

Approved 3-25-92  
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 17, 1992 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

- Bill Wolff, Legislative Research
- Norman Furse, Revisor's Office
- Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

- Norman Reynolds, Kansas Association of School Boards
- Chip Wheelen, Kansas Medical Society
- Elizabeth Taylor, Kansas Association of Local Health Departments
- Keith Landis, Christian Science Committee on Publication for Kansas
- Lawrence T. Buening, Board of Healing Arts
- Michelle Ruebke, Kansas Midwives Association

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

**Continued Hearing on HB 2695 - Health assessment required for admission to school.**

Norman Reynolds, Kansas Association of School Boards, submitted written testimony and appeared in support of **HB 2695** and stated KASB believes the bill would be of great assistance in eliminating ill health as a reason for children doing poorly in school, and would provide for the most beneficial aspect of starting school ready to learn -- an assessment of the general health of children. (Attachment 1)

Chip Wheelen, Kansas Medical Society, stated KMS supports **HB 2695** in its current form but the bill could be improved. A balloon of the bill was submitted showing technical amendments on page 1, that would include the original recommendation of the Special Committee on Children's Initiatives in regard to health screenings by a nurse, physician or physician assistant. Mr. Wheelen also expressed concern with page 2, line 12 through 14, of the bill describing exemptions for a health assessment. (Attachment 2)

Elizabeth Taylor, Kansas Association of Local Health Departments, submitted written testimony on **HB 2695** and stated her organization does support the concept of the bill but asked that appropriate funding be provided to the local health departments if this expectation is placed on them. Ms. Taylor also stated support for qualified nurses certified by the Department of Health and Environment to do health assessments. (Attachment 3)

Keith Landis, Christian Science Committee on Publication for Kansas, submitted written testimony and appeared before the Committee regarding **HB 2695** and stated their religion seeks consideration and accommodation of their beliefs and practices in which the healing of the body can be accomplished by spiritual means alone. (Attachment 4) During Committee discussion, Mr. Landis stated they would like to be exempt from both assessment and treatment.

Written testimony in support of **HB 2695** was received from Kay Coles, Kansas National Education Association. (Attachment 5)

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 526-S Statehouse, at 10:00 a.m./~~p.m.~~ on March 17, 1992

**Hearing on HB 2127 - Crimes relating to the unlawful practice of healing arts.**

Chip Wheelen, Kansas Medical Society, submitted written testimony and appeared in support of **HB 2127**, a carry-over bill from the 1991 Legislature amended by the House. (Attachment 6)

Lawrence Buening, Board of Healing Arts, submitted written testimony in support of **HB 2127** and stated the bill is not intended to restrict the religious freedom of individuals or alternative health care groups, but to strengthen the criminal penalties of the unlicensed and unqualified practice by a variety of individuals who invade the practice of the healing arts. (Attachment 7) The Attorney General Opinion (78-164) was referred to where the case involving the practice of midwifery as a per se violation of K.S.A. 65-2801 was discussed. The AG's Opinion also referred to K.S.A. 65-2872, (g) which exempts from being construed as practicing the healing arts any person whose professional services are performed under the supervision or by order of or referral of a practitioner who is licensed under the Kansas Healing Arts Act.

Michelle Ruebke, Kansas Midwives Association, submitted written testimony and appeared before the Committee in opposition to **HB 2127**. Ms. Ruebke stated she hopes this bill would not be used against midwifery in Kansas. (Attachment 8)

**Action on HB 2127 - Crimes relating to the unlawful practice of healing arts.**

The Chairman asked for wishes of the Committee on **HB 2127**. Senator Langworthy made a motion to recommend **HB 2127** favorably for passage, seconded by Senator Salisbury. Senator Walker requested the minutes reflect that passage of this bill as presented would not adversely impact the practice of midwifery, and any consequence it would have on that effect would be contrary to the intent and understanding of that legislation. The motion carried. Senator Langworthy will carry the bill.

**Action on HB 2695 - Health assessment required for admission to school.**

Senator Ward made a motion to accept the two amendments offered by Health and Environment in Section 1 that would define "nurse" and "child health assessment", seconded by Senator Walker. No discussion followed. The motion carried.

Senator Ward made a motion to recommend **HB 2695 as amended** favorably for passage, seconded by Senator Walker. No discussion followed. The motion carried. Senator Ward will carry the bill.

**Action on HB 2694 - Requiring immunization of children in family day care homes.**

Senator Walker made a motion to recommend **HB 2964** favorably for passage, seconded by Senator Ward. Senator Hayden expressed concern regarding day care of a child that is provided care for a few hours and if proof of immunization would be required. The motion carried. Senator Hayden requested he be recorded as "not voting." Senator Walker will carry the bill.

The meeting was adjourned at 11:00 a.m. The next meeting of the Committee is scheduled for March 18, 1992, 10:00 a.m., Room 526-S.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-17-92

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

Shawn Kennett 412 south First Bushton	Close-up Kansas
Howard Owens 516 South 1st Bushton, Ks	Close-up Kansas (I)
<del>Michael Groff</del> Holyrood Ks	" " (P)
<del>REPS</del> Topoka	SRS
Dale Richter Holyrood Ks	Close-up Kansas
Deborah Zajic Holyrood Ks	Close-up Kansas
Marjorie J. VanBuren Topoka	Rep. Wagon
Off Nicksen, Ft. Riley	Close-up
April Lauseng, Junction City	Close-up KS
<del>Royce Markandary</del>	KDHE
<del>Paula Kenney</del>	KDHE
Chris Wheeler	Ks Medical Soc.
Sherry Swearing	Soc of Working Arts
William Reynolds	KKSB
KETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Doug Bowman	Children & Youth Advisory Comm
John Peterson	Ks Assn Pract Psychologists
ELIZABETH E. TAYLOR	ASSN OF LOCAL HEALTH DEPT
Michelle Ruebke	Ks Midwives' Assoc.
GARY Robbins	Ks Opt Assn

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-17-92

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

Janis Coar 521 DAK PARK Dr. McPherson, KS 67460

Kansas Midwife Association

Amy C Bixler Topeka, KS

NOW

Brenda Welsh, P.O. Box One, Kincaid KS

Kansas Midwives' Assn.

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

Testimony on H. B. 2695  
Before the  
Senate Public Health and Welfare

by

Norman Reynolds  
Director of Education Services  
Kansas Association of School Boards

March 16, 1992

Mr. Chairman and members of the committee, the Kansas Association of School Boards appreciates the opportunity to testify today on behalf of the member districts of the association. H. B. 2695 would require each child to present evidence of a health assessment by a physician or local health department upon first enrollment in the public schools of the state.

It is KASB's belief that the bill in its present form would be of great assistance in eliminating ill health as a reason for a child(ren) doing poorly in school.

For years this state has required tests and inoculations along with vision, hearing and dental screening. H. B. 2695 provides for what might be the most beneficial aspect of starting school ready to learn, an assessment of the general health of the child(ren).

The Kansas Association of School Boards supports H. B. 2695 in its present form and recommends that it be passed out of committee favorably.

Thank you, I would be happy to respond to any questions.

*Senate P. H & W  
Attachment #1  
3-17-92*

HOUSE BILL No. 2695

By Special Committee on Children's Initiatives

1-14



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612  
(913) 235-2383 FAX # (913) 235-5114

Chip Wheelen  
Director of Public Affairs

11 AN ACT concerning school admission; relating to health assessments  
12 of pupils; amending K.S.A. 72-5209 and 72-5210 and repealing  
13 the existing sections.  
14

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

16 Section 1. (a) As used in this section:

17 (1) "School board" means the board of education of a school  
18 district and the governing authority of any nonpublic school;

19 (2) "school" means all elementary, junior high, or high schools  
20 within the state;

21 (3) "local health department" means any county or joint board  
22 of health having jurisdiction over the place where any pupil affected  
23 by this section may reside;

24 (4) "secretary" means the secretary of health and environment;

25 (5) "physician" means a person licensed to practice medicine  
26 and surgery.

27 (b) Subject to the provisions of subsection (d), on and after July  
28 1, 1993, every pupil who has not previously enrolled in any school  
29 in this state, prior to admission to and attendance in school, shall  
30 present to the appropriate school board ~~verification that a health~~  
31 ~~assessment has been completed~~ [the results of a health assessment],  
32 recorded on a form provided by the secretary, which assessment  
33 shall have been conducted within six months before admission by  
34 a nurse ~~or health care provider other than a physician~~ *delete* approved

35 by the secretary to perform health assessments ~~or~~ by a physician, *delete* or by a physician assistant.

36 ~~In approving health care providers other than physicians to conduct~~  
37 ~~health assessments, the secretary shall not approve such providers~~  
38 ~~individually but shall approve such providers by credentialed group.~~ *delete*

39 [Information contained in the health assessment shall be confidential  
40 and shall not be disclosed or made public beyond that necessary  
41 under this section except that: (1) Information contained in the  
42 health assessment may be disclosed to school board personnel but  
43 only to the extent necessary to administer this section and protect

3-17-92  
Attorney General  
Private Bill

*Investigate the following strategies as alternatives for expanding EPSDT participation:*

- *Contract the operation of the EPSDT component of the Medicaid program to the Department of Health and Environment to emphasize the children's health aspect of the program and to avoid association with "welfare."*
- *Contract the operation of the EPSDT component to a private sector contractor who accepts responsibility for outreach to increase participation, eligibility determination, provider recruitment, the provision of services and followup, and all other aspects of the program.*
- *Develop publicity for and fund the publicizing of already existing programs aimed at prenatal care and the care of children, such as the Medicaid EPSDT component, through a publicity campaign that emphasizes the positive aspects of health care and de-emphasizes the link to public assistance.*

#### **4. Caring Program – Primary Care Coverage**

*Encourage expansion of the Caring Program. Consider ways in which the state might participate in the program, including promoting access to adolescent health care. The state should consider allocating resources for a challenge grant (state provides \$1 for every \$2 contributed privately) to allow the state to support this private sector initiative and serve as an incentive for private matching funds to increase coverage statewide. An appropriate target would be \$250,000 in state funds in year one, and \$300,000 in new state funds in year two.*

*As an alternative, consideration could be given to the Florida and Minnesota insurance models designed to increase children's access to health care. Projects should be monitored and evaluated to compare costs over a three-year period with that of a control group of uninsured children of the same age and to determine whether it is cost effective to insure all children for primary and preventive care.*

#### **5. Health Screenings**

*Require all kindergartners entering school for the first time to have a health examination provided by a physician, nurse, or local health department. It should be the responsibility of parents to provide documentation that such an examination has occurred; however, schools are encouraged to assist parents who might find it difficult to obtain an examination by making the school building available for checkups in conjunction with kindergarten roundup or other activities.*

#### **6. Lead Poisoning**

*Request the Kansas Department of Health and Environment to study the issue of lead and children and to take any needed action in this area, including outreach and abatement. Make blood testing for lead poisoning available at every local health department.*

excerpt from Report on Kansas Legislative Interim Studies to the 1992 Legislature,  
SPECIAL COMMITTEE ON CHILDREN'S INITIATIVES, December 1991

the provisions of the Kansas administrative procedure act, that the request by the proposed responsible physician pursuant to subsection (b) of K.S.A. 65-2896a and amendments thereto should not be approved.

(b) The board of healing arts may remove a person's name from the register of physicians' assistants or may refuse to place a person's name on the register of physicians' assistants, if the board determines, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a physician's assistant has exceeded or has acted outside the scope of authority given the physician's assistant by the responsible physician or by this act.

**History:** L. 1975, ch. 327, § 3; L. 1978, ch. 254, § 5; L. 1984, ch. 313, § 122; L. 1989, ch. 197, § 3; July 1.

**65-2896d.** Physicians' assistants; temporary registration. The state board of healing arts shall provide for the temporary registration of any physician's assistant who has made proper application for registration, has the required qualifications for registration, except for examination, and has paid the prescribed registration fee. Such temporary registration shall authorize the person so registered to provide patient services within the limits of the temporary registration until the date the results of the examination become available. Not more than one such temporary registration shall be permitted to any one person without the majority approval of the members of the board.

**History:** L. 1978, ch. 254, § 3; L. 1987, ch. 240, § 13; Jan. 1, 1988.

➔ **65-2896e.** Same; performance under direction and supervision of physician; rules and regulations relating thereto; prescribing drugs prohibited; identification to patients and others; acts or procedures performed in practice of optometry; rules and regulations governing transmitting prescription orders. (a) A person whose name has been entered on the register of physicians' assistants may perform, only under the direction and supervision of a physician, acts which constitute the practice of medicine and surgery to the extent and in the manner authorized by the physician responsible for the physician's assistant and only to the extent such acts are consistent with rules and regulations adopted by the board which relate to acts performed by a physician's assistant under the responsible physician's direction and supervision. A physician's assistant may not

prescribe drugs but may transmit a prescription order for drugs pursuant to a written protocol as authorized by the responsible physician. Before a physician's assistant shall perform under the direction and supervision of a physician, such physician's assistant shall be identified to the patient and others involved in providing the patient services as a physician's assistant to the responsible physician. A physician's assistant may not perform any act or procedure performed in the practice of optometry except as provided in K.S.A. 65-1508 and 65-2887 and amendments thereto.

(b) The board shall adopt rules and regulations governing the transmitting of prescription orders for drugs by physicians' assistants and the responsibilities of the responsible physician with respect thereto. Such rules and regulations shall establish such conditions and limitations as the board determines to be necessary to protect the public health and safety. In developing rules and regulations relating to the transmitting of prescription orders for drugs by physicians' assistants, the board shall take into consideration the amount of training and capabilities of physicians' assistants, the different practice settings in which physicians' assistants and responsible physicians practice, the degree of direction and supervision to be provided by a responsible physician and the needs of the geographic area of the state in which the physician's assistant and the responsible physician practice. In all cases in which a physician's assistant is authorized to transmit prescription orders for drugs by a responsible physician, a written protocol between the responsible physician and the physician's assistant containing the essential terms of such authorization shall be in effect. In no case shall the scope of the authority of the physician's assistant to transmit prescription orders for drugs exceed the normal and customary practice of the responsible physician in the prescribing of drugs.

**History:** L. 1978, ch. 254, § 7; L. 1987, ch. 239, § 7; April 23.

**Attorney General's Opinions:**

Physicians' assistants; advanced registered nurse practitioners; persons authorized to issue prescription orders. 86-125.

Pharmacists; advance nurse practitioners; physicians' assistants; prescription orders. 89-116.

**65-2897a.** Same; definitions. The following words and phrases when used in this act shall have the meanings respectively ascribed to them in this section:





KANSAS ASSOCIATION OF LOCAL HEALTH DEPARTMENTS

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"... Public Health in Action"

TESTIMONY ON HB 2695  
SENATE PUBLIC HEALTH & WELFARE COMMITTEE  
Honorable Senator Roy Ehrlich, Chairman

presented by Elizabeth E. Taylor, Executive Director  
March 16, 1992

KALHD supports the concept of HB 2695 providing for school health assessments for school enterers. However, it will be local health departments which provide the majority of these assessments and we would make the following plea if this bill passes:

- Currently local health departments are funded by state appropriation in the amount of \$2.50 per capita while the national average of state appropriation per capita is \$5.63.
- school health assessments cost approximately \$45 each and require approximately 1 1/2 hour of nursing time each.
- some of the smallest health departments employ one half-time nurse to provide all of the personal and environmental public health for the county or multi-county.

Because of these constraints, KALHD asks that you provide appropriate funding for mandatory school health assessments if you are going to place this expectation on the local health department.

*Senate P.H.W.*

*attachment #3*

*3-17-92*

# Christian Science Committee on Publication For Kansas

820 Quincy Suite K  
Topeka, Kansas 66612

Office Phone  
913/233-7483

To: Senate Committee on Public Health and Welfare

Re: HB 2695

My remarks today specifically address HB 2695, but they apply equally to any bill in which we seek accommodation of our religious beliefs and practices. Similar testimony was given to the House committee earlier this session.

In this scientifically enlightened age, it may seem strange that a group of people would cling to the belief that healing of the body can be accomplished by spiritual means alone.

Christian Scientists, finding a Biblical basis for relying on God alone for healing, have been turning to Him for their care for well over a century. Some families have not had medical care for four or five generations. Children in these families have lived to become adults who have lived long and productive lives.

Like our friends in the medically related professions, we cannot claim a perfect record in healing bodily ills; but we do have a good record, with thousands of published testimonies of healing, many of them medically documented. For this reason, insurance companies and government agencies have given favorable recognition to our method of healing. For the same reason, federal and state governments have included provisions accommodating our religious views in their statutes.

I will not try to explain our religion to you in the time we have today. For example, many people do not know that we turn to God in situations other than those involving health care. In everything we do, we turn to God for guidance in accordance with the Bible directive to "pray without ceasing."

I have made available for each of you a booklet, "FREEDOM AND RESPONSIBILITY: Christian Science Healing for Children," which may answer some of your questions about our religion and the care we give our children. I am always ready to answer - to the best of my ability - any questions you may have.

We will appreciate your favorable consideration of our request that you continue accommodating our practices in the laws of Kansas.



Keith R. Landis  
Committee on Publication  
for Kansas

*Senate P. HEW*  
*Attachment #4*  
*3-17-92*



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Testimony before the  
Senate Public Health and Welfare Committee  
Kay Coles, Kansas NEA  
HB 2695  
March 16, 1992

Thank you Mr. Chairman. Members of the committee, I am Kay Coles, here today representing the 24,000 members of Kansas NEA. I appreciate the opportunity to speak in favor of HB 2695.

We worked closely during the interim with the Special Committee on Children's Initiatives and support the Targets for Change and strategies recommended by that committee. One of the committee's focuses was on children's health, an issue that is important to our members because of the close correlation between health and learning.

Teachers know that "coming to school ready to learn," means children have received adequate medical attention, as well as a host of other necessary prerequisites to learning.

While students currently are required to meet some limited health requirements before entering school, we believe a more comprehensive health assessment, as provided for in HB 2695 would be beneficial to the child, as well as to the school.

We therefore we ask that you report HB 2695 favorably for passage. Thank you.



KANSAS MEDICAL SOCIETY

623 W. 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383  
WATS 800-332-0156 FAX 913-235-5114

March 17, 1992

TO: Senate Public Health and Welfare Committee  
FROM: Kansas Medical Society *Chip Atteien*  
SUBJECT: House Bill 2127; Penalties for Violating the Healing Arts Act

Thank you for this opportunity to express the support of the Kansas Medical Society for the provisions of HB 2127. As you may be aware, the existing penalty for practicing the healing arts without a license, even if such activity causes great harm or threatens the life of a person, involves nothing more than a maximum \$200 fine. Considering the great potential harm to the public when someone practices medicine without a license, we believe that the existing penalty is sorely inadequate.

Upon analysis, the two levels of penalties make a lot of sense. The act of advertising or creating the impression that one is licensed to engage in the healing arts, poses a threat to others but does not actually do any type of bodily harm. This is similar to the crime of assault, which is the intentional threat to do bodily harm without actually striking or touching another person. The penalty for assault is a Class C Misdemeanor, and would thus be the same for creating a threat to the public by advertising oneself as a professional licensed to practice the healing arts.

Actually engaging in the healing arts without a license poses a higher level of potential harm to the public in that a patient would actually be seen or cared for by the unlicensed practitioner. This is essentially the same as battery, which is the unlawful intentional touching of a person. The penalty for battery is a Class B Misdemeanor, and thus would be the same for unlawfully engaging in the practice of the healing arts. In the event that the patient was injured, the patient could file a malpractice lawsuit or even file criminal charges.

The House Committee adopted important amendments which we requested in order to address a potential situation that could arise under two circumstances. One would be a situation where an office manager or the physician failed to renew the license on time and simply kept practicing without knowing the difference.

*Senate Floor  
attm #6  
3-17-92*

Senate Public Health and Welfare Committee  
Page 2  
March 17, 1992

This is referred to as inadvertent lapsing. We believe that it would be inappropriate to prosecute a licensee for inadvertent lapsing under these penalties for violation of the Healing Arts Act. The Board has sufficient authority to fine a licensee who allows their license to lapse, and there is an automatic \$50 fee for late renewal of one's license. The second scenario would be the situation when a health care provider rendered aid at the scene of an accident in an effort to save lives. It would indeed be unfortunate if such a person were to be prosecuted for violating the healing arts for simply doing their best to save the lives of others.

Thank you for considering our comments. We respectfully request that you recommend the bill for passage.

CW/cb

# State of Kansas

235 S. TOPEKA BLVD.  
TOPEKA, KS 66603



913-296-7413  
FAX: 913-296-0852

## Board of Healing Arts

### M E M O R A N D U M

To: Senate Committee on Public Health & Welfare

From: Lawrence T. Buening, Jr. *LTB*  
Executive Director

Re: Testimony on HB 2127

Date: March 17, 1992

Mister Chairman and members of the Committee, thank you for the opportunity to appear in support of House Bill 2127 as adopted by the House. The State Board of Healing Arts strongly believes that this particular bill will help rectify a situation that presents grave concerns and danger to the citizens of the State of Kansas. This bill is similar to 1990 SB 753 which was passed by the Senate, but was referred to House Judiciary Committee and, due to the number of bills in that Committee, did not receive a hearing and died in Committee.

Under K.S.A. 65-2801, the Healing Arts Act was adopted by this Legislature in 1957 to ensure the public is properly protected against "unprofessional, improper, unauthorized and unqualified practice of the healing arts." Pursuant to K.S.A. 65-2812, the Kansas State Board of Healing Arts is vested with the responsibility of administering the Healing Arts Act.

MEMBERS OF BOARD  
JOHN P. WHITE, D.O., PRESIDENT  
PITTSBURG  
REX WRIGHT, D.C., VICE PRESIDENT  
TOPEKA

FRANKLIN G. BICHLMEIER, M.D., OVERLAND PARK  
DONALD B. BLETZ, M.D., OVERLAND PARK  
JIMMY V. BULLER, D.O., PARSONS  
HOWARD ELLIS, M.D., LEAWOOD  
EDWARD J. FITZGERALD, M.D., WICHITA  
HAROLD GULDNER, SYRACUSE  
MARK HATESOHL, D.C., MANHATTAN

GRACIELA MARION, EUDORA  
JOHN PETERSEN, OVERLAND PARK  
RICHARD UHLIG, D.O., HERRINGTON  
IRWIN WAXMAN, D.P.M., PRAIRIE VILLAGE  
KENNETH D. WEDEL, M.D., MINNEAPOLIS  
RON ZOELLER, D.C., TOPEKA

*Senate PHH*  
*attn #7*  
*3-10-92*

It is not the intent of this bill to target certain "alternate" health care groups if the individuals in these groups are not practicing the healing arts as defined in K.S.A. 65-2802 or are included in one of the exceptions set forth in K.S.A. 65-2872. This is explained in greater detail in the attached memorandum from Emalene Correll to the Joint Committee on Health Care Decisions for the 1990's. Rather, the intent of this bill is to strengthen the criminal penalties of the unlicensed and unqualified practice by a variety of individuals who invade the practice of the healing arts. Please keep in mind that since these individuals are not licensed or registered by our office, they are not under our disciplinary jurisdiction. Some specific examples of cases which have been investigated by the Board include: (a) a "doctor" from Mexico who convinced an individual with prostrate cancer to forego surgery since he could "cure" the cancer through the use of coffee enemas; (b) a homeopath who influenced individuals to utilize homeopathic preparations and either discontinue prescribed medications or forego seeking proper medical attention; (c) a midwife who delivered a child with no physician supervision and which resulted in the mother dying and leaving 11 motherless children; (d) a chiropractor whose Kansas license expired in 1987 but who intentionally recommenced practice in this state without reinstating the license or obtaining the required professional liability insurance; (e) a veterinarian who removed warts from a young boy resulting in severe burns which required emergency room treatment.

At present, K.S.A. 65-2862 provides that any individual who violates any provision of the Healing Arts Act shall, upon conviction of the first offense, pay a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200).

For a second violation of the Healing Arts Act, the fine is not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) for each separate offense. No provisions are made for any period of imprisonment or confinement in county jail.

Penalties for unlicensed activities in other professions and occupations have been reviewed by Board staff. A listing is attached. I would like to mention just a few examples. In Kansas, if you conduct an auction without a license, under K.S.A. 58-1022, you are subject to a fine of not less than Two Hundred Dollars (\$200) nor more than One Thousand Dollars (\$1,000) and imprisonment of not less than 30 days and not more than 180 days. If you sell real estate without a license, K.S.A. 58-3065 provides you may be imprisoned for up to 12 months. For a second violation, not only can you be imprisoned, but a fine of not less than One Thousand Dollars (\$1,000) nor more than Ten Thousand Dollars (\$10,000) can be imposed. Practicing veterinary medicine without a license subjects a person to imprisonment of not more than 90 days. Under K.S.A. 1990 Supp. 65-1162, a licensed nurse who administers anesthesia without being authorized to practice as a nurse anesthetist is guilty of a class A misdemeanor, the penalty for which is jail confinement not to exceed one year and a fine of up



Senate Committee on Public Health & Welfare  
March 17, 1992  
Page Four

to Two Thousand Five Hundred (\$2,500). The Board of Healing Arts believes the unlicensed and unauthorized practice of the healing arts presents graver danger to the health and safety of citizens of this state than these examples I have just mentioned. Therefore, the penalties for such practice should be increased.

Section 1 of HB 2127, as amended by the House, amends K.S.A. 65-2803 and would make the unlicensed practice of the healing arts a class B misdemeanor, the penalties for which are confinement in the county jail for not more than six months or a fine of up to One Thousand Dollars (\$1,000), or both. Section 2, as amended by the House, amends K.S.A. 65-2867 and would make maintaining an office for the practice of the healing arts or advertising to practice the healing arts without a license a class C misdemeanor. The penalties for this is confinement not to exceed one month or a fine not greater than Five Hundred Dollars (\$500), or both. The amendments made by the House create two exemptions from the criminal acts created by Sections 1 and 2.

The Board concurs with the amendments made by the House and urges adoption of HB 2127 in its present form. I hope you agree with the Board that the present criminal penalties for unlicensed practice of the healing arts are woefully inadequate and that enactment of HB 2127 as adopted by the House, would make the penalties for such violation commensurate with the seriousness of the harm which is presented to the citizens of this state.

I would be pleased to respond to any questions.

COMPARISON OF PENALTIES FOR  
UNLICENSED ACTS

<u>K.S.A.</u>	<u>Crime</u>	<u>Penalty</u>
1-316	Practicing as a certified public account without a license	Not more than \$500, not more than 1 year in prison, or both
75-1128	Representing to the public as being a licensed municipal public accountant without a license	Misdemeanor, not less than \$100, not more than \$1000
65-1909	Representing to the public as being a licensed cosmetologist without a license	Misdemeanor, not less than \$10, not more than \$100, or by imprisonment for not less than 10 days nor more than 90 days, or both
65-5903	Practicing as a dietician without a license	Class C misdemeanor
65-6137	Practicing emergency services without a license	Class B misdemeanor
65-1122	Practicing as a nurse without a license	1st offense is a Class C misdemeanor; 2nd offense is a Class B misdemeanor
58-3065	Selling real estate without a license	1st offense is imprisonment up to 12 months; 2nd offense is imprisonment and not less than \$1000 nor more than \$10,000
65-1162	Licensed nurse who administers anesthesia without being a licensed nurse anesthetist	Class A misdemeanor
1992 SB 691	Holding oneself out as a physical therapist without being registered	Class C misdemeanor
1992 SB 691	Holding oneself out as a physical therapy assistant without being certified	Class C misdemeanor

65-5514	Holding oneself out as a respiratory therapist without being registered	Class C misdemeanor
65-5414	Holding oneself out as a occupational therapist or occupational therapy assistant without being registered	Class C misdemeanor
65-2007	Practicing as a podiatrist without being licensed	Not more than \$300 or imprisonment not to exceed 90 days
65-1513	Practicing optometry without a license	1st offense is a Class C misdemeanor; 2nd offense is a Class B misdemeanor
65-1460	Practicing as a dentist without a license	Up to \$1000 or imprisonment of not more than 12 months, or both
65-6307	Use of unapproved titles by social workers	Class C misdemeanor
65-6308	Improper private practice of social work	Class B misdemeanor
74-5341	Representing to be a psychologist without a license	Class A misdemeanor
2-2503 & 2-2506	Sale of egg under Class B quality	Not less than \$100 nor more than \$1000, not more than 6 months imprisonment, or both
21-3824	Representing oneself to be licensed to practice or engage in profession for which license is required and knowledge that such representation is false	Class B misdemeanor
75-7619	Practicing as a private detective without a license	Class A misdemeanor
2-417	Transporting bees without a permit	Not less than \$25 nor more than \$500

2-2125	Nursing stock sale or delivery without a certificate or license	Not less than \$25 nor more than \$500
65-1828	Barbering without a license	Not more than \$25 or imprisonment not more than 6 months, or both
47-834	Practicing as a veterinarian without a license	Not less than \$50 nor more than \$500, imprisonment of not more than 90 days, or both
2-2461	Applying pesticides without a permit	Class A misdemeanor
65-2862	Practicing the healing arts without a license	Not less than \$50 nor more than \$200

TERMS OF CONFINEMENT & FINES FOR  
CONVICTION OF CLASSIFIED MISDEMEANORS  
(per K.S.A. 1990 Supp. 21-4502 & 21-4503)

	<u>Term of Confinement</u>	<u>Fine</u>
Class A	Not to exceed one year	Not to exceed \$2500
Class B	Not to exceed six months	Not to exceed \$1000
Class C	Not to exceed one month	Not to exceed \$500

# MEMORANDUM

## Kansas Legislative Research Department

Room 545-N – Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

October 31, 1991

To: Joint Committee on Health Care Decisions for the 1990s  
From: Emalene Correll, Research Associate  
Re: Alternate Care Providers and the Kansas Healing Arts Act

During the 1991 Session, H.B. 2127, which was introduced by the House Committee on Public Health and Welfare at the request of the Board of Healing Arts and which would have amended three of the statutes in the Kansas Healing Arts Act, gave rise to a number of concerns and some misunderstanding in terms of how the Act relates to other health care providers, particularly those who are sometimes referred to as alternate care providers. As amended by House Committee, the bill would amend two of the statutes in the Kansas Healing Arts Act, with the amendments to K.S.A. 65-2803 being those that raised concerns on the part of some members of the Legislature and alternate care providers.

K.S.A. 65-2<sup>8</sup>03 currently states, "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 [of healing arts] a license for that purpose." As amended by House Committee, H.B. 2127 would read as follows.

- (a) *It shall be unlawful for any person who is not licensed under the Kansas healing arts act or whose license has been revoked or suspended to engage in the practice of the healing arts as defined in the Kansas healing arts act.*
- (b) *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. 65-2809 and amendments thereto.*
- (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.*
- (d) *Violation of this section is a class B misdemeanor.*

The second section of the bill would amend K.S.A. 65-2867 which currently states, "The opening of an office for the practice of the healing arts, the announcing to the public in any way the intention to practice the healing arts, the use of any professional degree, or designation, or any sign, card, circular, device, or advertisement as a practitioner, or as a person skilled in the same, shall be

prima facie evidence of engaging in the practice of said healing arts as defined in this act." As amended by the House Committee, K.S.A. 65-2867 would read as follows.

*(a) It shall be unlawful for any person who is not licensed under the Kansas healing arts act or whose license has been revoked or suspended to open or maintain an office for the practice of the healing arts as defined in the Kansas healing arts act by the use of any professional degree or designation, sign, card, circular, device, advertisement or representation.*

*(b) 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. 65-2809 and amendments thereto.*

*(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.*

*(d) Violation of this section is a class C misdemeanor.*

Although it was not clear in the testimony to the House Committee exactly what remained in the two statutes, as amended, that so concerned certain of the "alternate" care providers, several areas of misunderstanding were identified. The first is the meaning of the term "healing arts." The term as applied to health care practitioners as in "licensed to practice the healing arts," means only persons licensed to practice medicine and surgery (Medical Doctors and Doctors of Osteopathic Medicine) and Chiropractors. Although the term may be used generically in other contexts, for the purposes of the Kansas statutes and the legal issues arising therefrom, it includes only the three types of practitioners noted above who are licensed to practice the healing arts. The licensure provisions of the Kansas Healing Arts Act apply only to the three types of practitioners referred to as licensed to practice the healing arts. It does not include, as some conferees apparently believe, others who are licensed or registered by the Board of Healing Arts.

A second area of concern appears to arise from the definition of the practice of the healing arts found at paragraph (a) of K.S.A. 65-2802, which states, "(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.

It was suggested by one conferee that civil and criminal penalties in the Kansas Healing Arts Act could be applied to, among others, massage therapists, rolfers, herbalists, acupuncturists, acupressurists, hypno-therapists, lay midwives, and many other alternative health care providers. However for the penalties in the Kansas Healing Arts Act to apply to such persons, they would have to be diagnosing, treating, or curing a human disease, ailment, deformity, or injury. An individual who, for example, uses hypnosis or acupressure to assist others with smoking cessation or diet is not considered to be practicing the healing arts because such individual is not diagnosing or treating an ailment, disease, deformity, or injury. The same would be true of certain of the others listed by the House Committee conferee. Acupuncture is in a different category since it is a practice limited to persons licensed to practice the healing arts as a result of specific legislation and a Kansas district court decision. Naturopaths who meet the criteria set out in K.S.A. 65-2872 are permitted to practice

in Kansas without approval of the Board of Healing Arts, but are statutorily prohibited from practicing surgery or obstetrics or to prescribe prescription drugs. Persons who massage for the purpose of relaxation, muscle conditioning, or figure improvement, provided no drugs are used and they do not hold themselves out to be physicians or healers are exempt from being construed as practicing the healing arts pursuant to K.S.A. 65-2872, paragraph (f).

Lay midwives were the subject of a 1978 Attorney General Opinion (78-164) in which Attorney General Curt Schneider opined that the practice of midwifery is a *per se* violation of K.S.A. 65-2801, *et seq.* The opinion concerned women who were holding themselves out as midwives and assisting with home births, although they possessed no formal medical training regarding such practices and who were not working in conjunction with a person licensed to practice medicine and surgery. The opinion was based on the definition of midwifery found in *Webster* as "the act of assisting at childbirth; also obstetrics" with the latter being defined as "a branch of medical science that deals with birth and with its antecedents and sequels." However, the status of lay midwives was further refined in an action brought against a specific lay midwife through the settlement agreement entered into between the Board of Healing Arts and a defendant lay midwife in a 1984 case arising in the district court in Finney County. The settlement permitted the defendant to engage in the practice of midwifery in Kansas, with such practice not being considered the practice of the healing arts or the practice of medicine and surgery, so long as she utilized a licensed physician in the vicinity who agreed to be available in case of complications and to be available for consultation and examination, and so long as she agreed to provide such physician with her prenatal records in the event the physician so requested prior to delivery. As part of the settlement, the Board of Healing Arts agreed to notify the Kansas Medical Society and the Kansas Association of Osteopathic Medicine of the order and further to notify all licensed doctors of medicine and all doctors of osteopathy in writing of the contents of the order no later than July 15, 1985. Further, K.S.A. 65-2872, paragraph (g) exempts from being construed as practicing the healing arts any person whose professional services are performed under the supervision or by order of or referral of a practitioner who is licensed under the Kansas Healing Arts Act.

Contact with a representative of the Board of Healing Arts failed to turn up any other groups with which the Board has had contact in regard to the legality of their vocation or profession under the Healing Arts Act.

## Kansas Midwives' Association Facts

- The Kansas Midwives' Association (KMA) is the sole regulating body for midwifery and homebirth in Kansas.
- The KMA has been in existence for more than a decade.
- There are currently nine Practicing/Primary and Senior midwives with the KMA; and 28 members total including student and apprenticing midwives.
- Guidelines for certified membership in the KMA for practicing/primary and senior midwives include:
  - use of standard risk screening guidelines
  - set Standards of Care requirements
  - annual continuing education through KMA sponsored workshops and/or regional and national conferences
  - current CPR certification (adult, child and infant)
  - statistics on file
  - peer review
  - passing score on certification test
  - use of Informed Consent Agreement with all clients
  - accurate records kept of all births attended
- The KMA strongly opposes unattended and/or unplanned homebirths and does not consider such action responsible or safe.
- Accurate statistics for homebirths in Kansas are not available due to the manner in which statistics are kept by the Department of Vital Statistics; although this is changing with the adaptation of birth certificate forms to note births done at home with the assistance of midwives.
- According to available KMA statistics, KMA members have assisted in approximately 1,500 homebirths.
- KMA members routinely work with physician back-up for consultation, referral and/or emergency transport if necessary.
- Services provided by KMA members include:
  - prenatal care
  - labor and delivery assistance
  - post partum care for both mother and child
  - nutritional counseling
  - prenatal education
  - newborn care
  - breastfeeding counseling
  - 24 hour availability
- Midwifery is a needed service in Kansas:
  - In 1990, 43.6% of all Kansas counties had no practicing obstetricians.
  - Many times physician back-up is not available due to medical climate or more often non-existence of available obstetrical care.
  - Many times midwives offer the only prenatal and birth care available within a wide radius; and because midwives do not require the large volume of clientele necessary to sustain a medical practice, they are better able to meet rural needs.

*Senate Pass  
Action # 8  
3-17-92*



## Kansas Midwives' Association Facts

-Average cost of midwife care is 1/4 to 1/2 that of physician/hospital care. Yet many families served by Kansas midwives have maternity insurance and still opt for the care of midwives and homebirth.

- 98% of the people born worldwide are born at home and usually with the assistance of midwives.

- Every research study ever published, both in the U.S. and abroad, addressing the relative safety of doctors and midwives, show midwives and planned homebirths to be safer.

- The most recent U.S. study done was a 6-year study in Texas which showed the infant death rate for non-nurse midwife attended homebirths to be 1.9 per 1,000 while the rate for physician-attended hospital births was 5.7 per 1,000.

- The U.S., the most technologically advanced nation in the world, ranked a shameful 21st in the world for infant deaths in the latest statistics available (1989).

- Countries with the lowest rates of infant and maternal deaths are also the nations of the world with the highest proportions of midwives.

- Kansas, which ranks as one of the states with the highest medical malpractice insurance rates, is also the state with the 2nd highest rate of Cesarean sections.

- Kansas ranked 14th in the nation for infant deaths in the latest statistics available.

- States where midwifery is clearly legal and encouraged are also the states with the lowest infant death rates.

- Midwife-attended homebirth is a needed service in Kansas and while midwives have practiced in Kansas since territorial times, the Kansas Midwives' Association has been consistently providing quality care, skilled midwives and sound regulation to meet that need for more than a decade.

Michelle Ruebke, President - Kansas Midwives' Association  
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