in this section:

17 (a) "Secretary" means the secretary of health and environment.

18 (b) "Speech-language pathology" means the application of prin-
19 ciples, methods and procedures related to the development and
20 disorders of human communication. Disorders include any and all
21 conditions, whether of organic or nonorganic origin, that impede the
22 normal process of human communication including disorders and
23 relative disorders of speech, articulation, fluency, voice, verbal and

24 written language, auditory comprehension, cognition/communica- related
25 tion, and oral pharyngeal and/or laryngeal sensorimotor cognition/communication, and oral pharyngeal or
26 competencies or both. **Speech-language pathology does not mean diagnosis or treatment**
of medical conditions as defined by K.S.A. 65-2869 and amendments thereto.

27 (c) "Practice of speech-language pathology" means:

28 (1) Rendering or offering to render to individuals or groups of
29 individuals who have or are suspected of having disorders of com-
30 munication, any service in speech-language pathology including pre-
31 vention, identification, evaluation, consultation, habilitation, and
32 rehabilitation, instruction and research.

33 (2) determining the need for personal augmentative communi-
34 cation systems, recommending such systems and providing training
35 in utilization of such systems; and

36 (3) planning, directing, conducting or supervising such services.

37 (d) "Speech-language pathologist" means a person who engages
38 in the practice of speech-language pathology and who meets the
39 qualifications set forth in this act.

42 (e) "Audiology" means the application of principles, methods and
43 procedures related to hearing and the disorders of hearing and to
related language and speech disorders. Disorders include any and
all conditions, whether of organic or nonorganic origin, peripheral

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1 or central, that impede the normal process of human communication
2 including, but not limited to, disorders ~~of~~ auditory sensitivity, acuity,
3 function or processing.

of

Audiology does not mean diagnosis or treatment of medical conditions as defined by K.S.A. 1991 Supp. 65-2869.

4 (f) "Practice of audiology" means:

and

5 (1) Rendering or offering to render to individuals or groups of
6 individuals who have or are suspected of having disorders of hearing,
7 any service in audiology, including prevention, identification, eval-
8 uation, consultation, habilitation or rehabilitation (other than hearing
9 aid or other assistive listening device dispensing) ~~instruction and~~
10 ~~research~~;

11 (2) participating in hearing conservation;

12 (3) providing auditory training and speech reading;

13 (4) conducting tests of vestibular function;

14 (5) evaluating tinnitus; and

15 (6) planning, directing, conducting or supervising services.

16 (g) "Audiologist" means any person who engages in the practice
17 of audiology and who meets the qualifications set forth in this act.

18 (h) "Speech-language pathology assistant" means an individual
19 who meets minimum qualifications established by the secretary which
20 are less than those established by this act as necessary for licensing
21 as a speech-language pathologist; does not act independently; and
22 works under the direction and supervision of a speech-language pa-
23 thologist licensed under this act.

24 (i) "Audiology assistant" means an individual who meets mini-
25 mum qualifications established by the secretary, which are less than
26 those established by this act as necessary for licensing as an au-
27 diologist; does not act independently; and works under the direction
28 and supervision of an audiologist licensed under this act.

Note: Change commission to board throughout

29 Sec. 2. (a) There is hereby established a speech-language pa-
30 thology and audiology ~~commission~~. Such ~~commission~~ shall be advi-
31 sory to the secretary of health and environment in all matters
32 concerning standards, rules and regulations and all matters relating
33 to this act.

board

board

board

34 (b) The ~~commission~~ shall be composed of five persons appointed
35 by the secretary who have been residents of this state for at least
36 two years ~~and who are actively engaged in the practice of audiology~~.
37 The secretary may make appointments from a list submitted by
38 professional organizations representing speech pathologists and au-
39 diologists. ~~The commission shall be composed of at least three mem-
40 bers licensed, or initially eligible for licensure, under this act.~~

. Two members shall be licensed, or initially eligible for licensure, as speech-
language pathologists; one member shall be licensed, or initially eligible for
licensure, as an audiologist; one member shall be a licensed physician; and one
member shall be a member of the general public who is not a health care provider

41 (c) Members of the ~~commission~~ attending meetings of such ~~com-
42 mission~~ or attending a subcommittee meeting thereof authorized by
43 such ~~commission~~ shall be paid compensation, subsistence allowances,

board

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1 mileage and other expenses as provided in K.S.A. 75-3223 and
2 amendments thereto.

3 (d) ~~Commission members shall be appointed for a term of three~~
4 ~~years and until their successors are appointed and qualified, except~~
5 ~~that of the initial appointments, which shall be made within 60 days~~
6 ~~after the effective date of this act, one member shall be appointed~~
7 ~~for a term of one year, two members shall be appointed for terms~~
8 ~~of two years and two members shall be appointed for terms of three~~
9 ~~years as specified by the secretary. Whenever a vacancy occurs on~~
10 ~~the [commission] by reason other than the expiration of a term of~~
11 ~~office, the secretary shall appoint a successor of like qualifications~~
12 ~~for the remainder of the unexpired term. No person shall be ap-~~
13 ~~pointed to serve more than two successive three-year terms.~~

Board

two

two members first appointed

[, shall serve on the board for terms of one year and thereafter, upon expiration
of such one-year terms, successors shall be appointed in the same manner as the
original appointments. The chairperson of the board shall be elected annually
from among the members of the board.

board

two

14 Sec. 3. The secretary shall:

15 (a) Issue to each person who has met the education and training
16 requirements listed in section 5 and amendments thereto and such
17 other reasonable qualifications as may be established by rules and
18 regulations promulgated by the secretary, the appropriate license as
19 a speech-language pathologist or audiologist;

(e) Appointments to fill vacancies shall be made in the same manner as
original appointments for the unexpired portion of the term. The secretary may
terminate the appointment of any member for cause which in the opinion of the
secretary reasonably justifies such termination.

20 (b) establish by [regulation] the methods and procedures for ex-
21 amination of candidates for licensure;

rules and regulations

22 (c) appoint employees necessary to administer this act and fix
23 their compensation within the limits of appropriations made for that
24 purpose;

25 (d) keep a record of the [commission's] proceedings and a register
26 of all applicants for and recipients of licenses; and

board's

27 (e) make all such reasonable rules and regulations as deemed
28 necessary to carry out and enforce the provisions of this act.

29 Sec. 4. ~~It shall be unlawful for any person to engage in the~~
30 ~~practice of speech-language pathology or audiology for a fee in the~~
31 ~~state of Kansas unless they have been issued a valid license pursuant~~
32 ~~to this act or are specifically exempted from the provisions of this~~
33 ~~act. It shall be unlawful for any person to hold themselves out to~~
34 ~~the public as a "speech pathologist," "speech therapist," "speech~~
35 ~~correctionist," "speech clinician," "language pathologist," "voice ther-~~
36 ~~apist," "voice pathologist," "logopedist," "communicologist," "aphas-~~
37 ~~iologist," "phoniatrist," "audiologist," "audiometrist," "hearing~~
38 ~~therapist," "hearing clinician," "hearing aid audiologist," or any var-~~
39 ~~iation, unless they have been appropriately licensed by this act.~~

(a) On or after September 1, 1992, it

40 Notwithstanding the provisions of this act, any person who engages
41 in the practice of dispensing and fitting hearing aids as defined by
42 K.S.A. 74-5807 and amendments thereto must be licensed under
43 and adhere to the provisions of that act.

(b) No person licensed under this act shall be authorized to engage in the
practice of dispensing and fitting hearing aids as defined under K.S.A.
74-5807 and amendments thereto unless such person is also licensed or holds
a certificate of endorsement under the hearing aid act to engage in the
practice of dispensing and fitting hearing aids.

(c) Persons licensed under this act to engage in the practice of speech-
language pathology or audiology shall not be deemed to be engaged in the
practice of the healing arts when practicing under and in accordance with
this act.

6.3

1 Sec. 5. Speech-language pathologists or audiologists shall meet
2 the following qualifications for licensure under this act:

3 (a) Possess at least a master's degree or equivalent in speech-
4 language pathology or audiology from an educational institution ap-
5 proved by the secretary which consists of coursework approved by
6 the secretary pursuant to the rules and regulations;

7 (b) complete supervised clinical practicum experiences from an
8 educational institution or its cooperating programs the content of
9 which shall be approved by the secretary and delineated in the rules
10 and regulations;

11 (c) complete a postgraduate professional experience as approved
12 by the secretary pursuant to the rules and regulations; and

13 (d) pass an examination in speech-language pathology or audiol-
14 ogy approved by the secretary.

15 Sec. 6. (a) Any applicant for licensure shall submit an application
16 to the secretary upon the forms prescribed and furnished by the
17 secretary and shall pay appropriate fees as established by the sec-
18 retary, including examination fees if required. ~~Any initial fee shall~~
19 ~~be for the period of two years following the date of application.~~ All
20 licenses shall expire after two years and may be renewed by showing
21 proof of completing required continuing education and paying a re-
22 newal fee to be established and collected by the secretary.

23 ~~(b) Upon due application and payment of a licensure fee as es-~~
24 ~~tablished by the secretary within one year subsequent to the effective~~
25 ~~date of this act, the secretary may waive the education, practicum,~~
26 ~~examination and experience requirements and grant a license to all~~
27 ~~speech-language pathologists or audiologists so long as they have~~
28 ~~been employed in that capacity for at least two of the three years~~
29 ~~immediately prior to the effective date of this act. Upon payment~~
30 ~~of such fee and proof of completion of continuing education require-~~
31 ~~ments as established by the secretary, the secretary shall renew such~~
32 ~~licenses.~~

33 ~~(c) The secretary, upon application and payment of the fee fixed~~
34 ~~by the secretary, may issue a license as a speech-language pathologist~~
35 ~~or audiologist to any person who holds a valid license or its equivalent~~
36 ~~issued to such person by another state or country if the requirements~~
37 ~~for the licensure of the speech-language pathologist or audiologist~~
38 ~~under which such license or equivalent was issued are equivalent~~
39 ~~to or exceed the standards of this act.~~

40 ~~(d) The secretary, upon application and payment of the fee fixed~~
41 ~~the secretary, shall issue to persons meeting the education and~~
42 ~~experience requirements a temporary license which shall be valid~~
43 ~~only for the period preceding the first scheduled examination after~~

with standards consistent with those of the state universities of Kansas
a course of study consistent with the standards of the state universities of
submitting an application, Kansas

and shall be consistent with the standards of the state universities of Kansas
(b) At least 30 days before the expiration of the license, the secretary shall
notify the licensee of the expiration by mail addressed to the licensee's last
place of residence as noted upon the office records. If the licensee fails to
submit an application and fee by the date of expiration of the license, the
licensee shall be given a second notice that the registrant's license has
expired and the license may only be renewed if the application, renewal fee,
and late renewal fee are received by the secretary within the 30-day period
following the date of expiration and, if both fees are not received within the
30-day period, the licensee shall be considered to have lapsed for failure to
renew and shall be reissued only after the applicant has been reinstated under
subsection (c).

(c) Any licensee who allows the licensee's license to lapse by failing to
renew as herein provided may be reinstated upon payment of the renewal fee and
the reinstatement fee, and upon submitting evidence of satisfactory completion
of any applicable continuing education requirements established by the secretary.
The secretary shall adopt rules and regulations establishing appropriate con-
tinuing education requirements for reinstatement of persons whose registrations
have lapsed for failure to renew.

(d) September 1, 1992,

any applicant the applicant has
: (1) met the educational, supervised clinical practicum experiences and post-
graduate professional experience set forth in this act on or before September 1,
1992; or (2) have a master's degree or equivalent in speech-language pathology
or audiology and on the effective date of this act have been actively engaged in
the practice of speech-language pathology or audiology for at least two years of
the last four years immediately preceding September 1, 1992; or (3) have a
bachelor's degree in speech-language pathology or audiology and hold a current teaching
certificate by the Kansas department of education as a speech-language patholo-
gist or audiologist on the effective date of this act and has been actively
engaged in the practice of speech-language pathology or audiology for at least
three years of the last five years immediately preceding September 1, 1992; or
on the effective date of the act is certified by a national organization of speech-
language pathologists or audiologists approved by the secretary.

(e)
(f)

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the person should have completed the postgraduate experience required by section 5 (c)

its issuance and until the date on which ~~the results have been made public~~. This temporary license may be renewed by appeal to the secretary if the applicant has failed the examination, but such temporary license shall be renewed no more than two times.

Sec. 7. The secretary may contract with investigative agencies, commissions, or consultants to assist the secretary in obtaining information about courses of study and supervised clinical practicum experiences to be approved by the secretary under section 5.

~~Sec. 7.~~ The secretary shall deny, revoke, suspend or limit the license provided for in this act for any of the following reasons:

Sec. 8.

(a) Making a false statement on an application for a license ~~registration~~ or any other document required by the secretary;

(b) engaging or attempting to engage, or representing oneself as so entitled, to perform procedures not authorized in the license;

(c) demonstrating incompetence or making consistent negligent errors in tests or procedures;

(d) engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(e) providing professional services while mentally incompetent, under the influence of alcohol or narcotic or controlled ~~dangerous~~ substance that is in excess of therapeutic amounts or without valid medical indication;

(f) violating or aiding and abetting in a violation of any provisions of this act or any of the rules or regulations adopted under this act.

Sec. 9.

~~Sec. 8.~~ Proceedings under this act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under this act shall be in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 10.

~~Sec. 9.~~ Any person who violates any of the provisions of this act shall be guilty of a class C misdemeanor and each day in violation of this act shall be considered a separate offense.

Sec. 11.

~~Sec. 10.~~ The provisions of this act shall not apply to:

as defined by K.S.A. 1991 Supp. 65-4921 and amendments thereto or exempt licensees under the healing arts act

(a) Personnel employed by the United States government;

(b) ~~practitioners licensed or registered by the state of Kansas as~~ health care providers who are providing services within the lawful scope of their authority so long as they do not hold themselves out to the public by a title set forth in section 4;

(c) persons duly credentialed by this state as a teacher of the deaf or hearing impaired;

who are providing services within the lawful scope of their authority so long as they do not hold themselves out to the public by a title set forth in section 4

(d) the activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university provided that: (1) These activities and services constitute a part of the organized course of study at that institution; (2) such persons are designated by a title such as intern, trainee, student, or by other such title clearly indicating the status appropriate to their level of education; and (3) such persons work

*Approved
3-22-91
Attm. # 6-5*

6-5

- 1 under the supervision of a person licensed by this state to practice
- 2 speech-language pathology or audiology.
- 3 Sec. 11. This act shall take effect and be in force from and after
- 4 January 1, 1992, and its publication in the statute book.

(e) an employee or other person under the supervision of a person licensed to practice medicine and surgery in this state so long as such employee or person does not hold themselves out to the public by a title set forth in section 4; or
 (f) persons licensed or holding a certificate of endorsement to engage in the practice of dispensing and fitting hearing aids under the hearing aid act when practicing under and in accordance with the hearing aid act.

Sec. 12. The secretary shall fix by rules and regulations the licensure fee, renewal fee, late renewal fee, reinstatement fee, and examination fee, if necessary, under this act. Such fees shall be fixed in an amount to cover the costs of administering the provisions of the act. The secretary shall remit all monies received from fees, charges or penalties under this act to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the general fund.

13

PNWED
3-22-91
Attorney
6-6

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2484

STATE OF KANSAS

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

915 S.W. Harrison, Docking State Office Building, Topeka, Kansas 66612-1570

JOAN FINNEY, Governor

March 22, 1991

Representative Carol H. Sader, Chairperson
House Public Health and Welfare Committee
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

RE: House Bill 2484

Dear Representative Sader:

As you know, House Bill 2484 provides for a technical change in the KanWork Interagency Coordinating Committee membership to include a representative of the State Department of Education who is knowledgeable of vocational-technical education and/or community colleges to be appointed by the chairperson of the State Board of Education. I'll see if I can explain the reasoning behind this proposal and also answer question(s) about the advisability of the KanWork Interagency Coordinating Committee including a member of the Board of Regents.

The request specifically includes a representative from the Department of Education because SRS KanWork coordinates closely with community colleges, vocational technical schools, and adult basic education departments regarding KanWork client referrals, and client information and progress. Many KanWork clients do attend institutions of higher learning, also. SRS usually doesn't have much, if any, contact with university staff, since KanWork clients in college programs function rather independently. We believe there is an appropriate role for a Board of Regents representative in the KanWork program and on the KanWork Interagency Coordinating Committee.

Some possible alternatives include:

1. The bill could be left as it has been proposed, including only a representative from the Department of Education;
2. The bill could be amended to include representatives from both the Department of Education and the Board of Regents;
3. The bill already includes a faculty member from the school of social welfare as a representative on the committee. Perhaps that role could be strengthened and broadened for that person to represent the Board of Regents as well.

paper

*PK/UC
3-22-91*

attn # 7

We prefer either alternative number two or number three. Since one of the purposes of the KanWork Coordinating Committee is to ensure cooperation and coordination at all levels, we believe including representation from the Board of Regents would provide a broader perspective in accomplishing this purpose and others.

If I can provide more information, please feel free to contact me.

Sincerely,



Marjorie J. Turner, Director
SRS Employment Preparation Services

MJT:PL:cmc

cc: Robert Barnum
John Alquest

PAW
3-22-91

Alm 7-2



STATE OF KANSAS

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

915 S.W. Harrison, Docking State Office Building, Topeka, Kansas 66612-1570

JOAN FINNEY, Governor

March 22, 1991

The Honorable Carol Sader
House of Representatives
Statehouse - Room 115-S
Topeka, Kansas 66612

Dear Representative Sader:

This is follow-up to questions raised by the committee and staff with respect to language in House Bill 2487 concerning a SRS advisory committee on medical care. We would recommend the following changes:

On lines 17 - 20 change to read (2) members of consumer and advocacy groups, including medicaid recipients, and representatives of organizations interested in provision of health care services.

On line 30 delete the term ex officio.

I have included copies of the federal language for your review.

Please let me know if you have further questions.

Sincerely,

John W. Alquest
Acting Commissioner
Income Support/Medical Services

JWA/pc
encl.
cc: Dr. Robert C. Harder

pd/w
3-22-91
Attn #8

§ 431.11

action by other offices or agencies of the State.

(3) If other State or local agencies or offices perform services for the Medicaid agency, they must not have the authority to change or disapprove any administrative decision of that agency, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency.

[44 FR 17930, Mar. 23, 1979]

§ 431.11 Organization for administration.

(a) *Basis and purpose.* This section, based on section 1902(a)(4) of the Act, prescribes the general organization and staffing requirements for the Medicaid agency and the State plan.

(b) *Medical assistance unit.* A State plan must provide for a medical assistance unit within the Medicaid agency, staffed with a program director and other appropriate personnel who participate in the development, analysis, and evaluation of the Medicaid program.

(c) *Description of organization.* (1) The plan must include—

(i) A description of the organization and functions of the Medicaid agency and an organization chart;

(ii) A description of the organization and functions of the medical assistance unit and an organization chart; and

(iii) A description of the kinds and number of professional medical personnel and supporting staff used in the administration of the plan and their responsibilities.

(d) *Eligibility determined by other agencies.* If eligibility is determined by State agencies other than the Medicaid agency or by local agencies under the supervision of other State agencies, the plan must include a description of the staff designated by those other agencies and the functions they perform in carrying out their responsibility.

[44 FR 17931, Mar. 23, 1979]

§ 431.12 Medical care advisory committee.

(a) *Basis and purpose.* This section, based on section 1902(a)(4) of the Act, prescribes State plan requirements for

42 CFR Ch. IV (10-1-09 Edition)

establishment of a committee to advise the Medicaid agency about health and medical care services.

(b) *State plan requirement.* A State plan must provide for a medical care advisory committee meeting the requirements of this section to advise the Medicaid agency director about health and medical care services.

(c) *Appointment of members.* The agency director, or a higher State authority, must appoint members to the advisory committee on a rotating and continuous basis.

(d) *Committee membership.* The committee must include—

(1) Board-certified physicians and other representatives of the health professions who are familiar with the medical needs of low-income population groups and with the resources available and required for their care;

(2) Members of consumers' groups, including Medicaid recipients, and consumer organizations such as labor unions, cooperatives, consumer-sponsored prepaid group practice plans, and others; and

(3) The director of the public welfare department or the public health department, whichever does not head the Medicaid agency.

(e) *Committee participation.* The committee must have opportunity for participation in policy development and program administration, including furthering the participation of recipient members in the agency program.

(f) *Committee staff assistance and financial help.* The agency must provide the committee with—

(1) Staff assistance from the agency and independent technical assistance as needed to enable it to make effective recommendations; and

(2) Financial arrangements, if necessary, to make possible the participation of recipient members.

(g) *Federal financial participation.* FFP is available at 50 percent in expenditures for the committee's activities.

§ 431.15 Methods of administration.

A State plan must provide for methods of administration that are found by the Secretary to be necessary for

Health Care Financing Administration

the proper and efficient operation of the plan.

(Sec. 1902(a)(4) of the Act)

[44 FR 17931, Mar. 23, 1979]

§ 431.16 Reports.

A State plan must provide that the Medicaid agency will—

(a) Submit all reports required by the Secretary;

(b) Follow the Secretary's instructions with regard to the form and content of those reports; and

(c) Comply with any provisions that the Secretary finds necessary to verify and assure the correctness of the reports.

[44 FR 17931, Mar. 23, 1979]

§ 431.17 Maintenance of records.

(a) *Basis and purpose.* This section based on section 1902(a)(4) of the Act prescribes the kinds of records a Medicaid agency must maintain, the retention period, and the conditions under which microfilm copies may be substituted for original records.

(b) *Content of records.* A State plan must provide that the Medicaid agency will maintain or supervise the maintenance of the records necessary for the proper and efficient operation of the plan. The records must include—

(1) Individual records on each applicant and recipient that contain information on—

(i) Date of application;

(ii) Date of and basis for disposition;

(iii) Facts essential to determination of initial and continuing eligibility;

(iv) Provision of medical assistance;

(v) Basis for discontinuing assistance;

(vi) The disposition of income and eligibility verification information received under §§ 435.940 through 435.960 of this subchapter; and

(2) Statistical, fiscal, and other records necessary for reporting and accountability as required by the Secretary.

(c) *Retention of records.* The plan must provide that the records required under paragraph (b) of this section will be retained for the periods required by the Secretary.

PHedw
3-22-91
Attmt 8-2

LONG-TERM CARE

Estimating the Extent of Medicaid Spend-Down in Nursing Homes

Journal of Health Politics, Policy and Law

The proportion of nursing home residents that are forced to "spend down" into Medicaid in order to afford such care is surprisingly small, while the proportion remaining on Medicaid throughout their stay is surprisingly large, according to estimates using 1985 data. The proportion of nursing home patients spending down into Medicaid, i.e. private pay at admission and Medicaid at discharge, during a single nursing home episode was only 10.2%. On the other hand, almost 34% of patients were on Medicaid both at admission and discharge. This pattern of spend-down differs very little with previous nursing home stays; however, the proportion of patients who are Medicaid-throughout increases substantially with a prior stay. Almost 28% of patients without a previous stay were Medicaid-throughout, as compared with almost 50% of those patients with a continuous (within 120 days of their surveyed stay) previous stay.

—D. Spence and J. Wiener, *Fall 1990, pp. 607-626*

MANAGED CARE

HMO Market Penetration in the 30 Largest Metropolitan Statistical Areas, 1989

Group Health Association of America

At year-end 1989, 22% of the population in the 30 largest metropolitan statistical areas (MSAs) were enrolled in HMOs; nationwide, HMOs cover 13.9% of the population. The Sacramento-San Francisco Bay Area has the highest HMO market penetration rate in the country, 46%; Minneapolis-St. Paul has the second highest penetration rate, 44%. Six additional MSAs have penetration rates over 25%: Boston (28%), Denver (26%), Los Angeles-San Diego (32%), Milwaukee (35%), Phoenix (26%) and Portland, OR (34%). The largest number of HMO members are located in the Los Angeles-San Diego area, with 5.1 million enrollees—a penetration rate of 32%. Higher penetration appears to be positively associated with the length of time HMOs have been offered in the area.—S. Palsbo, *December 1990, 5 pp., \$12.50*

• Order requests should be sent to GHAA, Publications, Dept. 0612, Washington, DC 20073-0612, (202) 772-3245.

Toward New Typologies for HMOs

The Milbank Quarterly

The prevailing typology used to distinguish among HMOs, particularly network and independent practice association (IPA) models, does not adequately discriminate among prevailing structures. Two new means of classifying HMOs could be based on the type of physician financial incentives offered or alternatively, on organizational structure. Under an incentive-based typology, classification is based solely on the method of payment made to physicians and the existence of risk pools (in addition to whether the plan's physicians accept fee-for-service (FFS) patients. Such a system yields five types of HMOs: 1) prepaid group practice: HMOs whose physicians see only HMO patients and are salaried (36% of total enrollment); 2) salary IPA: IPAs where physicians are salaried but do see FFS patients as well (4%); 3) capitation IPA: IPAs where physicians are capitated (19%); 4) FFS IPA with subgroup risk pools: IPAs in which physicians receive FFS patients and have self or subgroups as the risk pool (14%);



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MEMORANDUM

Date: March 22, 1991

To: Madam Chairman Carol Sader
HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
From: John R. Grace, President
Kansas Association of Homes for the Aging

=====
Rep. Tom Bishop requested information on the number of persons who convert from private pay to Medicaid after admission to a nursing facility.

Attached are 25 copies of two items of information. The first is a memo Dr. Harder distributed today to the House Sub-committee on the SRS budget. The second is an article from Health Care Trends Report, January 1991.

As an association, we do not collect actual data on our facilities regarding this information.

If you require any additional information, please let me know.

Thank you.

PHW
3-22-91
Attn #9