

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on February 13, 1995 in Room 423-S of the State Capitol.

All members were present except: Representative Greta Goodwin - excused
Representative "Dee" Donna Yoh - excused

Committee staff present: Norman Furse, Revisor of Statutes
Emalene Correll, Legislative Research Department
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Kent Vincent, Kansas Midwives Association, Topeka
Michelle Ruebke, Kansas Midwives Association
Signe Rogers, Midwives Alliance of North America
Pamela Scott, Kansas Funeral Directors Association, Topeka

Others attending: See Guest List, Attachment 1.

Chairperson Mayans opened the meeting for consideration of introduction of bills.

Kent Vincent, representing the Kansas Midwives Association, introduced Michelle Ruebke and Signe Rogers (association members and Ms. Rogers also represents the Midwives Alliance of North America). Mr. Kent stated the bill being offered is to establish the registration and regulation of direct entry midwives (see Attachment 2). This proposal will provide accountability and standards for midwives. He indicated the issue of midwifery came to the forefront with concerns that it should be regulated since there are no state standards. After consulting with those interested, the consensus was to ask that the committee introduce this bill to clarify the situation and avoid conflict. Essentially it is a registration bill to establish a Midwife Council and establish rules and regulations (such as those of the North American Registry of Midwives).

Representative Mayans asked if there were any questions. Representative Geringer asked what is meant by direct entry midwifery. Mr. Vincent stated that section 2 of the bill defines the term. Representative Wells asked if midwives would be able to test for genetic diseases. Ms. Rogers stated that requirement would be up to the Council if the bill is enacted. Presently, all of the physicians who are serving as back ups to the midwives provide that testing.

Representative Mayans asked if there was a specific problem that concerns the Association. Is this a proposal for a specific group, or is there a group to be excluded? Mr. Vincent replied that midwives practice through the Kansas Midwives Association. This bill would establish registration and set standards for the practice of midwifery. Mr. Vincent said there are some "turf" concerns with respect to the Kansas Medical Society and the State Board of Nursing.

Representative Mayans asked staff if this proposal would be better addressed by credentialing. Emalene Correll outlined the responsibilities of credentialing healthcare groups by the Kansas Department of Health and Environment. The definition is broad and it would be possible to consider midwifery as a part. The process causes the KDHE Secretary to establish a credentialing committee that reviews the application and holds hearings for the group and others who wish to appear on the application. The committee makes recommendations to the Secretary, who in turn forwards the application to the Legislature. The time frame depends on the applicant's ability to quickly provide documentation and meet requirements.

Representative Mayans asked if this proposed bill has been presented to the Legislature prior to this session. Mr. Vincent replied they tried the credentialing process several years ago for only 79 practicing midwives, and apparently they lacked the capability to get through the process. This bill is an attempt to avoid that process. There are ambiguities in the law and presently two midwives are under restraining orders to keep them from practicing. Those involved in nursing and healing arts have concerns that, in their opinion, need to be resolved by the Legislature.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on February 13, 1995

Representative Mayans stated the group has the committee in a difficult place: when there's a court case or administrative hearing, take it to the Legislature and if it's passed, the Legislature would be giving someone a stronger position before the court case is decided.

Representative Landwehr asked how this bill impacts the midwives who have restraining orders. Mr. Vincent stated the issue is: does midwifery violate the nursing practice act or the healing arts act. There are existing ambiguities that the Legislature could clarify.

Representative Haley asked how many Kansas births are by midwives. Ms. Ruebke replied that according to the association, an average of 150-200 births occur each year by members of the organization. Representative Haley asked if those births are recorded with the state. Ms. Ruebke replied that birth certificates are filed--all association members file birth certificates.

Representative Landwehr moved, seconded by Representative O'Connor that the bill, as shown on Attachment 2, be introduced as a committee bill. By voice vote, the motion carried.

Chairperson Mayans stated in his discussion just prior to this meeting with Donna Baba, of Wichita, (representing the Apprentice Academy) that she decided to bring amendments to the bill just considered in case the committee holds a hearing on it. Her written statement on midwifery has been distributed to committee members (see Attachment 3).

Pamela Scott, representing the Kansas Funeral Directors Association, presented a request for the committee to introduce a bill relating to funeral expenses of a deceased person (see Attachment 4). She said in preparing this bill draft that the committee's questions and suggestions discussed in February 7th's meeting were considered. The first section on disposal of a body has been deleted as that is covered in common and case law. The question as to the meaning of "reasonable costs," Ms. Scott said the family makes the decision on the type of burial and there is no way to place a dollar amount on that. "Reasonable costs" falls under the "Prudent Man" principle. She asked for introduction of the bill.

Chairperson Mayans opened the hearing to questions. Representative Gilmore stated many have described this proposed bill as the lawyers dream bill. She questioned the order of succession in determining liability for the funeral. Ms. Scott replied that if there is any money in the decedent's estate, the estate will pay the costs. In cases of indigents, after determining that the remaining family is unable to pay, the SRS Burial Assistance Program (BAP) may be required. It is anticipated that if this bill is enacted, an estimated 50% of the state's appropriation to BAP will be saved.

Emalene Correll questioned the section on liability of the family. Ms. Scott replied that the purpose is to take the obligation off the state.

Representative Haley asked what is the definition of "family" in the bill. Ms. Scott replied there is no definition; that SRS determines eligibility requirements for the BAP and in doing so, considers the assets of remaining family members. He asked if other Association members have been contacted about the bill. Ms. Scott indicated the majority were in support. A few members were not in complete support--their comment being, "will you really be able to collect?"

Representative Landwehr reported a situation she experienced where there was a \$2,000 discrepancy for transportation in the amount quoted her family before a funeral and what was quoted afterwards. She had concerns with "reasonable costs" as it seems too broad. Ms. Scott said that should not have happened as there is a federal funeral rule in place to protect consumers.

Representative Merritt questioned the family's responsibility. Some adult children will assume the responsibility for costs; others will not. Representatives O'Connor and Rutledge expressed concerns about legal liability for family members. Representative Rutledge stated the burial of paupers has been a responsibility of the government for a long time. He said he would oppose introduction of the bill.

Representative Mayans moved, seconded by Representative Yoh, that the committee introduce the bill as shown on Attachment 4. By voice vote, the motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on February 13, 1995

HB 2246 - State board of pharmacy grounds for disciplinary actions, costs of proceedings and appointment of executive director

Chairperson Mayans opened the hearing. Tom Hitchcock testified in support of the bill and offered some amendments (see Attachment 5). He asked that the bill be favorably passed.

Emalene Correll questioned the added language concerning the physical and mental evaluations of licensees whom the Board refers for evaluation because of impairment. Mr. Hitchcock replied that the Board requested the language to add some sort of methodology, similar to that in the statute for the Board of Healing Arts.

Representative Morrison questioned the legal process when complaints are lodged on pharmacists who are employed by a corporation, stating that the corporate structure may shield the impaired pharmacist. Norman Furse stated the language on page 2 does not affect due process in any way. He referred to K.S.A. 65-2836 in the Healing Arts Act, noting the statutory language differences between it and the bill. Mr. Furse asked if the Board would object to placing the missing language of the Healing Arts Act into this bill. Without the language, or something like it, the Board would have legal problems in releasing information. Mr. Hitchcock said he believed the Board would be amenable to that.

The hearing was closed.

HB 2221 - Administration to infants of tests for genetic diseases

Chairperson Mayans asked the committee to consider action on **HB 2221**. After discussion, Representative Freeborn moved that the amendments offered by the Kansas Medical Society at the hearing of February 8, 1995 be adopted (see Attachment 6). Representative Henry seconded the motion. The motion was discussed and Representative Haley questioned if there could be a separation of the language relating to defining the attending physician in that amendment, so that it would read "For purposes of this section, 'attending physician' means a person licensed to practice medicine and surgery in this state (a) who attends the birth of the child or (b) who is selected by a parent of the child to assume primary responsibility for the medical care of the child." There were concerns expressed that the timing of the tests should be included, but it was explained that the law establishes those requirements and this bill only changes the responsibility for testing onto the attending physician. Representative Haley moved by substitute motion to adopt the amendments and the addition of (a) and (b) as he just described. Representative Geringer seconded the motion. Chairperson Mayans called for action on the motions on the floor, and called for a vote. On Representative Haley's substitute motion, by voice vote, the committee adopted the amendments.

Stating that since the present genetic tests are not reliable in many cases, Representative Rutledge moved that **HB 2221** be adversely reported. Representative Yoh seconded the motion. On voice vote, the motion failed.

Representative O'Connor moved, and Representative Merritt seconded, that the committee pass **HB 2221** favorably, as amended. By voice vote, the motion was adopted.

Representative Morrison announced that the Subcommittee Meeting on **HB 2004** (chiropractors authorized to perform health assessments of school pupils) scheduled for 8:00 a.m., February 14, has been cancelled.

The meeting was adjourned at 3:02 p.m.

The next meeting is scheduled for February 14, 1995.

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE
GUEST LIST
FEBRUARY 13, 1995

NAME	REPRESENTING
Pam Scott	Ks. Funeral Directors Assn
Bob Williams	Ks. Pharmacists Assoc
KENT VINCENT	Ks. Midwives Assn.
Ben Rogers	Visiting Boy Scout
Signe Rogers	Ks. Midwives Assn. ^{Midwives Alliance} of North America
Michelle Ruebke	Ks. Midwives Association
Joe Furjanic	KCA
KEITH E. LANDIS	CHRISTIAN SCIENCE Comm ON PUBLICATION FOR KS
Tom Hitchcock	Bd. of Pharmacy
ETHEL WILKINSON	AMS
Dona Baba	Apprentice Academics
Stacey Empson	Hain, Ebert & Weir, Chld.
Tom Bruno	Allen & Assoc.
PHILIP HURLEY	PATRICK J. HURLEY & CO.

Proposed Midwifery Registration Legislation
February 7, 1995

An act establishing the *Registration of Direct Entry Midwives* and the regulation thereof.

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

Section 1. Legislative intent:

The Legislature finds that access to prenatal care and birthing services is limited, particularly in rural areas, by an inadequate number of providers of such services. Kansans should have the freedom to choose the manner, cost and setting for giving birth. It further finds that the profession of Direct Entry Midwifery helps to increase availability of prudent maternity care, and that Childbirth is a normal physiological event in a vast majority of cases; it is not an illness or disease. The Legislature sets forth a midwifery council to provide accountability for Direct Entry Midwives and for the purpose of protecting the health and welfare of mothers and infants. This act shall not be used for the sole purpose of limiting access to Direct Entry Midwifery.

Section 2.

As used in the bill "*Direct Entry Midwife*" is not an Advanced Registered Nurse Practitioner, Certified Nurse Midwife. "Direct Entry Midwife" means an individual who attends to a woman and baby throughout prenatal, intrapartum and postpartum periods of the natural process of pregnancy, provides newborn care, well woman care, and meets the requirements as defined by the Kansas Midwifery Council guidelines for Direct Entry Midwives.

Section 3.

There is hereby established the Kansas Midwifery Council under the Kansas Dept. of Health & Environment, to oversee the registration of Direct Entry Midwives. The council shall adopt rules and regulations to administer the provisions of this act. The Dept. of Health & Environment shall be responsible for the enforcement of the rules & regulations adopted by the midwifery council.

- (a) The Governor shall appoint a council consisting of five members.,
- (i) A majority of the council shall be individuals who have significant experience as a lay midwife, or midwives who have been registered pursuant to this act.
 - (ii) One member shall represent the medical community and shall be a physician Registered pursuant to K.S.A. 65-2801 *et seq.* and its amendments, who is familiar with the profession of Direct Entry Midwifery. In making such an appointment, the governor shall give preference to a physician who also has experience in providing health care service to women in a home or other non-medical setting.
 - (iii) One member shall represent the public and shall not be a member of either of the previous communities. In making such an appointment, the governor shall give preference to a parent who has had personal experience with childbirth through Direct Entry Midwifery.
- (b) Members appointed under subsection (3a) shall serve a term of three years and not more than two consecutive terms, except that, of the first members appointed, one shall be for a term of one year, two shall be appointed for a term of two years, and two shall be appointed for a term of three years.

(c) The Kansas Midwifery Council shall serve without pay. Members shall be entitled to reimbursement for travel expenses and per diem.

(d) A yearly renewal fee of not more than \$50.00, shall be collected from each midwife governed by this act to apply toward the expenses of the Kansas Midwifery Council.

Section 4

The Kansas Midwifery Council shall establish rules and regulations for the registration of Direct Entry Midwives. The regulations adopted by the council shall establish such education, training and other qualifications for the registration of Direct Entry Midwives as may be necessary to protect the public health and safety.

Section 5

No person shall use the term *Direct Entry Midwife* except those registered under the provisions of this act.

Section 6

No person subject to any other act relating to healthcare may be restrained from practicing in compliance with this act.

Section 7

Any midwife practicing in accordance with the provisions of this act and rules and regulations adopted under this act shall be exempt from the provisions of the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.* and amendments thereto, and exempt from the Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq.*

Section 8

The State Board of Healing Arts shall not initiate any disciplinary action against a physician Licensed under K.S.A. 65-2801 *et seq.*, and amendments thereto, because arrangements were made with a Direct Entry Midwife for prospective provisions of emergency services or for otherwise cooperating with a Direct Entry Midwife when both the Direct Entry Midwife and the physician are acting within the scope of their respective practices.

Section 9

The State Board of Nursing shall not initiate any disciplinary action against a nurse Licensed under K.S.A. 65-1113 *et seq.*, because arrangements were made with a Direct Entry Midwife for prospective provisions of emergency services or for otherwise cooperating with a Direct Entry Midwife when both the midwife and the nurse are acting within the scope of their respective practices, or for a nurse acting as a Direct Entry Midwife under the provisions of this Act.

Section 10

A health care provider who renders emergency care or assistance in good faith to a person in the care of a Direct Entry Midwife shall be liable for civil damages resulting from acts or omissions in providing emergency care only to the extent that damages are caused by negligence or willful or wanton acts of health care provider.

Section 11

The Legislature of the state of Kansas finds it reasonable to maintain midwifery services in the state. Therefore prior to the establishment of rules & regulations by the council it shall be presumed that any midwife who practices using the present Kansas Midwives' Association guidelines or by meeting the certification standards of the nationally accepted North American Registry of Midwives (NARM), is practicing lawfully absent evidence of actual or imminent harm to the public.

Section 12

This act shall take effect and be in force on April 1, 1995.

Mr. chairman & members of the committee, I want to thank you for giving me the opportunity to address you today. I would like to introduce a bill dealing with midwifery and home birth in Knasas.

I am here representing Apprentice Academics Midwifery Home study course as the Kansas state coordinator. I would like to ask for your support for this bill which was introduced last session to establish some basic regulations for midwives including a registry board, information gathering through registration and accountability for midwifery.

This bill would set up some basic criteria by which midwives could practice and prepare for their education including public acessibility to midwives records and training.

The midwifery Home study course is being reviewed by several other groups including the Kānsas Medical Society as a result of last sessions meetings.

Thank you for your time.
Sincerely,

Dona M. Baba

AN ACT Relating to funeral expenses of a deceased person.

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

Section 1. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(1) The agent for health care decisions established by a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, et seq., and amendments thereto, if such power of attorney conveys to the agent the authority to make decisions concerning disposition of the body upon death.

(2) The surviving spouse.

(3) The surviving adult children of the decedent.

(4) The surviving parents of the decedent.

The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

Section 2. The term "funeral" shall mean the mortuary services needed for the proper preparation, preservation, and care of the remains of a deceased person with needed facilities and appropriate memorial services. "Transportation" shall mean transport of a body from place of death to mortuary and transportation to place of disposition, within the service area. "Disposition" includes necessary costs of a burial and cemetery plot or cremation and disposition site, and all services related to interment and the minimal memorial marking of a grave.

Kansas State Board of Pharmacy

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BILL GRAVES
GOVERNOR

HOUSE BILL 2246 COMMITTEE ON HEALTH AND HUMAN SERVICES MONDAY, FEBRUARY 13, 1995

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS TOM HITCHCOCK AND I SERVE AS THE EXECUTIVE SECRETARY TO THE BOARD OF PHARMACY. I APPEAR BEFORE YOU TODAY ON BEHALF OF THE BOARD IN SUPPORT OF HB 2246.

THE FIRST REQUESTED CHANGE CAN BE FOUND ON PAGE 2, LINE 11 THROUGH 17. PARAGRAPH (14) IS VERY SIMILAR TO THAT WHICH IS CONTAINED IN K.S.A. 65-2836, SUBSECTION (i), OF THE HEALING ARTS ACT. THE BOARD ATTORNEY BELIEVES WE NEED A LIKE SECTION IN THE PHARMACY ACT. MOST OF THE TIME A PROBLEM WITH A LICENSEE CAN BE RESOLVED BY REFERRAL TO THE IMPAIRED PHARMACIST PROGRAM (CIPP COMMITTEE) FOR EVALUATION. WE OCCASIONALLY HAVE A LICENSEE THAT WILL NOT ACCEPT THE BOARD'S REFERRAL WHICH NECESSITATES ADDITIONAL ACTION BY THE BOARD.

THE SECOND CHANGE ON PAGE 3, LINE 24 THROUGH 26 WOULD SPECIFICALLY ALLOW THE BOARD TO CONSIDER AN INDIVIDUAL'S NONPAYMENT OF ADMINISTRATIVE HEARING EXPENSES DURING THE PROCESS TO REINSTATE A FORMER LICENSE. THIS HAS HAPPENED TO THE BOARD WITH CONTINUATION OF HEARINGS OF AN INDIVIDUAL THAT REFUSES TO PAY FORMER HEARING COSTS. EVEN FOLLOWING THE CORRECT PROCEDURES IN FILING A CLAIM WITH THE KANSAS SET OFF PROGRAM AGAINST SUCH PERSON, THE BOARD DOES NOT ALWAYS SUCCEED IN THEIR COLLECTION.

THE THIRD REQUEST ON LINE 28 OF PAGE 3, MERELY CHANGES THE MONTH OF MAY TO JUNE. THIS IS REQUESTED BECAUSE THE BOARD DOES NOT MEET IN THE

HOUSE H&HS COMMITTEE
2-13-1995
Attachment 5-1

MONTH OF MAY.

THE REMAINDER OF CHANGES ON PAGE 3, LINES 30, 32, AND 40 THROUGH LINE 2 OF PAGE 4, WE WOULD RESPECTFULLY REQUEST BE AMENDED OUT OF THE BILL. IT WAS THOUGHT THAT THESE CHANGES COULD EASILY BE MADE WHILE K.S.A. 74-1606 WAS IN THE BILL. WE HAVE SINCE FOUND OUT, FOLLOWING COMMUNICATION WITH MR. NORMAN FURSE, THAT IT WOULD REQUIRE THE AMENDMENT OF 16 ADDITIONAL STATUTES TO THIS BILL TO CHANGE THE TERM OF SECRETARY TO DIRECTOR EVERYWHERE MENTIONED IN THE PHARMACY ACT. THIS IS FELT TO BE AN UNDUE IMPOSITION ON THIS COMMITTEE AND IS MORE THAN WE CARE TO UNDERTAKE.

WE REQUEST THE AMENDMENT OF THIS BILL AS DESCRIBED ABOVE AND WOULD RESPECTFULLY REQUEST THE FAVORABLE PASSAGE OUT OF COMMITTEE OF HB 2246 AS AMENDED.