

Approved

3-19-91

Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m. ~~p.m.~~ on March 11, 1991 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Norman Furse, Revisor's Office
Jo Ann Buntten, Committee Secretary

Conferees appearing before the committee:

Chairman Ehrlich called the meeting to order at 10:00 a.m.

SB 343 - Kansas dental board grounds for disciplinary action.

Staff Furse gave explanation of balloon of SB 343 showing amendments to the bill, with clarification of certain language. (Attachment 1) Senator Salisbury moved that the committee adopt the amendments as presented, seconded by Senator Langworthy. No discussion followed. The motion carried. The wishes of the committee were asked on SB 343 as amended, and Senator Langworthy moved to recommend the bill as amended favorably for passage, seconded by Senator Salisbury. No discussion followed. The motion carried.

Senator Langworthy presented a subcommittee report on SB 149, SB 253, and SB 288. Senator Langworthy stated interested parties were heard at the subcommittee hearing on the three bills, and she felt more damage than good would result in recommending passage of the three bills at this time. Certain problems with each bill needed to be addressed, and Senator Langworthy recommended SB 149, SB 253 and SB 288 remain in committee. Senator Reilly expressed his concern no action would be taken at this time and suggested the bills be referred to Senate Ways and Means Committee or Senate Federal and State Affairs Committee until a report by the Center for Disease Control would be released. Senator Walker expressed his understanding of Senator Reilly's concerns, but felt more information is needed and agreed with Senator Langworthy that the bills remain in committee for further study. Senator Langworthy made the motion to adopt the sub-committee report, seconded by Senator Walker. The Chairman recognized Senator Reilly on a substitute motion. Senator Reilly made a substitute motion to refer the bills to Senate Ways and Means Committee or Senate Federal and State Affairs Committee to await a report from CDC. Senator Hayden seconded the motion. Senator Walker inquired as to when the CDC report would be available, and Senator Reilly through it would be ready the latter part of March and yielded to Dr. Konigsberg of the Department of Health and Environment for an answer. Senator Hayden then withdrew his second to the substitute motion. Senator Vidricksen seconded the substitute motion. Senator Langworthy expressed her concern again with acting on the bills in haste. Dr. Konigsberg (H&E) stated the CDC report would not be available for approximately 6 months. The Chairman asked for a vote on the substitute motion. The motion lost. Back to the original motion to adopt the subcommittee report. No further discussion. The motion carried. SB 149, SB 253 and SB 288 will remain in committee.

The Chairman asked for a motion directing the chairman write a letter recommending an interim study on SB 105 - registration of athletic trainers.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 11, 1991

Senator Anderson moved the Chairman write a letter recommending SB 105 be referred to an interim Public Health and Welfare committee for further study. Senator Hayden seconded the motion. Senator Salisbury questioned the accomplishment of an interim study, and the Chairman stated problems such as liability insurance and other concerns brought out at the hearing needed to be clarified that were not addressed in the bill. Senator Hayden also pointed out the need to clarify at an interim committee study the question of jurisdiction on a football field -- the athletic trainer or emergency medical personnel. The motion carried. The wishes of the committee were asked on SB 105. Senator Langworthy made the motion to recommend SB 105 be referred to an interim committee on Public Health and Welfare for further study, seconded by Senator Walker. The motion carried. The Chairman announced that a letter will be sent to the interim committee on Public Health and Welfare for further study of SB 105.

The Chairman asked if there were any other bills the committee would like to work at this time. None appearing, the meeting was adjourned at 10:50 a.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE March 11, 1991

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Jim Yonally Overland Park

Kan. Dent. Hygien. Assoc.

Charles Konigsberg, M.D. Topeka

KDHE

Richard Morrissey

KDHE

Michelle Liester

John Peterson & Associates

FRANCES KASTNER

Ks Physical Therapy Assn

Mike Stuedel

Harris News

Harold Riemer

KAOA

Carl Schmittmeyer

Kansas Dental Assn

David Hazzlick

Ks Dental Assn

GARY Robbins

Ks Optometric Assn

Tom Hitchcock

Bd. Pharmacy

Kevin Siek

KCDC

Martha Grabehart, Topeka

Com. on
Disability Concerns

Wendell STROM, Topeka

CCTF AARP

Rebecca Taylor, Topeka

KDHE

Chip Wheelen, Topeka

Ks Med. Soc.

Helen Stephens

KPOA

SENATE BILL No. 343

By Committee on Public Health and Welfare

2-27

8 AN ACT concerning grounds for disciplinary action by the Kansas
9 dental board; defining unprofessional conduct; amending K.S.A.
10 1990 Supp. 65-1436 and repealing the existing section.
11

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

13 Section 1. K.S.A. 1990 Supp. 65-1436 is hereby amended to read
14 as follows: 65-1436. (a) The Kansas dental board may refuse to issue
15 the license provided for in this act, or may take any of the actions
16 with respect to any dental or dental hygiene license as set forth in
17 subsection (b), whenever it is established, after notice and oppor-
18 tunity for hearing in accordance with the provisions of the Kansas
19 administrative procedure act, that any applicant for a dental or dental
20 hygiene license or any licensed dentist or dental hygienist practicing
21 in the state of Kansas has:

22 (1) Committed fraud, deceit or misrepresentation in obtaining
23 any license, money or other thing of value;

24 (2) habitually used intoxicants or drugs which have rendered such
25 person unfit for the practice of dentistry or dental hygiene;

26 (3) been determined to be incompetent;

27 (4) committed gross, wanton or willful negligence in the practice
28 of dentistry or dental hygiene;

29 ~~(5) employed, allowed or permitted any unlicensed person or~~
30 ~~persons to perform any work in the licensee's office which constitutes~~
31 ~~the practice of dentistry or dental hygiene under the provisions of~~
32 ~~this act;~~

33 ~~(6) willfully violated the laws of this state relating to the practice~~
34 ~~of dentistry or dental hygiene or the rules and regulations of the~~
35 ~~secretary of health and environment or of the board regarding~~
36 ~~sanitation;~~

37 ~~(7) engaged in the division of fees, or agreed to split or divide~~
38 ~~the fee received for dental service with any person for bringing or~~
39 ~~referring a patient without the knowledge of the patient or the~~
40 ~~patient's legal representative, except the division of fees between~~
41 ~~dentists practicing in a partnership and sharing professional fees, or~~
42 ~~in case of one licensed dentist employing another;~~

43 ~~(8) committed complicity in association with or allowed the use~~

(5) repeatedly failed to practice dentistry or dental hygiene with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

(6)

(7)

(8)

(9)

1 of the licensed dentist's name in conjunction with any person who
2 is engaged in the illegal practice of dentistry;

3 ~~[(9)]~~ been convicted of a felony if the board determines, after (10)

4 investigation, that such person has not been sufficiently rehabilitated
5 to warrant the public trust, or a misdemeanor involving moral
6 turpitude;

7 ~~[(10)]~~ failed to pay license fees; (11)

8 ~~[(11)]~~ used the name "clinic," "institute" or other title that may (12)

9 suggest a public or semipublic activity except that the name "clinic"
10 may be used as authorized in K.S.A. 65-1435 and amendments
11 thereto;

12 ~~[(12)]~~ committed engaged after becoming a licensee, *in unprofes-* (13)

13 sional conduct or any conduct which is detrimental to the public
14 health, safety or welfare as defined by rules and regulations of the
15 board; or

16 ~~[(13)]~~ engaged in a misleading, deceptive, untrue or fraudulent (14)

17 misrepresentation in the practice of dentistry ~~or~~ on any document or dental hygiene

18 connected with the practice of dentistry ~~by~~ knowingly ~~submitting~~ or dental hygiene, including the systematic nondisclosure
19 any misleading, deceptive, untrue or fraudulent misrepresentation of waiver of patient copayment or coinsurance, or

20 on a claim form, bill or statement. submitted

21 (b) Whenever it is established, after notice and opportunity for
22 hearing in accordance with the provisions of the Kansas administra-
23 tive procedure act, that a licensee is in any of the circumstances or
24 has committed any of the acts described in subsection (a), the Kansas
25 dental board may take one or any combination of the following actions
26 with respect to the license of the licensee:

27 (1) Revoke the license.

28 (2) Suspend the license for such period of time as may be de-
29 termined by the board.

30 (3) Restrict the right of the licensee to practice by imposing
31 limitations upon dental or dental hygiene procedures which may be
32 performed, categories of dental disease which may be treated or
33 types of patients which may be treated by the dentist or dental
34 hygienist. Such restrictions shall continue for such period of time as
35 may be determined by the board, and the board may require the
36 licensee to provide additional evidence at hearing before lifting such
37 restrictions.

38 (4) Grant a period of probation during which the imposition of
39 one or more of the actions described in subsections (b)(1) through
40 (b)(3) will be stayed subject to such conditions as may be imposed
41 y the board including a requirement that the dentist or dental
42 nygienist refrain from any course of conduct which may result in
43 further violation of the dental practice act or the dentist or dental

1 hygienist complete additional or remedial instruction. The violation
2 of any provision of the dental practice act or failure to meet any
3 condition imposed by the board as set forth in the order of the
4 board will result in immediate termination of the period of probation
5 and imposition of such other action as has been taken by the board.

6 (c) The board may upon its own motion or upon the request of
7 any licensee who is a party to a licensure action require a physical
8 or mental examination, or both, of such licensee either prior to a
9 hearing to be held as a part of a licensure action or prior to the
10 termination of any period of suspension or the termination of any
11 restrictions imposed upon the licensee as provided in subsection (b).

12 (d) As used in this section, "unprofessional conduct" means:

13 (1) Representing to a patient that a dental disease, condition or
14 injury can be permanently cured

[when a licensee knows or should know that a cure is not
possible under current scientific knowledge

15 (2) Assisting in the care or treatment of a patient without the
16 consent of the patient or the patient's legal representative.

17 (3) The use of any letters, words or terms, as an affix, on sta-
18 tionery, in advertisements or otherwise indicating that such person
19 is entitled to practice a branch of dentistry or dental hygiene for
20 which such person is not licensed or, with respect to specialty rep-
21 resentations, does not hold a specialist's certificate

[indicating that such person is a specialist or is specially
qualified in any particular branch of dentistry for such
such person does not hold a certificate of qualification
under K.S.A. 65-1427 and amendments thereto

22 (4) Willful betrayal of confidential information.

23 (5) Conduct likely to deceive, defraud or harm the public.

24 (6) Making a false or misleading statement regarding the licen-
25 see's skill or the efficacy or value of the drug, treatment or remedy
26 prescribed by the licensee or at the licensee's direction in the treat-
27 ment of any dental disease or other dental condition.

[dentist

28 (7) Aiding or abetting the practice of dentistry, dental hygiene
29 or any of the healing arts by an unlicensed incompetent or impaired
30 person. For the purposes of this paragraph, the term "impaired"
31 means unable to perform the duties of the discipline for which the
32 person in question is licensed, certified or otherwise credentialed.

[or

Note: unlicensed covered under page 1,
lines 29 through 32

33 (8) Allowing another person or organization to use the licensee's
34 license to practice dentistry or dental hygiene.

[practice of dentistry or practice of dental hygiene

See page 1, paragraph (8)

35 (9) Commission of any act of sexual abuse, misconduct or ex-
36 ploitation related to the licensee's professional practice.

[(8)

37 (10) The use of any false, fraudulent or deceptive statement in
38 any document connected with the practice of dentistry or dental
39 hygiene, to include the systematic nondisclosure of waiver of patient
40 payment or coinsurance.

See page 2, lines 16 through 20

41 (11) Directly or indirectly giving or receiving any fee, commis-
42 sion, rebate or other compensation for professional services not ac-
43 tually and personally rendered, other than through the legal

[(9)

functioning of lawful professional partnerships, corporations or associations.

(12) Failure to transfer a copy of dental records to another dentist when requested to do so by the subject patient or by such patient's legally designated representative with reasonable costs of copying and transfer to be paid by the patient or the patient's representative.

(10)

or to a person licensed to practice medicine and surgery. The dentist may change the

(13) Performing unnecessary tests, examinations or services which have no legitimate dental purpose.

(11)

(14) Prescribing, dispensing, administering or distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice as authorized under K.S.A. 65-1444 and amendments thereto.

(12)

or

dentist's

(15) Repeated failure to practice dentistry or dental hygiene with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

Moved to page 1, (5)

(16) Failure to keep permanent written dental records which describe the services rendered to the patient.

(13)

oral status and

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

(14)

(18) Using experimental forms of dental treatment without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee of peers as established by the American dental association or a comparable body

(15)

or peers

Sec. 2. K.S.A. 1990 Supp. 65-1436 is hereby repealed.

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

Note: Healing Arts Act says "committee or peers"