

Approved 2-12-92
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION & UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:02 a.m./p.m. on February 5, 1992 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Thomas A. Day, Director of Administrative Services, Kansas Corporation Commission
Betty McBride, Director, Division of Vehicles
Orvis Fitts, 7716 W. 98th St., Overland Park
Bertha McDowall, Executive Director of Epilepsy-Kansas
Karen Hipp, Nurse Coordinator for Epilepsy Center, St. Francis Hospital, Wichita
Loreta B. Scharnhorst, 1114 E. 31st S., Wichita
Dr. Chi-Wan-Lai, Neurologist, Kansas City, Kansas, KU Medical Center
Charles Wheelen, Kansas Medical Society

Thomas A Day, Kansas Corporation Commission appeared before the committee to request legislation on behalf of KCC. This legislation includes: 1) Elimination of License Tags (motor carrier); 2) Implementation to inspect Common Carrier Pipelines and Creation of Hazardous Liquid Pipeline Safety Program; and 3) Amend KSA66-1, 150 subject non-utility companies to Kansas Pipeline Safety Regulation. A copy of the proposed legislation is attached. (Attachment 1). A motion was made by Sen. Hayden and was seconded by Sen. Vidricksen to introduce the proposed legislation as committee bills. Motion carried.

Copies of Kansas Corporation Commission Report to 1992 Legislature were distributed to members. (Copy available in this office).

Hearing on S.B. 522 - Driver licenses, concerning seizure disorders.

Betty McBride, Director, Motor Vehicle Division, spoke in favor of this bill and said that current rules and regulations require a person to be seizure free for one year. This bill would permit acceptance of a doctor's statement that a seizure disorder is under control by use of medication. It would allow greater flexibility in granting driving privileges. A copy of her statement is attached. (Attachment 2). She also expressed concern about liability in this area.

Orvis Fitts, Overland Park, spoke in favor of the bill and of his experience in obtaining a license after he experienced a seizure in 1991. He felt the current definition of "controlled by prescribed medication" is arbitrary, unfair, and highly discriminatory. A copy of his statement is attached. (Attachment 3).

Bertha McDowall, Epilepsy-Kansas, said she felt that the one year seizure free period was excessively long. She said that if regulations concerning licensing were more reasonable, more people effected would adhere to them and driving would be safer for everyone. A copy of her statement is attached. (Attachment 4).

Karen Hipp, St. Francis Regional Medical Center, Wichita, said many patients are afraid to taper off of their medication for fear they will lose their license if they experience even one event. She spoke in support of the bill. (Attachment 5).

Loreta B. Scharnhorst, Wichita, told the committee of her experience when she experienced a seizure during a kidney transplant. She had never had a problem before nor has had any since then but her driver's license was cancelled and a judge's recommendation was ignored. A copy of her statement is attached. (Attachment 6).

Dr. Chi-Wan Lai, KU Med Center, said that accident rates for epileptic patients are not significantly higher than those of patients with other medical conditions such as diabetes or heart disease but they are not subject to the regulations regarding driving. A copy of his statement is attached. (Attachment 7). He also expressed concern about liability. Doctors would be reluctant to approve them even if they felt the patient was no risk. There is also the problem that patients will not always tell the complete truth.

A letter to Rep. Carl D. Holmes dated February 3, 1992 from Michael P. Dreiling Liberal, Kansas concerning his daughter, Megan, was submitted to the committee. (Attachment 8). He had also enclosed copies of pleadings of Petition for Judicial Review and Plaintiff's Trial Brief.

Action on S.B. 461 - Division of vehicles, confidential records.

The Revisor had brought in an amendment to the bill which would permit releasing information for legitimate reasons. A copy of the proposed amendment is attached. (Attachment 9). A motion was made by Sen. Doyen to adopt the proposed amendment. Motion was seconded by Sen. Hayden. Motion carried.

A motion was made by Sen. Sallee to recommend S.B. 461 as amended, favorably for passage. Motion was seconded by Sen. Thiessen. Motion carried.

Further discussion on S.B. 522.

A motion was made by Sen. Sallee to reduce the period of time for controlling a seizure from one year to six months. Motion was seconded by Sen. Rock. Motion carried.

Charles (Chip) Wheelen, Kansas Medical Society, said he was trying to obtain legal counsel on this bill. He said there may be liability and he would probably have an amendment to the bill.

Meeting was ajourned at 10:00 a.m. Meeting on February 6, 1992 was cancelled. Next meeting February 12, 1992.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-5-92 Place 254-E Time 9:02

GUEST LIST

NAME

ADDRESS

ORGANIZATION

JACK TIERCE

TOPEKA

KCC

Willynda Holmes

Liberal

Leg.

John W. Smith

TOPEKA

KDOR

Orvis N. Fitts

OUQUIN & PARK

-

PAT BARNES

TOPEKA

CARFAX

Karen Hipp

Wichita

Epilepsy Center SFRmc

Chi-Wan Lai

Kansas City

KU men center

Bertha McDowall

Wichita

Epilepsy - Kansas

Roberta Lindbeck

Kansas City

Epilepsy Foundation Heart of Am.

Wynn Smith

TOPEKA

KCC

Tom Whitaker

TOPEKA

Ks Motor Carriers Assn

Ken Clark

TOPEKA

Kansas Div. of Vehicles

Betty McBride

TOPEKA

Ks. Dept of Revenue

Rick Scheibe

TOPEKA

KDOR

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-5-92 Place 254-E Time 9:02

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Sharon Hoffman Topoka Ks Comm on Disability Concerns

Anna L. Palmer Wichita

Laura B. Schandorst Wichita

Rep. Diane Heistad Wichita KS House of Rep.

TOM DAY TOPEKA KCC

Joan Finney
Governor

Jim Robinson
Chairman

F. S. Jack Alexander
Commissioner

Rachel C. Lipman
Commissioner

Judith McConnell
Executive Director

Brian Moline
General Counsel



Kansas Corporation Commission

February 4, 1992

Honorable Bill Morris, Chairman
Senate Transportation and Utilities
Room 143-N
State Capitol Building
Topeka, Kansas

Senator Morris:

The Kansas Corporation Commission would ask the Senate Transportation and Utilities Committee to introduce legislation on behalf of the KCC. The legislation proposed for introduction has been approved by the Governor's office.

Attached please find a brief synopsis of each statutory change, proposed new statute, and a bill draft from the Revisor's office.

The attached legislation includes: 1) Elimination of License Tags (motor carrier); 2) Implementation to Inspect Common Carrier Pipelines and Creation of Hazardous Liquid Pipeline Safety Program; and 3) Amend KSA 66-1,150--subject non-utility companies to Kansas Pipeline Safety Regulations.

The Corporation Commission respectfully seeks introduction of the bills through the Senate Transportation and Utilities Committee. Should you have questions, please feel free to call me at 271-3190.

Thank You,

A handwritten signature in black ink, appearing to read "Thomas A. Day".

Thomas A. Day
Director of Administrative Services

Att. 1
T&U
2-5-92

KANSAS CORPORATION COMMISSION
Proposed Legislation
1992 Legislative Session

Amend K.S.A. 66-1,139 (elimination of license tags)

The proposed legislation will eliminate the KCC license plate now being issued. Vehicle registration will continue as always and KCC credentials will be issued; it's just that the credentials will not include license plates. This requires amending K.S.A. 66-1,139.

There will be no change in the amount of money received by the Commission for regulatory fees. There will be a great savings realized due to eliminating the expense of license plates, decals, and postage. The plates are multi-year plates (5 years) with decals issued on the other 4 years. The license plate expenditures average \$40,000 annually (for additional equipment and newly-granted authorities) with approximately \$140,000 every 5th year. The annual decals expense is approximately \$5,600. The postage is \$1.21 per single license plate (third class mail).

This statutory change will bring Kansas more in line with other states. Very few state regulatory agencies issue license plates. They issue a cab card or other identifier, which this Commission will do.

This statutory change will not have any direct impact on any other state agency. The Kansas Highway Patrol is our enforcement and will be notified of effective date of any legislation. This proposed legislation has been discussed with the Highway Patrol and they had no opposition. We have notified the industry (KMCA) of our intent and have received favorable response. Draft language (marked Exhibit A) is attached.

Amend K.S.A. chapter 66 as necessary (implementation to inspect common carrier pipelines and creation of Hazardous Liquid Pipeline Safety Program)

Presently the KCC has the responsibility to monitor common carrier pipelines with reference to the public safety and convenience. Privately owned and operated pipelines are excluded from this mandate. The KCC is applying for certification from the U.S. Department of Transportation to operate a hazardous liquids pipeline safety program. Without the statutory authority to inspect non common carrier hazardous liquid pipelines the public safety will be reduced and citizens will be exposed to different risks based solely on whether the pipeline operates as a common carrier. This statute appears necessary as a matter of public policy. The establishment of a hazardous liquids pipeline safety program requires the adoption of three separate statutes: The first authorizing the adoption of regulations (marked Exhibit E (1)); the second establishing the penalties for violations (marked Exhibit E (2)); and the third statute providing for the assessment of fees for inspection and supervision (marked Exhibit E (2)).

The fiscal impact is minimal. Additional in-state travel of KCC pipeline safety staff will be required. There will be negligible impact on other state agencies.

Amend K.S.A. 66-1,150

This proposed statutory amendment is a significant policy change. This legislation would subject non-utility companies to Kansas pipeline safety regulations. The open transport mode that pipelines operate under as a result of FERC regulatory changes has vastly changed the pipeline business. Many end-users own and operate a pipeline to bypass the local distribution company to reduce their cost of gas. One of the "benefits" to the owner has been the lines do not have to be maintained in accordance with Kansas pipeline safety regulations, even though a reduction in public safety may occur. This proposed amendment would eliminate that discrepancy. Additionally, jurisdiction would be extended to operators of "master meter" facilities (i.e. trailer parks, large apartment complexes).

The fiscal impact of this change will be negligible. The additional monitoring necessitated by the change will be performed by existing staff. Other state agencies will minimally be affected. A bill draft (marked exhibit H) is attached.

JYU
2-5-2
att. 1
(2-7)

66-1,139. Registration of carriers with corporation commission; regulatory fees; disposition; exemptions; application requirements; ~~plates, issuance, display,~~ certain interstate carriers may display identification on side; ~~transferable plates, when.~~ (a) All public motor carriers of property or passengers, contract motor carriers of property or passengers, and private motor carriers of property shall register with the state corporation commission all trucks or truck tractors as defined by K.S.A. 8-126, and amendments thereto, and all other passenger vehicles used to transport persons for hire, used in the operation of their business as such, except those used in operations exempted under the provisions of K.S.A. 66-1,109, and amendments thereto. All intrastate motor carriers shall register their vehicle identification numbers with the commission. Interstate motor carriers which have been granted authority by the commission to transport commodities exempt from the jurisdiction of the interstate commerce commission and who operate for hire shall register their complete vehicle identification numbers and the year and make of vehicle with the commission. For the purpose of assisting in paying the cost of supervision and regulation of motor carriers, every such carrier shall annually pay to the commission for each calendar year a regulatory fee of \$10 for each truck, truck tractor or passenger vehicle registered with the commission. No fee shall be charged for a trailer or semitrailer.

(b) All applications for registration shall be made on forms furnished by the commission. Applications for registration of interstate common or contract motor carriers shall include on the application the quantity of trucks, truck tractors or passenger vehicles used by the motor carriers on which a fee is required to be paid. The application shall be accompanied by the required fee. ~~Interstate carriers regulated by the interstate commerce commission operating in interstate commerce which have registered their authority with the commission for an interstate licence and who also may have intrastate common or contract motor carrier authority, private carrier authority or an interstate exempt licence with the commission and who have paid the regulatory fee to the commission and registered their equipment are not required to display external identification K.C.C. plates upon the vehicle if proper identification is displayed on the side of the vehicle as required by the interstate commerce commission and rules and regulations of the commission.~~ Applications for registration of intrastate common or contract motor carriers, private motor carriers, and interstate exempt motor carriers shall include the complete vehicle identification numbers and the year and make of all trucks, truck tractors or passenger vehicles used by the motor carrier, on which a fee is required to be paid, and the application shall be accompanied by the required fee. The fees shall be due January 1 and shall be paid

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(3-7)

not later than January 15. Upon receipt of the application and fee, the commission shall issue to the carrier ~~an~~ appropriate ~~credentials plate~~ for each vehicle registered, ~~bearing the letters K.C.C. and the numerals designating the year or years for which the plate is issued. The plate shall be attached by the carrier and displayed at all times in a conspicuous place on the front of the vehicle for which the plate is issued. Any common motor carrier or contract motor carrier of property delivering vehicles which such person does not own by the driveaway method where the vehicles are being driven, towed or transported singly, or by the saddle mount, tow bar or full mount method, or any lawful combination thereof shall be issued a K.C.C. plate which may be transferred from one such vehicle or combination to another. The annual license fee for a transferable K.C.C. plate shall be \$2.50.~~

(c) The commission shall remit all moneys received by it or for it in payment of fees imposed under this section 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 the same shall be credited to the motor carrier license fees fund.

History: L. 1955, ch. 297, § 2; L. 1956, ch. 50, § 2; L. 1957, ch. 350, § 2; L. 1968, ch. 159, § 1; L. 1976, ch. 288, § 2; L. 1982, ch. 277, § 1; L. 1985, ch. 224, § 3; L. 1989, ch. 207, § 1; Jan. 1, 1990.

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BTW:1
(4-7)

Hazardous Liquid Pipeline Safety Program

The State Corporation Commission is hereby authorized to adopt such rules and regulations as may be necessary to be in conformance with the Hazardous Liquid Pipeline Safety Act of 1979 (49 USCA 2001 et seq.) as amended. Nothing in this act shall be construed as invalidating any present rules or regulations of the State Corporation Commission, concerning the regulation of pipelines and pipeline companies.

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Penalty for Violation

Any person who violates any rule or regulation adopted by the commission, and in effect on (date), shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed five hundred thousand dollars (\$500,000) for any related series of violations.

Fees for Inspection

Every entity engaged in the operation of hazardous liquids pipelines in this state which is subject to the jurisdiction and control of the state corporation commission, shall pay annually to the commission a fee for the inspection and supervision of the standards of safety prescribed by rules and regulations adopted in conformance with the hazardous liquids pipeline safety act of 1979 (49 U. S. C. 2001): Provided, that nothing in this act shall apply to any public utility required to pay the fee provided for by K.S.A. 66-1503. Said fee shall be due and payable on or before September 1 of each year, commencing in the year 1992, and shall be for the fiscal year in which payment is due. Such fee shall be in addition to any and all property, franchise, or license fees and other taxes, fees and charges fixed, assessed, or charged by law against such entity.

The amount of the fee shall be set by the Corporation Commission sufficient to cover program costs. The fee shall be set by dividing the revenue requirement by the total inch miles of jurisdictional pipeline. Each operator is assessed on the basis of the ratio of inch miles of its system to the state total. The inch miles of pipeline is calculated by multiplying the diameter of a pipeline (in inches) by the length of the pipeline (in miles).

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GAS PIPELINE SAFETY

66-1,150. Rules and regulations in conformance with federal pipeline safety act; application.

The state corporation commission is hereby authorized to adopt such rules and regulations as may be necessary to be in conformance with the natural gas pipeline safety act of 1968 (49 USCA 1671 *et seq.*) as amended. For the purpose of gas pipeline safety such rules and regulations shall be applicable to all public utilities, corporations, other business entities, and all municipal corporations or quasi-municipal corporations transporting natural gas or rendering gas utility service, the exemption provisions of K.S.A. 66-104, 66-131 and related statutes notwithstanding. Nothing in this section shall be construed as invalidating any present rules or regulations of the state corporation commission, concerning the regulation of pipelines and pipeline companies.

History: L. 1970, ch. 271, § 1; L. 1971, ch. 219, § 1; July 1.

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STATE OF KANSAS

Betty McBride, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66626-0001



(913) 296-3601
FAX (913) 296-3852

Department of Revenue
Division of Vehicles

To: Senate Committee on Transportation
From: Betty McBride, Director Division of Vehicle
Kansas Department of Revenue
Date: February 4, 1992
Subject: **Senate Bill 522**

Mr. Chairman, Members of the Committee,

My name is Betty McBride. I am the Director of the Division of Vehicles, and I appear before you on behalf of the Kansas Department of Revenue in regards to Senate Bill 522.

This bill addresses the concerns of the Department about our ability to fairly administer the vehicle laws of Kansas where seizure disorders are concerned. There is a measure of flexibility built into to this law which allows us to grant driving privileges in many situations that now require the Medical Advisory Board and myself to apply a much more stringent interpretation of the current rules and regulations.

Under section 7 of this bill, we can now accept a doctor's statement that a seizure disorder is under control by use of medication, and the applicant should be granted a drivers license. This alone is a great step toward removing a barrier that has kept many persons with seizure disorders from receiving a drivers license, regardless of the opinion of their physician. Our current rules and regulations require a person to be seizure free for one year before consideration can be given to issuing driving privileges to any applicant.

Att. 2
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Although this bill allows the Director of Vehicles some latitude in deciding whether or not to issue a driver license to persons with seizure disorders, this does not mean that the Medical Advisor Board is no longer needed. There are many instances where a medical condition is not defined strictly by the letter of the law, and an assessment by a medical professional is needed. House Bill 2670, which has been introduced this session, would abolish the Medical Advisory Board. I strongly oppose this provision because I feel the Division of Vehicles needs the advise and guidance of the physicians who serve on the Board.

However, I do feel that Senate Bill 522 is move in the right direction, and I request that this bill be amended to remove any threat of civil liability to myself and the Medical Advisory Board.

I will be happy to answer any questions you might have.

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(2-2)

5 February 1992

Kansas State Senate
Senate Transportation and Utilities Committee

Mr. Bill Morris Chairman, and members of the Senate Transportation & Utilities Committee, I welcome this opportunity to appear before you. I understand Representative Diane Gjerstad has introduced H. B. #2772 in the House of Representatives, and that my Senator Richard Bond, has likewise introduced S. B. #522 in the Senate. This legislation would be an amendment to the K.S.A. 8-247 ("seizures disorders"). I am fully in agreement with the proposed change to this statute. It would not now directly benefit me, but it would help other Kansas drivers confronted with the same situation I have experienced. Therefore I would like to inform you of my particular case.

On January 20, 1991, while attending a concert of the Kansas City Symphony Orchestra in company with my wife, I experienced a seizure in which I lost consciousness. My wife had the ambulance service called, and I was taken to Humana Hospital in Overland Park. There an E.E.G. and brain scan was done with negative results - no abnormalities. I was placed on Dilantin medication the next morning and released.

This was the first seizure I had ever experienced. My doctor told me there was no known reason why this happened to me. He explained it was similar to an electrical short-circuit, but in the brain. He further stated if the E.E.G. had shown a tumor or other brain damage, this could indicate the probable cause. I had never had a head injury or other medical reason for such an occurrence. I was told not to drive for a couple of weeks after which a blood test would be done to determine the level of Dilantin in my blood stream. I understand this level must range from 10 to 20 %. After the blood test, my doctor gave me permission to drive.

My driver license renewal date was 10 March 1991. On 7 March I applied for my license renewal, and I answered in the affirmative the question on the renewal application if I had a seizure in the past 12 months with a loss of consciousness. My application was denied. I then asked if my license was now rescinded, and I was told I could continue to drive until midnight on 10 March! I was also told I could request medical forms from the Division of Vehicles if I desired to have my case reviewed.

I called that same day and requested the medical forms; had my doctor complete them with his recommendation I be given an unrestricted driver's license, and sent the forms to Topeka on 13 March. A letter I received dated 10 April informed me my case was referred to the Medical Advisory Board which would meet on 26 April after which I would

be notified within 45 days! I made a telephone call on 30 April with no result, and on 12 June I received a letter stating I had a seizure disorder that was not currently "controlled" by prescribed medication" (i.e. K.A.R. 92-52-11). The letter stated I could request an administrative hearing within 30 days. I called on 14 June, and stated I intended to ask for such a hearing. In the phone discussion I was told that even though my doctor stated my disorder was controlled by medication, and he considered me safe for driving privileges, the K.A.R. 92-52-11 defines "controlled by prescribed medication" to mean you have not sustained a seizure involving the loss of consciousness in the waking state within the preceding one year period." This of course means an arbitrary regulation definition of a seizure disorder in spite of the the fact I was on prescribed medication at the proper level. I was then told new medical forms would be sent to me early in December so I could resubmit them on or after 20 January 1992, which was the end of my 12 month period.

By 9 December I had not received another set of medical forms so I called the Division of Vehicles and asked such forms be sent to me. These forms were sent and completed by my doctor with the recommendation I be given an unrestricted driver's license, and I sent them to Topeka on 20 January 1992. After a telephone call to the Division of Vehicles on 28 January, I received on 1 February a letter stating I was now eligible to continue with my application for a Kansas driver's license. Also, an annual medical report would be required until I was free of seizures for a full 5 year period as recommended by the Medical Advisory Board. Medical forms would be sent to me each year.

In addition, I should mention if I had received my license on 10 March 1991 and had the seizure on the following day, I would have been driving for the next 4 years. Unfortunately, I had happened to be in the 25% of those drivers who had to renew in 1991 and who had incurred a seizure in the past 12 months.

In my opinion, the current K.A.R. 92-52-11 definition of "controlled by prescribed medication" is arbitrary, unfair, and highly discriminatory. I am 100% in favor of S. B. #522 to correct this inequitable and capricious regulation. I would urge this committee to vote favorably on S. B. #522.

Orvis N. Fitts

Orvis N. Fitts
7716 W. 98th Street
Overland Park, Kansas 66212
(913) 642-2661

att. 3
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Epilepsy-Kansas, Inc. Testimony to the Transportation Committee
Regarding
Individuals With A Seizure Disorder And Drivers Licensing
(HR 2772 & SN 522)

Members of the Committee

My name is Bertha McDowall and I am the Executive Director of Epilepsy-Kansas. Epilepsy-Kansas and The Epilepsy Foundation for the Heart of America are the Kansas affiliates of the Epilepsy Foundation of America. I also currently serve on the State Commission on Epilepsy.

In the course of the hearings leading to the creation of the Commission and during the Commission meetings also, the issue of the licensing of individuals with epilepsy continually and emotionally was addressed. It was felt that the one year seizure free period was excessively long, that the administrative hearing process was ineffective and that the Medical Review Board needed to be educated regarding the latest medical developments as they applied to individuals with seizures who were seeking a driver's license.

Recommendation 47 of the Task Force on Epilepsy and Other Seizure Related Disorders calls for legislation revising the driver's licensing regulation to reflect a three month, or less, seizure free provision.

According to Dr Jerome Murphy, chief of the Neurology section of Children's Mercy Hospital, Kansas City, seizures account for about two of 10,000 motor vehicle accidents. As a comparative value, alcohol appears to be a contributing factor in 50 percent of motor vehicle accidents. The frequency of accidents related to epilepsy is roughly similar to the frequency of sudden and unexpected death behind the wheel or to accidents in patients with diabetes mellitus. Most accidents in patients with epilepsy involve one vehicle striking an unyielding substance and most occur in rural settings. Essentially, this is a small risk.

So therefore, it is known that patients with seizures are involved in fewer fatal accidents than persons with an alcohol-related condition and the accident rates of epileptic patients are not significantly higher than those of patients with other medical conditions.

The Epilepsy Foundation of America believes that where a specific seizure-free interval requirement exists, provision should be made for exceptions where appropriate. Examples of possible appropriate exceptions include the following: a breakthrough seizure due to physician-directed medication change, an isolated seizure where the medical examination indicates that another episode appears unlikely, a seizure related to a temporary illness, a seizure due to an isolated incident of not taking medication, an established pattern of only nocturnal seizures, an established pattern of only seizures which do not impair driving ability or an established pattern of an extended warning.

Approximately fifteen states require a seizure-free period of less than one year (ranging from three to six months) and about ten do not have

a standard seizure-free period. States which do not have a set seizure free period require a doctor's statement concerning the person's ability to drive safely.

While we realize that the three month seizure free recommendation may be too short a waiting period for the Committee and for the legislature, we hope that they can endorse a period of six months seizure free and the option of a doctors authorization of the individual's ability to drive. We would also hope that the Medical Review Board would become more educated as to the circumstances surrounding a seizure disorder.

In the case where the physician suspects the individual may no longer need to take their medication, it is not reasonable to almost force a person to remain on medication just because they fear that they may lose their license in the process due to an isolated seizure. There is no reason why, once the person is put back on their original medication, which has proven effective previously, the individual should wait for a year. This poses an unfair burden on individuals whose seizures were controlled and who probably rely very heavily on driving.

It is also our hope that by making the regulations concerning licensing more reasonable, that more people effected would adhere to them therefore making driving safer for everyone. A law that people spend most of their time circumventing is not effective in the first place and accomplishes very little except to catch the very people it should not apply to. The individuals who should legitimately be excluded from driving are on the road anyway. It is hoped that this committee will help to remedy this situation.

On behalf of the individuals with epilepsy in the state, I would like to thank you for considering this very important issue and we hope for your support of this bill and its intent.

att. 4
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United States Driving Laws

Driving & Epilepsy*

State	Seizure-Free Period	Periodic Medical Updates Required After Licensing	Doctors Must Report Epilepsy	DMV Appeal of License Denial**
Alabama	1 year	Annually for 10 years from date of last seizure	No	Yes
Alaska	6 months	No, but Department of Motor Vehicles may require annual physical exam	No	Within 15 days
Arizona	1 year, with exceptions	At discretion of Motor Vehicle Division	No	Within 15 days
Arkansas	1 year	At discretion of Department of Motor Vehicles	No	Within 20 days
California	None	as above	Yes	Within 10 days
Colorado	None	as above	No	Yes
Connecticut	3 months	Every 6 months	Yes	Yes
Delaware	None	Annually	Yes	Yes
District of Columbia	1 year	Annually until 5 years seizure-free	No	Yes. Within 5 days if suspended
Florida	1 year	At discretion of Medical Advisory Board	No	Yes
Georgia	1 year. Less if only nocturnal seizures.	At discretion of Department of Motor Vehicles	No	Within 15 days
Hawaii	1 year	At discretion of Department of Motor Vehicles	No	Yes
Idaho	1 year. Less with doctor recommendation medication change	Every 6 months or annually	No	Yes
Illinois	None	At discretion of Medical Advisory Board	No	Yes
Indiana	None	as above	No	Yes
Iowa	6 months. Less if seizures nocturnal	Every 2 years	No	Yes
Kansas	1 year	Annually, until 5 years seizure-free	No	Within 30 days
Kentucky	3 months	At discretion of Medical Advisory Board	No	Within 20 days
Louisiana	1 year, with exceptions	as above	No	No
Maine	1 year or 6 months	as above	No	Yes
Maryland	3 months	as above	No	Within 15 days
Massachusetts	6 months	At discretion of Medical Advisory Board	No	Within 14 days
Michigan	6 months. Less with doctor recommendation	At discretion of Medical Advisory Board	No	Within 14 days

* Chart reflects data available as of March, 1990. Information subject to change. This chart is not a substitute for legal advice. For further information, consult your state Dept. of Motor Vehicles. Adapted from *National Spokesman*, March 1990.

** Time frames are given when known. Every state allows for appeal through the courts.

Minnesota	Generally, 6 months	as above	No	Yes
Mississippi	1 year	At discretion of Medical Advisory Board	No	Yes
Missouri	None	At license renewal	No	No
Montana	6 months	No	No	Yes
Nebraska	1 year	No	No	Yes
Nevada	3 months	Annually	Yes	Yes
New Hampshire	1 year	No	No	Within 30 days
New Jersey	1 year. Less on recommendation of Neurological Disorder Committee	Every 6 months for 2 years, thereafter annually	Yes	Within 10 days
New Mexico	1 year	At discretion of Medical Advisory Board	No	Within 20 days
New York	1 year. Less with doctor recommendation	At discretion of Department of Motor Vehicles	No	Within 30 days
North Carolina	None	Annually, or less at discretion of Department of Motor Vehicles	No	Within 10 days
North Dakota	1 year. Restricted licenses available after 6 months	Annually for at least 5 years	No	Within 10 days
Ohio	None	Every 6 months or 1 year until seizure-free 5 years	No	Within 30 days
Oklahoma	1 year, with exceptions	At discretion of Department of Public Safety	No	Yes
Oregon	6 months, with exceptions	Every 6 or 12 months until 2 years seizure-free	Yes	Within 20 days
Pennsylvania	1 year. Less if nocturnal or prolonged auras	At discretion of Medical Advisory Board	Yes	No
Puerto Rico	None	as above	No	Within 20 days
Rhode Island	Usually 18 months. Less at discretion of Department of Transportation	as above	No	Yes
South Carolina	6 months	Every 6 months	No	Within 10 days
South Dakota	12 months. Less with doctor recommendation	Every 6 months until 12 months seizure-free	No	No
Tennessee	No set seizure-free period	At discretion of Medical Advisory Board	No	Within 20 days
Texas	1 year. Less if nocturnal or due to medication change	At discretion of Medical Advisory Board	No	No
Utah	3 months	Annually until seizure-free 5 years	No	Within 10 days
Vermont	24 months, or 6 months with doctor recommendation	Every 6 months until 24 months seizure-free	No	Yes
Virginia	1 year or 6 months	At discretion of Medical Advisory Board	No	No
Washington	6 months	as above	No	Yes
West Virginia	1 year	as above	No	Within 10 days
Wisconsin	3 months	Every 6 months for 2 years. Annually thereafter until seizure-free 5 years	No	Yes
Wyoming	1 year, with exceptions	Annually until seizure-free 2 years, thereafter upon license renewal	No	Yes

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Comprehensive Epilepsy Center
St. Francis Regional Medical Center
Wichita, Kansas

Testimony to the Transportation Committee regarding individuals with a seizure disorder and driver's license.

(HR 2772 and SN 522)

Members of the Committee:

My name is Karen Hipp, RN, BSN. I am the Nurse Coordinator for the Epilepsy Center at St. Francis Regional Medical Center in Wichita, Kansas. My current job has many diverse avenues. I provide education and counseling for individuals and families who have been affected with epilepsy. I deal with adults and children who have seizures both in the hospital and outpatient clinic setting. I work with epilepsy patients in dealing with their medical as well as social problems.

The inability of many of our seizure patients to obtain a driver's license affects not only transportation difficulties, but also their self esteem. It makes my clients different from their peer group whether they are sixteen years of age or fifty six.

The clients in the Epilepsy Clinic are seen by the neurologist a minimum of once each year for follow-up and checking anticonvulsant levels. Clients may be seen more often if deemed necessary by the physician. Who can get to know these individuals better than their doctor? Compliance with their medication schedule is checked by noting consistent therapeutic drug levels. Obtaining seizure history and current seizure logs assists us in noting how the individual is doing with their seizure control.

The current driver's license law is less than desirable. Many individuals are afraid to taper off of their anticonvulsants due to the current one year seizure free stipulation for fear of the loss of their driver's license if they experience even one event. Those who would consider tapering their medications are patients who have been seizure free for two years post epilepsy surgery, teenagers who suffered from a classification of seizures called absence (staring spells lasting 3 to 4 seconds) as pre-school and school age and have been seizure free for years and often can be off anticonvulsants as they grow into adolescents. Occasionally our patients have been controlled on polytherapy (more than one anticonvulsant). In an attempt to decrease or remove their anticonvulsants if they experience one seizure event, they are penalized for a whole year. As soon as the event occurs, the neurologist would resume their previous medication dose, follow-up with anticonvulsant drug levels in two to four weeks to check for compliance and therapeutic drug levels. In most instances therapeutic drug levels are achieved in one month. It does not take twelve months.

Att. 5
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2-5-92

The Epilepsy Center Neurologists and myself optimally would prefer to see the one year seizure free time period decreased to six months. We do support the proposed bill of one-year-seizure-free or upon the discretion of the person's medical physician and making each case individual. Our concern is the Medical Board will continue to base their approval on future driver's licenses on the one-year-seizure-free status, and overlook the recommendations of the person's physician.

att. 5
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(2-2)

(6)

This is asking for you to please support bill #
Bill # 522

This is a story explaining why I have interest in this law. Nov. 17, 1990 I received a kidney transplant on Dec. 3, 1990 there were complications and surgeon he said I had a seizure in emergency room never had one before or since. The complication was a ~~bad~~ dead ureter and on Dec. 7, 1990 they finally did surgery removing 6 qts of water from my left side. On March 19, 1990 they canceled my drivers license on April 19, 1990 had a hearing and Judge recommendations were ignored.

As my husband is also crippled and Blind I have the responsibility to take care of him also.

I will list a few hardships #1. Cab fare run from \$10 to \$15 roundtrip each time we left the house. Since I'm on a lot of medications it took more than one trip to the pharmacy a week. I hired a ride for \$20 a week so I could work. When I called a cab to pick me up from work at 2 A.M. in the morning no cab came. You can wait an hour to go to the store and up to 2 hrs after shopping is done to come home.

2 Could not go pick up my grandchildren like I have all their lives. No way to explain

3 Allowed to work around heavy machines and no restrictions. Could not have a Fork Lift license to move my blocks and parts at work.

4 Could not get my husband out of the house so he became very depressed. This is only a partial list of problems this caused. There was no public transportation going to work direction. So please I'm begging for support to take the old law off the book.

The druggies and drinkers don't get the punishment that I got for being sick. I felt very miss treated

Thank You

Leta B. Schamhorst

7

Chi-Wan Lai, M.D.
Professor of Neurology
Department of Neurology
University of Kansas Medical Center
Kansas City, KS

In recent years, a number of states have liberalized their laws and policies regarding epilepsy. There are a number of reasons for this.

First of all, there is no data to substantiate that a one year seizure free period is safer than a shorter period of time for a person with a seizure disorder to be able to begin or resume driving. Blanket restrictions for licensing persons with epilepsy are not appropriate because of the various ways in which epilepsy affects different people. Instead, individualized determinations of ability should be based upon the following factors: type(s) and frequency of seizures; presence of an aura; customary time of seizure occurrence (e.g., nocturnal, upon waking); willingness to take prescribed medication(s), and any side effects of such medication. The person's medical physician is in a position to be able to make such a determination based upon these factors. Also, the medical physician is in a position to monitor the medication. After a certain number of weeks without a seizure, the physician can believe the medication is working for that person. After a certain number of months without a seizure, the physician can believe the seizures are being controlled by the medication.

Second, the report of the seizure free interval itself depends largely on the patient. Under the current law where there is no individualized determination, a Kansas resident who has a seizure disorder must be seizure free for one year. Therefore, the patient may not choose to report that he is having seizures. The bill currently under consideration allows for the possibility of an individualized determination. Therefore, if a person begins having seizures and the seizures are brought under control with a new medication or an increase in dosage, the person does not have to wait an entire year before he can drive again. The restrictions in the bill currently under consideration make it more likely that a person will be honest with their physician about their seizures.

Finally, from our study, we found that patients are very much in conformity with the advice of their medical physician on the subject of driving. This means that most patients will not drive if the physician feels they should not, and that they will follow the restrictions the physician suggests concerning their driving.

During the past decade, there has been a significant trend away from an across-the-board seizure-free period to a reduced period when one is required. Most of the states still have a required seizure free period, with an allowance for exceptions under which a license may be issued after a shorter period of time. This is the essence of the bill being discussed today. For the reasons just stated, I hope that you will realize the merits of this bill.

Att. 7
T&U
2-5-92

Chi-Wan Lai, M.D.
Professor of Neurology
Department of Neurology
University of Kansas Medical Center
Kansas City, KS

The safety of driving in patients with epilepsy has always been a concern of both physicians and the public. It is known that patients with seizures are involved in fewer fatal accidents than persons with an alcohol-related condition, and the accident rates of epileptic patients are not significantly higher than those of patients with other medical conditions, such as diabetes or heart disease. The regulations regarding driving, however, tend to be more commonly enforced in patients with epilepsy. This has created a sizable psychosocial impact upon patients with epilepsy. In many states, a specified seizure-free duration is required as a criterion for determining the driving privilege. The information about a patient's seizure-free duration, however, depends largely on the patient's own report, is difficult to verify, and sometimes is influenced by the need to drive, previous experience with driving and general attitudes toward driving and epilepsy. Therefore, from the physician's perspective, a better understanding of patients' attitudes toward this issue is absolutely essential.

The Neurology Department at the University of Kansas Medical Center has been interested in the issue of driving in patients with epilepsy. We studied this issue by mailing questionnaires using the mailing list of the Epilepsy Foundation for the Heart of America. There were 391 valid responses from both Kansas and Missouri. The results suggest the following:

1. Half of the patients currently drive, and 43% of this group drive with some self-restriction; such as avoiding rush hours, bad weather or highway driving. Some patients drive only for employment. The remaining half of patients currently do not drive, and the majority of them rely on their family to provide transportation. Only 46% of them count on public transportation.
2. The majority (79%) report their seizures to their physician. Their doctors' opinion include doctors approve of their driving (35.5%), disapprove of driving (25.1%), and "doctor had never discussed with me." (33.8%) Their driving status and attitude are, in general, in conformity with their physicians' advice.
3. The majority agree that it is important to be able to drive (81%), and feel that being able to drive is essential to being independent, getting to work, self-esteem, and necessity.
4. The majority agree that patients with seizures should be restricted in driving (73%), and should be seizure-free for a specified period of time before they can drive safely (72%).

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(2-3)

5. Only 52% agree with a requirement of an annual medical report, and only 35% agree that the state should require physicians to report patients' seizures to the state.

Therefore, the study concluded that the physician's role as an educator can be very effective. Physicians should spend time discussing the issue of safety of driving with patients. They may help effectively reduce the incidence of seizure-related car accidents by educating epileptic patients on the issues related to driving. The physicians however, cannot be as effective in playing a policing role of reporting patients' names to the state. We believe the mandatory report requirement that exists in some states may jeopardize the physician-patient relationship and patients may not report their seizures to physicians, consequently hampering therapy. We also feel that the improvement of the public transportation system is very important to provide epileptic patients a means of maintaining their normal, productive lives if the driving privilege needs to be restricted.

We also examined patients personal comments on the issue of epilepsy and driving. There were several polarized statements, clearly indicating that it is impossible to extract a consensus on this extremely personal issue. Some patients expressed the opinion that epileptic patients should not be driving, and some patients categorically regard driving as an individual's right that no one can infringe upon. Some patients correctly pointed out that state regulations should take into consideration individual factors: different types of seizures, presence or absence of warning (aura), and the potential psychological impact on the individuals who are not allowed to drive. One 26 year old female patient expressed her opinion, "To drive or not to drive is a very individual thing. I don't think you can apply the same guidelines to everyone since we're all so different. I think the doctor and the patient TOGETHER should decide if it is realistically safe for the patient to drive-if they disagree, doctor's opinion prevails."

In order to have a better understanding of the nature of the driving risk in patients with epilepsy, we are currently in the process of assessing the history of automobile accidents in patients with epilepsy in our seizure clinic in a confidential survey.

For physicians, other difficult aspects of this issue still remain, such as giving advice to the patient who has experienced a first seizure or the patient who is to taper and discontinue anti-epileptic medication after a seizure-free duration of two to four years.

Through our continuous research efforts in this area, we hope someday we can develop a screening technique to assess the safety of driving in patients with epilepsy.

att. 7
T+H.
2-5-2

NEUBAUER, SHARP, MCQUEEN, DREILING & MORAIN, P. A.

LAWYERS

419 NORTH KANSAS

P. O. BOX 2619

LIBERAL, KANSAS 67905-2619

AREA CODE 316

TELEPHONE 624-2548

FAX 624-9163

REX A. NEUBAUER
GENE H. SHARP*
KERRY E. MCQUEEN
MICHAEL P. DREILING
JAMES H. MORAIN

*ADMITTED IN KANSAS AND OKLAHOMA
*ADMITTED IN KANSAS, OKLAHOMA AND COLORADO
*ADMITTED IN KANSAS, OKLAHOMA, TEXAS AND COLORADO
ALL OTHERS ADMITTED IN KANSAS

DANIEL H. DIEPENBROCK*
TAMMIE E. KURTH*
REX A. SHARP*
SHIRLA R. MCQUEEN
H. HOBBLE, JR.
(RETIRED)
CHAS. VANCE
(1904-1975)

February 3, 1992

Carl D. Holmes, Representative
125th District
Room 156E
State Capitol
Topeka, KS 66612

VIA FACSIMILE #(913) 296-1154

Re: Senate Bill No. 522
House Bill No. 2772

Dear Carl:

As you are aware, my daughter Megan was denied a driver's license by the Motor Vehicle Division of the Kansas Department of Revenue on the basis that she sustained a seizure during the waking state within the preceding one year of her application for a driver's license. Megan and I filed a Petition for Judicial Review in the District Court of Seward County, Kansas.

For your benefit, I am enclosing photostatic copies of the following pleadings:

1. First Amended Petition for Judicial Review; and
2. Plaintiff's Trial Brief.

I would appreciate it if you would submit both the First Amended Petition for Judicial Review and Plaintiff's Trial Brief during the hearings on both bills.

In addition, I would appreciate it if you would inform the committee that K.S.A. 8-255b(a) requires that upon appointment of the medical advisory board, the board shall be composed of five members, and it shall include, but not be limited to, a physician licensed to practice ophthalmology, a licensed optometrist, a licensed psychiatrist, and a licensed physician specializing in internal medicine. The board shall meet at the request of the Director of Vehicles.

Through discovery proceedings in Megan's Petition for Judicial Review, the Kansas Department of Revenue disclosed that there are only three members appointed to the medical advisory board, an optometrist, an ophthalmologist,

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2-5-92

Carl D. Holmes, Representative

: 2

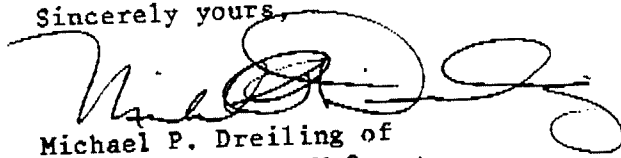
February 3, 1992

and a neurologist, in violation of K.S.A. 8-255b(a). We also discovered that the board does not always meet, and that in most instances the Director of Motor Vehicles has to mail the medical information to the doctors to obtain their decisions contrary to the requirement that the board must meet.

For your benefit, I am also enclosing our answer to an Interrogatory propounded to us by the Kansas Department of Revenue, and I would also request that this answer be submitted at the hearings.

Your help is deeply appreciated.

Sincerely yours,



Michael P. Dreiling of
Neubauer, Sharp, McQueen,
Dreiling & Morain, P. A.

MPD:sco
Enclosures

✓

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(2-19)

IN THE DISTRICT COURT OF SEWARD COUNTY, KANSAS

MEGAN K. DREILING, a minor,
by and through MICHAEL P.
DREILING, her father and
natural guardian,

Plaintiff,

vs.

KANSAS DEPARTMENT OF REVENUE,

Defendant.

Case No. 91-CV-163

PLAINTIFF'S TRIAL BRIEF

Pursuant to the Court's direction to counsel on January 6, 1992, Plaintiff submits this Trial Brief addressed to two (2) questions of law. The issues deal with (1) the validity of Kansas Administrative Regulation 92-52-11; and, (2) may this Court decide a moot question.

FACTUAL BACKGROUND

Plaintiff filed her Petition for Judicial Review of the order of the Defendant denying Plaintiff permission to make application for driving privileges.

The only evidence the medical advisory board reviewed and considered was Plaintiff's medical history and physician's report [Paragraph 11 of Defendant's Response to Plaintiff's Discovery Request], setting forth that Plaintiff suffered a seizure disorder in the waking state on February 12, 1991; that Plaintiff always has a warning prior to a seizure; and that Plaintiff is reliable in taking her medication and reporting for her appointments; and a certificate from her physician and neurologist certifying that there is no known medical reason to deny Plaintiff a

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driver's license with full driving privileges, and that Plaintiff is medically capable of operating a vehicle safely upon the public highways of the State of Kansas and other states.

On December 4, 1991, Plaintiff appeared at an Administrative Hearing and introduced into evidence, with no objections, reports from her physician and neurologist stating that Plaintiff's seizure disorder is controlled by Depakote Sprinkles 500 mg twice a day, and that there is no known medical reason to deny Plaintiff of her driver's license, for she is medically capable of operating a vehicle safely on public roads.

At trial, Plaintiff's evidence will show that Plaintiff's seizure disorder is well-controlled by Depakote Sprinkles 500 mg twice a day, and that the Defendant solely denied Plaintiff's driving rights on the parameters of K.A.R. 92-52-11 [Paragraph 12 of Defendant's Response to Plaintiff's Discovery Request].

ARGUMENT AND AUTHORITY

1. THE VALIDITY OF KANSAS ADMINISTRATIVE REGULATION 92-52-11

The Kansas Department of Revenue promulgated and adopted K.A.R. 92-52-11 which provides in subparagraph (c) that:

A driver's license shall not be issued pursuant to K.S.A. 8-237(e), and its amendments, if the driver has sustained a seizure involving a loss of consciousness in the waking state within the preceding one year, unless the medical advisory board determines to the contrary.

That portion of the regulation pertaining to being seizure-free for one year before a license can be issued is contrary to Kansas statutes.

K.S.A. 1990 Supp. 8-237, as amended by Chapter 36 of the 1991 Session Laws, provides in part that:

The Division of Vehicles shall not issue any driver's license to any person:

(e) . . . known to have suffered any seizure disorder, until the procedure specified in paragraph (7) of subsection (f) of K.S.A. 8-247, and amendments thereto, has been complied with.

K.S.A. 8-247 did contain subsection (f), but was amended by Chapter 33 of the 1983 Session Laws by the deletion of (f) and changing (f) to (e).

Paragraph (7) of subsection (e) of K.S.A. 8-247, and amendments thereto, provides in part:

(7) Seizure disorders which are controlled by prescribed medication shall not be considered a disability under the preceding subpart, unless the medical advisory board finds that the applicant's condition is such that the applicant is likely to be a danger to such applicant or others, while operating a motor vehicle. . . . [Emphasis supplied.]

Plaintiff assumes that K.A.R. 92-52-11 was adopted in accordance with K.S.A. 77-420 and 77-421, which require approval by the Secretary of Administration and the Attorney General, plus public hearings after notice, and Plaintiff further assumes that said rule and regulation was subject to examination, modification, or rejection by the legislature as authorized by K.S.A. 77-426, but said regulation is nevertheless invalid because the Department of Revenue clearly exceeded its authority in adopting K.A.R. 92-52-11.

K.S.A. 8-247, and amendments thereto, does not require an individual to be seizure-free involving a loss of consciousness in the waking state within the preceding one year. It only requires that an individual's seizure disorder be controlled by prescribed medication.

The Kansas Supreme Court in Wesley Medical Center v. Clark, 234 Kan. 13 at page 18, held:

Because K.A.R. 28-34-6(d) was duly adopted pursuant to statutory authority, and has the force and effect of law . . . Wesley contends that a valid statutory privilege from discovery was created. Furthermore, since the legislature did not modify the regulation, as it has authority to do under K.S.A. 1982 Supp. 77-426, the petitioner asserts the legislature has approved and adopted this privilege. The same argument was found to be without merit in Grauer v. Director of Revenue, 193 Kan. 605, 608, 396 P.2d 260 (1964). An administrative agency which has the power to

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adopt regulation does not have authority to adopt regulations which exceed the statutory authority granted in the first instance. As said in Grauer, "water cannot rise above its source." 193 Kan. at 608. See also Woods v. Midwest Conveyor Co., 231 Kan. 763, Syl. Paragraph 3, 648 P.2d 234 (1982).

In Woods v. Midwest Conveyor Co., 231 Kan. 763, Syl. Paragraph 3, it is

held:

The power to adopt rules or regulations is administrative in nature, not legislative, and to be valid must be within the authority conferred. An administrative rule and regulation which goes beyond that which the legislature has authorized, or which violates the statute, or which alters, extends, or limits the source of its legislative power, is void.

For a regulation to have the force and effect of law, the regulation promulgated must be within the authority conferred by law. This simply means that if K.S.A. 8-247(e)(7), as amended, pursuant to which the regulation is drafted, does not include a restriction or limitation that an individual be seizure-free for one full year, the Director of Revenue is without authority to promulgate a regulation imposing a limitation or restriction which goes beyond the authority of the statute.

If the legislature intended that a driver or an applicant for a driver's license be free of a seizure involving a loss of consciousness in the waking state within the preceding one year, it could have easily so stated, either in the original act or in the various amendments to K.S.A. 8-247(f)(7). Instead, the legislature provided that the applicant need only show the disorder is controlled by prescribed medication. Plaintiff has so shown, but the Defendant, standing behind the rule it adopted for itself, continues to deny Plaintiff a license.

2. MAY THIS COURT DECIDE A MOOT QUESTION.

Plaintiff sustained a seizure involving a loss of consciousness in the waking state on February 12, 1991. Trial of this case has been set for February 24, 1992. As of this date, Plaintiff has not sustained a seizure

involving a loss of consciousness in the waking state and may be seizure free for one full year prior to trial; and Defendant could grant Plaintiff a driver's license during the pendency of this review or review by an appellate court.

It is also possible that, after being issued a driver's license, Plaintiff could sustain a seizure involving a loss of consciousness in the waking state, could have her license revoked or suspended pursuant to the parameter of K.A.R. 92-52-11, and again have to suffer the agony, frustration, and expense of challenging said unlawful rule and regulation.

Furthermore, there are other individuals in Kansas facing the same challenge. Such was revealed by the hearing examiner at Plaintiff's Administrative Hearing. It is submitted that it is the plan of the Defendant to drag out every case, including this one, until it becomes moot under its own one-year rule. K.A.R. 92-52-11 has statewide application.

The Kansas Court of Appeals in Stone v. Kansas State High School Activities Ass'n., Inc., 13 Kan. App. 2d 71, 761 P.2d 1255 in Syl. 1, held:

An appellate court may decide a moot question arising from a real controversy when the question is of statewide importance, the question is likely to arise again in the future, and the question will ordinarily be mooted before it can be considered on appeal.

See also Buchanan v. Kansas Dept. of Revenue, 14 Kan. App. 2d 169, 172, 788 Pac. 2d 285 (1988). The real controversy is the validity of K.A.R. 92-52-11, and that question is of statewide importance and will not go away even if Plaintiff is issued a driver's license.

CONCLUSION

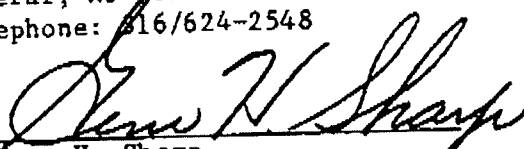
For the reasons, arguments, and authorities stated above, Plaintiff requests the Court to find that Kansas Administrative Regulation 92-52-11 is

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invalid and unconstitutional in that it exceeds that statutory authority granted; and the Defendant, by enforcing said regulation, acted and continues to act beyond the jurisdiction conferred by any provision of law. Plaintiff further requests the Court to find that the Court may and should decide a moot question arising from a real controversy when the question is of statewide importance, the question is likely to arise again in the future, and the question will ordinarily be mooted before it can be considered on appeal.

Respectfully submitted,

Michael P. Dreiling, S.C. #06560
Gene H. Sharp, S.C. #05184
NEUBAUER, SHARP, McQUEEN,
DREILING & MORAIN, P.A.
419 N. Kansas Avenue
P. O. Box 2619
Liberal, KS 67905-2619
Telephone: 616/624-2548

By: 
Gene H. Sharp
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Gene H. Sharp, hereby certify that on this 7th day of January, 1992, I mailed a copy of the above and foregoing Trial Brief by United States mail, postage prepaid and properly addressed to:

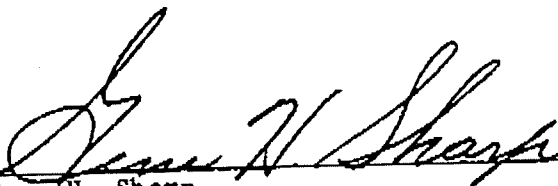
Brian Cox, Attorney
Kansas Department of Revenue
Legal Services Bureau
Docking State Office Building
Second Floor
915 S.W. Harrison Street
Topeka, KS 66626-0001

Honorable Keaton G. Duckworth
District Judge
Seward County Courthouse
415 N. Washington
Liberal, KS 67901

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d the original to:

Faye Shoemaker
Clerk of the District Court
Seward County Courthouse
415 N. Washington
Liberal, KS 67901


Gene H. Sharp

IN THE DISTRICT COURT OF SEWARD COUNTY, KANSAS

MEGAN K. DREILING, a minor,)
by and through MICHAEL P.)
DREILING, her father and)
natural guardian,)
Plaintiff,)
vs.)
KANSAS DEPARTMENT OF REVENUE,)
Defendant.)

Case No. 91-CV-163

FIRST AMENDED PETITION FOR JUDICIAL REVIEW

COMES NOW, the Plaintiff, by and through her attorneys, Neubauer, Sharp, McQueen, Dreiling & Morain, P.A., Liberal, Kansas, and for her First Amended Petition for Judicial Review, alleges and states:

1. The name and mailing address of the petitioner is: Megan K. Dreiling, 1741 James Court, Liberal, Kansas 67901.
2. The name and mailing address of the agency whose action is at issue is Kansas Department of Revenue, Robert B. Docking State Office Building, 915 S.W. Harrison Street, Topeka, Kansas 66626-0001.
3. By order dated October 1, 1991, the Defendant denied Plaintiff permission to make application for driving privileges until Plaintiff presents an acceptable medical report from herself and her physicians, verifying that she has remained seizure free for one (1) full year and is capable of safely operating a motor

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vehicle; a copy of said order is attached hereto and marked Exhibit "A".

4. Plaintiff is a resident of the State of Kansas, over the age of 17 years, her driving privileges have been denied by the Defendant, and by reason thereof Plaintiff is entitled to obtain judicial review pursuant to the provisions of Section 12, Chapter 36, 1991 Session Laws of Kansas, and K.S.A. 77-611.

5. Plaintiff should be granted full driving privileges for the following reasons:

(a) Defendant denied Plaintiff driving privileges pursuant to the provisions of K.A.R. 92-52-11 on the basis that Plaintiff sustained a seizure involving a loss of consciousness in the waking state within the preceding one year contrary to the provisions of K.S.A. 8-247(e)(7), as amended which states that seizure disorders which are controlled by prescribed medication shall not be considered a disability in denying a driver's license.

(b) K.A.R. 92-52-11 is invalid and unconstitutional in that it exceeds that statutory authority granted; and, the Defendant acted beyond the jurisdiction conferred by any provision of law.

(c) Plaintiff is not required to exhaust her administrative remedies and judicial review of a rule, regulation or agency action is proper if the agency has exercised authority in excess of its jurisdiction or acted in some manner that is contrary to its statutory grant of authority. (R.D. Anderson Constr. Co. v. Kansas Dept. of Human Resources, 7 Kan.App.2d 453, 456.)

(d) The only evidence the Medical Advisory Board reviewed and considered was Plaintiff's medical history and physician reports, copies of which are attached and marked Exhibits "B" and "C" which set forth that Plaintiff always has a warning prior to a seizure; Plaintiff is reliable in taking her medication and reporting for her appointments; Plaintiff is physically and mentally capable of driving

safely and a certificate from her physicians certifies there is no known medical reason to deny Plaintiff a driver's license, with full driving privileges; and that Plaintiff is medically capable of operating a vehicle safely upon the public highways of the State of Kansas or other states.

(e) The Medical Advisory Board failed to find that the Plaintiff is likely to be a danger to herself or others, while operating a motor vehicle, as required by Chapter 36, Section 10(e)(7) of the 1991 Session Laws for the State of Kansas.

(f) That the decision of the Medical Advisory Board and the order of the Defendant are contrary to the evidence, and are unreasonable, arbitrary, and capricious.

6. Plaintiff was enrolled in an approved drivers' education course, having paid the required fee of \$55.00, with one week remaining to complete the course when Defendant summarily denied her the right to complete said course and obtain one (1) credit hour toward her high school diploma.

7. Plaintiff, on December 4, 1991 appeared before a hearing examiner for an administrative hearing and was told by the hearing examiner that he had not authority to waive or modify the Department rule the Plaintiff must be seizure free for a year before being issued a driver's license. That hereto attached is a copy of his report which denied Plaintiff a driver's license until a year after her last seizure. That in view of the Department's unauthorized rule (K.A.R. 92-52-11(c) and the arbitrary and unreasonable enforcement thereof the Plaintiff is not required to exhaust her administrative remedies before bringing this suit, because in fact she has no effective administrative remedy.

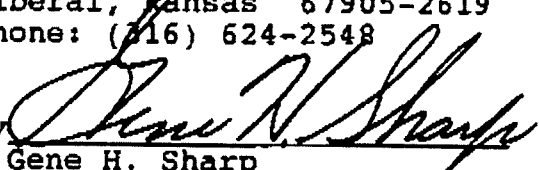
8. That even if Defendant grants Plaintiff a driver's license during the pendency of this review, this court may decide

a moot question arising from a real controversy when the question is of state-wide importance, the question is likely to arise again in the future, and the question will ordinarily be mooted before it can be considered on appeal. (Stone v. Kansas State High School Activities Ass'n., Inc., 13 Kan.App.2d 71, 761 P.2d 1255).

WHEREFORE, Plaintiff prays for judgment against the Defendant, setting aside the order of the Defendant denying Plaintiff's driving privileges; that Plaintiff be granted full driving privileges; for judgment declaring K.A.R. 92-52-11 as invalid and unconstitutional; and, judgment against the Defendant in the sum of \$55.00 and costs of this action.

NEUBAUER, SHARP, McQUEEN,
DREILING & MORAIN, P.A.
P.O. Box 2619
Liberal, Kansas 67905-2619
Phone: (316) 624-2548

By


Gene H. Sharp
Attorney for Plaintiff

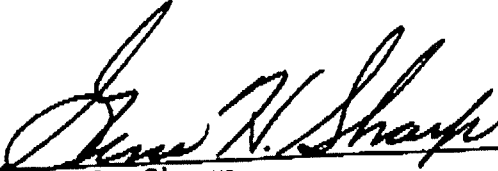
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 6th day of December, 1991, I mailed a copy of the above and foregoing First Amended Petition for Judicial Review by United States mail, postage prepaid and properly addressed to:

Brian Cox
Attorney at Law
Kansas Department of Revenue
Legal Services Bureau
Robert B. Docking State Office Building
915 S.W. Harrison Street
Topeka, KS 66626-0001

and the original to:

Faye Shoemaker
Clerk of the District Court
Seward County Courthouse
415 North Washington
Liberal, KS 67901



Gene H. Sharp

17

- att. 8
744
2-5-2
(14-19)

Neurology Center of Wichita

2620 E. Central
Wichita, KS 67214
(316) 686-6866
FAX (316) 686-9797

Neurology with special
competence in Child Neurology

Richard C. Gilmartin, M.D.
Diplomate American Board of Pediatrics
American Board of Psychiatry and Neurology

Electroencephalography
Electromyography
Evoked Potential

November 26, 1991

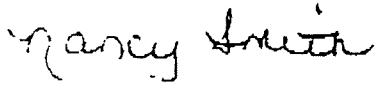
Gene H. Sharp
NEUBAUER, SHARP, McQUEEN, DREILING & MORAIN, P.A.
419 N. Kansas, P.O. Box 2619
Liberal, KS 67905-2619

Re: **Megan Dreiling**
D.O.B.: 4-29-74

Dear Gene:

Megan Dreiling has been under Dr. Gilmartin's care for her epilepsy. She has shown excellent compliance for taking her medication appropriately and on time. Because of this she has good seizure control with Depakote 500 mg b.i.d. Her last seizure was February 12, 1991. Megan is aware of the signs of an approaching seizure and would not be a danger to herself or anyone else. For this reason, I feel Megan is capable of having full driving privileges. Her last EEG done on August 16, 1991, was normal. If you need any further information, please contact our office. Thank you.

Sincerely,



Nancy Smith, R.N.



Richard C. Gilmartin, M.D.

RCC:KS:djh

EXHIBIT B

att-8
174
2-5-2
(5-19)

WESTERN MEDICAL ASSOCIATES, P.A.

1410 N. Western Ave. • P.O. Box 1824 • Liberal, KS 67901

November 20, 1991

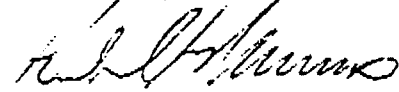
Gene H. Sharp
Neubauer, Sharp, McQueen,
Dreiling & Morain, P.A.
P. O. Box 2619
Liberal, KS 67905-2619

Dear Mr. Sharp:

Megan Dreiling has been a patient of mine for a long time and has concomitantly been under the care of Richard C. Gilmore, M.D., a neurologist in Wichita. She has a seizure disorder which is controlled by Depakote Sprinkle Capsules 500 mg twice a day. Her last seizure was over a year ago and as the others have occurred, it occurred while she was awake and with a long advanced warning. This patient is reliable in taking her medication, having blood level determinations, and in following her physician's orders. There is no known medical reason to deny Megan of her driver's license, for she is medically capable of operating a vehicle safely on public roads. Based upon Megan's warnings of seizure and her general reliability, she will not be of danger to herself or others while operating a motor vehicle.

If I may be of further assistance in this matter, please notify me.

Sincerely,



Richard L. Nevins, M.D.

RLN:pz

FAMILY PRACTICE/WELLNESS

Richard L. Nevins, M.D., F.A.A.P.

INTERNAL MEDICINE/SPORTS MEDICINE

H. C. Palmer, Jr., M.D., F.A.C.S.

PSYCHIATRIC NURSE

Teresa Miller, M.N., R.N.

DIETARY CONSULTATION

ADMINISTRATION

Carol Schwarz

MAIN OFFICE

(316) 624-0255

FAX (316) 624-6815

att. 8
T47
2-52
EXHIBIT - C

Name Megan F. Druker HEARING REPORT

An administrative hearing is called by a representative of the Director, Division of Vehicles of the Kansas Department of Revenue at the request of the named respondent. Appearances are made by:

Respondent
 No Appearance
 Other Attorney Gene Sharp
Sharp

ADMINISTRATIVE ORDER

After hearing statements, considering evidence and/or examining the file, the hearing officer finds:

- p712 The Division's prior Administrative Order is affirmed.
- p713 No administrative action is taken; matter dismissed.
- p714 The respondent's driving privileges are revoked for _____ days.
- p715 The respondent's driving privileges are suspended for _____ days.
- p716 The respondent's driving privileges are restricted for _____ days.
 - p717 To driving to/from and during course of employment.
 - p718 To driving to/from doctor/hospital.
 - p719 To driving to/from school by most direct and accessible route.
 - p720 In accordance with the court ordered restriction.
 - p721 To driving _____

p724 Following the above period of suspension or revocation, respondent's driving privileges will be reinstated unless otherwise suspended, revoked or cancelled. If any restrictions are noted above, the restriction period will begin upon such reinstatement and the stated restrictions will apply during the restriction period.

p726 Respondent's driving privileges are currently suspended or revoked by another prior order of the Department not modified by this order or by the order of a court. Respondent's driving privileges will not be reinstated and any period of restricted driving privileges set out in this order will not begin until all suspensions or revocations have terminated and respondent is otherwise eligible for reinstatement.

p442 _____

SIGNATURE OF HEARING OFFICER:

- p727 Eugene F. Gastl
- p728 Ralph Ball
- p729 Richard T. Ballinger
- p730 Douglas Sell
- p731 Stuart W. Gribble
- p442 Other: (see above sig.)

1. 95-52-11 in question - Sub p(4c)
8-237 Statute in Q

2. How advanced was in 1994
Surgery

3. Was told no more medication
needed - then 7 months later
had a seizure back on medication now

HEARING DATE: 12-4-91 14 17-19
att. 8
T+31
2-5-2
↑
Should be allowed to take P.L. Tablets

8. State the legal theory and factual basis underlying any claim by you that one (1) year is not an appropriate time period in which to determine a patient's compliance with a medication program.

ANSWER:

Kansas law does not require a time period of one (1) year in which to determine a patient's compliance with a medication program. [See Plaintiff's Trial Brief.]

The Kansas legislature is cognizant of the principles set forth in Calabi v. Malloy, 438 F. Supp 1165, at page 1171, stating:

Because of the importance of the right to drive a car in our society, the Supreme Court has squarely held that the due process clause applies to the deprivation of a driver's license by the state; and,

That the right to drive encompasses very important interests to most citizens today is beyond dispute, as is the constitutional requirement that a state provide due process of law before suspending that right. (Emphasis supplied).

Since the right to drive encompasses very important interest to most citizens today, the Kansas legislature only requires that a seizure disorder be controlled by prescribed medication [K.S.A. 8-247(e)(7), as amended; See also Plaintiff's Trial Brief]. Furthermore, the legislature is aware that the effects of seizure disorders vary and that a prohibition from driving for one full year for all seizure disorders is arbitrary, unfair, unjust and discriminatory; otherwise, the legislature would have enacted such a prohibition.

The legislature did, however, provide adequate safeguards by requiring an applicant to submit to additional examinations and by permitting the Division of Vehicles to request an advisory opinion of the medical advisory board. [K.S.A. 8-247 (e)(6)].

As stated above, the effects of seizure disorders vary. The determination as to whether an applicant or driver is medically capable to operate a vehicle safely upon the public highways of this or other states should be made by the treating neurologist or physician who is sufficiently familiar with the driver's license applicant to render such a decision; and, if necessary, the Division of Motor Vehicles may request an advisory opinion of the medical advisory board.

Att. 8
7-71
2-5-2

Adequate warnings or auras should permit a driver with epilepsy to adjust safely before an incapacitating seizure and such a driver should not be prohibited from driving by the enforcement of an arbitrary, unfair, unjust and discriminatory regulation or law. Nor, should a driver, who may sustain only one seizure resulting from an accident, be barred from driving by the enforcement of said arbitrary regulation; however, such is the case as revealed by the hearing examiner at Plaintiff's Administrative Hearing.

In Kansas no such arbitrary and unlawful regulation applies to drivers suffering from cardiovascular or diabetes disorders, or alcoholism or drug usage; and as reported in the Journal of the American Medical Association, February 6, 1991 - Vol. 265, No. 5, women with epilepsy have lower accident rates than men without epilepsy. Should the State of Kansas ban all male drivers from driving? Said article further reveals that drivers suffering from cardiovascular or diabetes disorders, or alcoholism or drug usage have similar accident rates as drivers with epilepsy. Why does the Department of Revenue discriminate against applicants or drivers suffering from seizure disorders only?

The Epilepsy Foundation of America strongly favors individualized determinations [Journal of the American Medical Association, February 6, 1991-Vol. 265, No. 5]. Kansas law is in accord except for the unlawful, arbitrary, unfair, unjust and discriminatory regulation of the Department of Revenue in adopting and enforcing K.A.R. 92-52-11.

Att. 8
1-4-21
2-5-21

SENATE BILL No. 461

By Senator Bogina

12-17

Att. 9
T&U
2-5-92

8 AN ACT relating to records of the division of vehicles; amending
9 K.S.A. 1991 Supp. 74-2012 and repealing the existing section.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 1991 Supp. 74-2012 is hereby amended to read
13 as follows: 74-2012. (a) All records of the division of vehicles relating
14 to the physical or mental condition of any person or to expungement
15 shall be confidential. Records of the division relating to diversion
16 agreements for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908,
17 and amendments thereto, shall be confidential and shall be disclosed
18 by direct computer access only to: (1) A city, county or district
19 attorney, for the purpose of determining a person's eligibility for
20 diversion; (2) a municipal or district court, for the purpose of using
21 the record in connection with any matter before the court; (3) a law
22 enforcement agency, for the purpose of supplying the record to a
23 person authorized to obtain it under (1) or (2); or (4) an employer
24 when a person is required to retain a commercial driver's license
25 due to the nature of such person's employment. *The name and
26 address of any person contained in or derived from records of the
27 division of vehicles shall be confidential and shall be disclosed only*

28 *as provided in subsection (b).* _____ : (1)

29 All other records of the division of vehicles shall be subject to the
30 provisions of the open records act except as otherwise provided by
31 this section.

32 (b) Lists of persons' names and addresses contained in or derived
33 from records of the division of vehicles shall not be sold, given or
34 received for the purposes prohibited by K.S.A. 21-3914, and amend-
35 ments thereto, except that:

36 (1) The director of vehicles may provide to a requesting party,
37 and a requesting party may receive, such a list and accompanying
38 information from public records of the division upon written certi-
39 fication that the requesting party shall use the list solely for the
40 purpose of: (A) Assisting manufacturers of motor vehicles in compiling
41 statistical reports or in notifying owners of vehicles believed to: (i)
42 Have safety-related defects, (ii) fail to comply with emission standards
43 or (iii) have any defect to be remedied at the expense of the man-

_____ ; (2) as otherwise provided by
law; or (3) in accordance with criteria
established by rules and regulations
adopted by the secretary of revenue