

Approved: 3-10-95  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 21, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Mark W. Stafford, General Counsel, Kansas Board of Healing Arts  
Chip Wheelen, Kansas Medical Society and Radiological Society  
Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts  
Richard Morrissey, Bureau of Local and Rural Health Systems, KDHE

Others attending: See attached list

Minutes of February 13, 14, 15, 16 and 17, 1995 were distributed to the Committee for review.

**Hearing on: SB 264 - Disciplinary proceedings under Kansas healing arts act**

Mark Stafford, KBHA, testified in support of **SB 264** and briefed the Committee on seven sections of the bill as outlined in his written testimony. (Attachment 1)

Chip Wheelen, KMS, addressed the Committee and noted that because of the numerous changes and unintended consequences of some of the features in **SB 264** the KMS would take a neutral position. Mr. Wheelen did express concern with new language in Sec. 3, subsection (b) that defined "Unprofessional conduct" noting that such language would create a vague definition of unprofessional conduct and suggested such language be stricken. He also suggested the Committee may want to rely on expert opinion on specific definitions of unprofessional conduct taken from the AMA Code of Medical Ethics. (Attachment 2)

Because of the numerous questions and concerns that were raised by members and staff during Committee discussion regarding the expansion of authority and procedures by the Board of Healing Arts, the Chair suggested further study and discussion was needed on **SB 264** possibly during the interim.

**Hearing on: SB 265 - Healing arts act penalties and visiting practitioner authorization**

Larry Buening, KBHA, appeared before the Committee in support of **SB 265** and noted that the bill would address and clarify situations and issues of individuals who perform services relating to the practice of the healing arts on individuals physically located in the state of Kansas such as in telemedicine. (Attachment 3)

During Committee discussion it was pointed out that if this bill was too restrictive and require the responsible physician be present during the use of telemedicine and interactive video, such requirement could block the opportunity for Kansans to have access to medical opportunities outside the state. It was also noted that such restrictions could present a problem during an emergency situation.

Chip Wheelen, representing the Kansas Radiological Society, expressed his support for **SB 265** as noted in his written testimony. (Attachment 4)

**Hearing on: SB 271 - Creating under healing arts act inactive license, federally active license, post graduate permit and limited permit**

Larry Buening, KBHA, testified in support of **SB 271** and briefed the Committee on changes in the bill as outlined in his written testimony. (Attachment 5)

Richard Morrissey, KDHE, noted that **SB 271** would address the current problem of federally active licensees being unable to volunteer as Charitable Health Care Providers and also called attention to several issues and concerns with the bill as noted in his written testimony. (Attachment 6)

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 22, 1995.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
GUEST LIST

DATE: 2-21-95

NAME	REPRESENTING
John Federico	Pete Mcbill + Assoc
Chip Wheelen	Ks Medical Society
Rich Guthrie	Health Midwest
Larry Gunning	Soc of Working Arts
Richard Morrissey	NDHE
John Grace	K A H S A
BOB HAYES	HCSE
Rita Non	HCSE
Sandy Strand	KINH
Bob Wunsch	KUMC
Mike Meacham	NCA - KS
Russell P.	KSOS
Steve A. Kunt	KSNA
Nathalie Scharf	KHA
→ HELBY → Smith	KPMA
KEITH R LANDIS	CHRISTIAN SCIENCE Comm ON PUBLICATION FOR KS
Roger Franke	Ks Post Consulting
Patricia Mahen	EDHE
Tom Bruno	Allen Assoc -





# KANSAS BOARD OF HEALING ARTS

BILL GRAVES  
Governor

LAWRENCE T. BUENING, JR.  
Executive Director



235 S. Topeka Blvd.  
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(913) 296-7413  
FAX # (913) 296-0852

## MEMORANDUM

**To:** Senate Committee on Public Health and Welfare

**From:** Mark W. Stafford  
General Counsel

**Date:** February 21, 1995

**Re:** 1995 Senate Bill No. 264

On behalf of the State Board of Healing Arts, thank you for the opportunity to appear in support of Senate Bill No. 264. This proposed legislation was requested by the Board of Healing Arts in response to *Corder v. Kansas Bd. of Healing Arts*, \_\_\_ Kan. \_\_\_, 883 P.2d 1152 (1994). Additionally, several clean up measures are included in the bill.

Section One would assist the Board in carrying out administrative orders by requiring that a license certificate be returned by the individual following surrender, suspension or revocation of a license. By returning the certificate to the Board, the individual is not able to publicly display the certificate in such a manner as to represent licensure.

Section Two would amend K.S.A. 65-2836 in three respects. That section provides procedure and grounds for disciplinary action against a license. Initially, the amendment would address the ruling in *Corder v. Kansas Bd. of Healing Arts*, a 1994 decision. In that case, the Kansas Supreme Court interpreted subsection (i) of the statute to preclude an order for mental or physical examination until an administrative petition is on file. The Board believes the interpretation is not consistent with the intent of the legislature. Mental or physical examinations or drug screens are an important part of the investigative process. Though not often

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Senate Public Health & Welfare  
Date: 2-21-95  
Attachment No. 1

**Testimony of State Board of Healing Arts,  
Page 2**

utilized, such examinations help determine if grounds for discipline exist. The amendment would delete the current language in subsection (i), replace the provision with similar language in new section 7, and add procedural protection for the licensees.

Secondly, the amendment would resolve some of the procedural issues faced by the Board. All Board actions are required by K.S.A. 65-2851a to be conducted under the Kansas administrative procedure act. This provision is overly broad as not all of the Board's decisions are quasi-judicial in nature. By repealing K.S.A. 65-2851a and adding the language of that section to K.S.A. 65-2836, the Board is relieved of the obligation to use the hearing procedures when such are not appropriate.

Thirdly, the amendments to K.S.A. 65-2836 would update language and remove duplications with other sections. These amendments should be read in light of those in Section Three of the bill which amends K.S.A. 1994 Supp. 65-2837.

As stated, Section Three would amend K.S.A. 1994 Supp. 65-2837 which defines some of the terms used as a basis for disciplinary action. The definitions are codification of common law, and would clarify that unspecified behavior may be considered unprofessional or dishonorable. Expert opinion would be necessary to prove whether specific behavior was unprofessional or dishonorable. Additional minor changes to the statute update the language as in Section Two.

Section Four of the Bill would amend K.S.A. 65-2838 to clarify and strengthen the jurisdiction of the Board in light of *Patel v. Board of Healing Arts*, Case no. 94-CV-488 (Sh. Co. D.Ct.). As long as an individual has any property or liberty interest in the license, even though the licensee may not be able to practice, the statute should clearly articulate that the Board continues to have authority over that license. The six month period refers to the time within which an expired or cancelled license may be reinstated without subjecting the practitioner to a criminal penalty.

Section Five would amend the language regarding the Board's subpoena power to include a provision for issuing protective orders. Additionally, it would be made clear that persons who are not regulated by the Board but who nonetheless are subject to a subpoena are entitled to witness and mileage fees as in other civil actions.

**Testimony of State Board of Healing Arts,  
Page 3**

The amendments to Section Six update the language in K.S.A. 65-2840a which relates to the Board's Disciplinary Counsel. Some of the language is clean-up, as in clarifying that Disciplinary Counsel may prosecute a case after it is investigated. Other changes coincide with the amendments discussed in Section Five relating to subpoenas. The existing language is outdated, as the Board has subpoena power and need not resort to the courts for a subpoena order.

Finally, Section Seven would establish the procedure for ordering a mental or physical examination or drug screen. The protection for the licensee are consistent with the *Corder* decision. While providing more procedural protection than required by *Corder*, the amendment would clarify that such examinations may be part of the investigation, and not merely part of a formal hearing.

Once again, thank you for allowing me to appear on the Board's behalf and in support of Senate Bill 264. I am happy to respond to any questions.

or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

3 ~~(x)~~ (u) The licensee has failed, *at or before the next license renewal*  
4 *period*, to report to the board any adverse judgment, settlement or award  
5 against the licensee resulting from a medical malpractice liability claim  
6 related to acts or conduct similar to acts or conduct which would consti-  
7 tute grounds for disciplinary action under this section, *including the fail-*  
8 *ure to adhere to the applicable standard of care to a degree which con-*  
9 *stitutes ordinary negligence.*

10 (y) (v) The licensee has failed to maintain a policy of professional  
11 liability insurance as required by K.S.A. 40-3402 or 40-3403a and amend-  
12 ments thereto.

13 ~~(z)~~ (w) The licensee has failed to pay the annual premium surcharge  
14 as required by K.S.A. 40-3404 and amendments thereto.

15 ~~(aa)~~ The licensee has knowingly submitted any misleading, deceptive,  
16 untrue or fraudulent representation on a claim form, bill or statement.

17 ~~(bb)~~ The licensee as the responsible physician for a physician's assist-  
18 ant has failed to adequately direct and supervise the physician's assistant  
19 in accordance with K.S.A. 65-2896 to 65-2897a, inclusive, and amend-  
20 ments thereto, or rules and regulations adopted under such statutes.

21 Sec. 3. K.S.A. 1994 Supp. 65-2837 is hereby amended to read as  
22 follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto,  
23 and in this section:

24 (a) "Professional incompetency" means:

25 (1) One or more instances involving failure to adhere to the appli-  
26 cable standard of care to a degree which constitutes gross negligence, as  
27 determined by the board.

28 (2) Repeated instances involving failure to adhere to the applicable  
29 standard of care to a degree which constitutes ordinary negligence, as  
30 determined by the board.

31 (3) A pattern of practice or other behavior which demonstrates a  
32 manifest incapacity or incompetence to practice medicine.

33 (b) "Unprofessional conduct" means ~~any act inconsistent with stan-~~ *deceit*  
34 ~~dards of ethical practice of a branch of the healing arts established by~~  
35 ~~expert opinion of the profession as reasonably necessary to protect the~~  
36 ~~public interest. In addition, the following constitute unprofessional con-~~  
37 ~~duct:~~

38 (1) Solicitation of professional patronage through the use of fraudu-  
39 lent or false advertisements, or ~~profiting by the authorizing or acquiescing~~  
40 ~~in similar acts of those representing themselves to be agents of the li-~~  
41 ~~censee.~~

42 (2) Representing to a patient that a manifestly incurable disease, con-  
43 dition or injury can be permanently cured.



## KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612  
(913) 235-2383 FAX # (913) 235-5114

Chip Wheelen  
Director of Public Affairs

Senate Public Health & Welfare  
Date: 2-21-95  
Attachment No. 2

# KANSAS BOARD OF HEALING ARTS

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Executive Director



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

**TO:** Senate Committee on Public Health and Welfare

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

**DATE:** February 21, 1995

**RE:** SENATE BILL NO. 265

Thank you for the opportunity to appear before you today and provide testimony in support of Senate Bill No. 265 which is one of the three bills the Board requested to be introduced for consideration during this legislative session.

The Board has requested Senate Bill No. 265 in response to concerns raised by the Joint Committee on Rules and Regulations when it reviewed K.A.R. 100-26-1 which became effective June 20, 1994. A copy of that regulation is attached as is a copy of the comments made by the Joint Committee following its review of that regulation. Also attached is a copy of K.S.A. 65-2802.

The primary purpose of Senate Bill No. 265 is to address the issues of individuals who perform services constituting the practice of the healing arts on individuals physically located in the State of Kansas. This situation can occur in a number of different circumstances, primarily relating to what is commonly referred to as telemedicine. One such example is noted in a letter which has been attached from Eugene H. Kaplan, M.D. in which he inquired about his ability to provide psychotherapy and psychoanalysis by videophone. Telemedicine is a two-way audio and video communications network that gives Kansas hospitals and physicians world-wide access to medical and technological resources via telephone lines or satellite hookups. Telemedicine is an extremely valuable medical tool which, when used appropriately, allows

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Senate Public Health & Welfare  
Date: 2-21-95  
Attachment No. 3



hospitals and physicians to gain access to valuable medical services primarily available only at tertiary care centers. Cameras and monitors at each site allow for emergency medical assistance, medical consultation, resident programs, continuing education and other services. Using PCs, computers equipped with digitizing boards, high resolution monitors and data links over standard telephone lines, a telemedicine system enables a physician to interactively exam a patient at a distance. While it may not yet be available, technology is advancing to the point where a physician located outside this state can not only see, but also actually interactively treat a patient in this state.

It is the desire of the State Board of Healing Arts not to in any way restrict the utilization of telemedicine in the diagnosis and treatment of Kansas patients. Rather, the purpose of Senate Bill No. 265 is to clarify the situations in which it can be used in order to adequately maintain the quality of the services being provided. New Section 3 of Senate Bill No. 265 clearly allows services by visiting practitioners whether they are physically in this state or providing adjunct services from Rochester, Minnesota, Boston, Massachusetts, or London, England. However, it does require that a Kansas-licensed physician remain actively engaged in the professional services being provided to that patient and for the supervision of the adjunct services provided by the visiting practitioner. In other words, an individual whose credentials and qualifications to practice the healing arts in this State have been scrutinized remains the "Captain of the Ship".

In conclusion, telemedicine and interactive telemedicine are the wave of the future and should be encouraged in the State of Kansas so that Kansas citizens and residents receive the highest quality of care available anywhere in the world. However, to ensure that quality is maintained, the Board urges your adoption of Senate Bill No. 265.

Again, thank you for the opportunity to appear before you. I would be happy to respond to any questions.

bj  
Attachments



THE UNIVERSITY OF SOUTH CAROLINA

Department of Neuropsychiatry and  
Behavioral Science  
School of Medicine

Clinical Education Building  
3555 Harden Street Extension  
Columbia, SC 29208  
803-434-4250

July 7, 1993

Kansas State Board of Healing Arts  
235 SW Topeka Blvd.  
Topeka, KS 66603

Dear Executive Director:

I would appreciate your bringing this request for clarification and guidance to the attention of the Board.

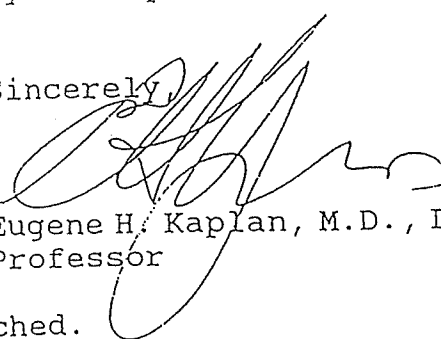
I am a Professor in the Department of Neuropsychiatry and Behavioral Science of the University of South Carolina School of Medicine.

My area of specialty is psychoanalysis and psychotherapy.

Recently, I have had inquiries from out-of-state residents seeking psychotherapy and psychoanalysis by videophone.<sup>1</sup>

I am not licensed to practice medicine in any state but South Carolina. Would I be considered as practicing in your state if I undertook such a treatment from my videophone in South Carolina with a resident of your state?

Sincerely,



Eugene H. Kaplan, M.D., L.F.A.P.A.  
Professor

1: AT&T descriptive brochure attached.

EHK/cp: Execdir. EHK

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JUL 15 1993

KANSAS STATE BOARD OF  
HEALING ARTS

# VideoPhone

## 2500



Telephone calls bring you closer, but not face to face. Now, for the first time, there's a telephone that can — each time you call.

The AT&T VideoPhone is the world's first personal video telephone that lets you hear and see — in color, in motion — the people you call over ordinary telephone lines.

It's simple to install and use, right out of the box. Just plug it in, make a phone call and press the Video button to bring distant callers face to face — closer than you ever thought possible.

Privacy is guaranteed — you're seen only when you want to be seen. The AT&T VideoPhone protects your privacy in three ways:

- No one can see you until you press the Video button.
- You can close the camera shutter at any time to physically block the camera lens
- For complete privacy, press the Hold button to block both sight and sound

The cost of each VideoPhone call is exactly the same as an ordinary telephone call. But the difference has to be seen to be believed.

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KANSAS STATE BOARD OF HEALING ARTS

000261

# VideoPhone

2500

## VideoPhone Features

- Full color, motion video
- VideoPhone calls cost the same as regular telephone calls
- Installs in seconds; plugs into standard electrical outlet and modular telephone jack
- Bright 3.3-inch (diagonal) color LCD video screen
- Screen messages and prompts remind you when to press a button
- Compact, portable design
- Fixed-focus camera lens with 1 to 9 foot focal range
- Self-view mode to check your own appearance
- Camera view indicators help maintain your position within camera range
- Tilt/swivel camera console
- Normal telephone mode for ordinary calls
- One-way video mode lets you see without being seen
- Two-way video mode lets both VideoPhone users see each other
- Multi-level focus control
- Multi-level screen brightness control

## Privacy Features

- No video image is transmitted until the Video button is pressed
- Manual shutter physically blocks camera lens when closed
- Hold button suspends both sound and video images
- Mute button silences handset and speakerphone

## Telephone Features

- Improved, noise-suppressing speakerphone design for hands-free and group conversations
- Multi-level handset and speaker volume control
- Hold and Mute buttons for audio privacy
- Flash button for Call Waiting and other services
- Ringer on/off volume control
- Works with tone or pulse telephone service
- Hearing-aid compatible
- Battery backup saves memory and video settings during electrical power loss

## Memory Features

- 12-number memory for one-touch dialing
- Displays numbers stored in memory
- Programmable two-second or 30-second dialing delay
- Redial memory dials last number called



100-26-1

What does this rule and regulation do that existing law does not regulate? What is the intent of the Board in the adoption of this regulation? (Statutes cited by the Board do not authorize nor does the regulation implement a policy set out in the statutes cited.)

If the Board wishes greater, perhaps more specific, authority to define and regulate the healing arts, the Board should suggest draft legislation it feels necessary.

In any case, give consideration to the repeal of 100-26-1.

Board of Accountancy

Permits to practice; positive enforcement program

Reviewed without comment.

Board of Cosmetology

Licensing and qualifications of cosmetologists.

Reviewed without comment.

Insurance Commissioner

General; fire and casualty (rating organization filing of rates).

Reviewed without comment.

Kansas Racing Commission

Rules for racing; Kansas Horse Breeding Development fund.

Reviewed without comment.

Following discussion of Committee concerns, the Chairperson announced the next meeting dates will be July 18-19. The meeting was adjourned at 4:25 p.m.

Prepared by William G. Wolff

Approved by Committee on:

July 18, 1994  
(Date)



Article 26.—SERVICES RENDERED TO  
INDIVIDUALS LOCATED IN THIS STATE

**100-26-1.** Services rendered to individuals located in this state. Except as authorized by K.S.A. 65-2872 and amendments thereto, each person, regardless of location, who performs an act included in subsection (a) of K.S.A. 65-2802 and amendments thereto or who issues an order for services which constitute the practice of the healing arts on an individual located in this state shall be deemed to be engaged in the practice of the healing arts in this state and shall be required to have a license, issued by the board, to practice the appropriate branch of the healing arts. (Authorized by and implementing K.S.A. 65-2802, 65-2803, 65-2867 and 65-2869; effective June 20, 1994.)

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

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

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

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

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

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

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

Cross References to Related Sections:

Other definitions, see 65-2837; 65-2868 to 65-2872; 65-2874 to 65-2876.

Law Review and Bar Journal References:

"The Physician-Patient Privilege Under the New Code," Steven P. Flood, 33 J.B.A.K. 100, 102 (1964).

"The Psychotherapists' Privilege," Craig Kennedy, 12 W.L.J. 297, 307 (1973).

"Should You Take A Chiropractor To Court?", Steven M. Dickson, J.K.T.L.A., Vol. XIII, No. 3, 19, 20 (1990).

Attorney General's Opinions:

Persons deemed engaged in the practice of healing arts. 85-92.

Doctors of chiropractic cannot use the term "chiropractic physician." 87-42.

Master level psychologists; supervision; limitations on practice. 87-184.

Persons deemed engaged in practice of chiropractic. 89-91.

Insurance coverage for services rendered in treatment of alcoholism, drug abuse or nervous or mental conditions. 90-130.

CASE ANNOTATIONS

1. Cited in discussing but not determining whether a chiropractor is a physician or surgeon within meaning of

44-510. *Grantham v. Coleman Co.*, 190 K. 468, 470, 375 P.2d 629. Paragraph deleted from opinion in opinion denying rehearing. 190 K. 634, 376 P.2d 908.

2. Cited in upholding revocation of license by board pursuant to 65-2848. *Kansas State Board of Healing Arts v. Foote*, 200 K. 447, 452, 436 P.2d 828.

3. Cited; ambulance services as professional services and exempt from bidding requirements in home rule statute (19-214) examined. *Curtis Ambulance v. Shawnee Cty. Bd. of Cty. Com'rs*, 811 F.2d 1371, 1380 (1987).

**Testimony to  
The Senate Public Health and Welfare Committee  
February 21, 1995**

Regarding 1995 Senate Bill 265

By *Chip* C. Wheelen on Behalf of  
The Kansas Radiological Society

Thank you for the opportunity to express our enthusiastic support for the provisions of SB265. This bill would improve the accountability of physicians to Kansas patients.

As you may know, for many years there has been an exception under the Healing Arts Act for out of state physicians who occasionally provide medical care to Kansas patients but do not maintain a regular practice here in Kansas. In addition, there has been an exception for out of state physicians who indirectly provide patient services on referral from a Kansas physician. This was apparently a matter of convenience in the past.

Because of modern day technology, what were in the past matters of convenience are now gaping loopholes in the Healing Arts Act. As a result of advancements in telecommunications, it is now possible to transmit extremely accurate images across great distances. This could be an x-ray or other radiological image or could be the patient on camera. This allows an out of state physician to render direct patient care without obtaining a Kansas license and remain immune from any regulatory activity by the Board of Healing Arts. We believe this constitutes the unlicensed practice of medicine and surgery and thereby exposes such patients to unacceptable potential harm.

→ Senate Bill 265 would not prohibit out of state physicians from rendering medical care to a Kansas patient nor would it give Kansas physicians a competitive advantage over out of state physicians. It would simply require out of state physicians who wish to provide services to Kansans to obtain a license to practice in this State. If the physician is licensed in another state and has not had any kind of reportable incident such as loss of hospital medical staff privileges or suspension of his or her license, the Board of Healing Arts will likely issue a Kansas license by endorsement. In other words, there is no test or other extraordinary requirement; the physician simply applies and pays the appropriate fee. Having obtained a Kansas license, the physician becomes accountable to our Board of Healing Arts and the patient has an opportunity for redress in the event of substandard care.

We believe this is an important improvement in the law. We urge you to recommend SB265 for passage.

Senate Public Health and Welfare  
Date: 2-21-95  
Attachment No. 4

# KANSAS BOARD OF HEALING ARTS

BILL GRAVES  
Governor

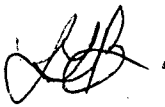
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Executive Director



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

**TO:** Senate Committee on Public Health and Welfare

**FROM:** Lawrence T. Buening, Jr.   
Executive Director

**DATE:** February 21, 1995

**RE:** SENATE BILL NO. 271

Thank you for the opportunity to appear before you on behalf of Senate Bill No. 271. This bill makes some comprehensive changes to the manner in which the Board licenses individuals under the Healing Arts Act.

Section 1 amends K.S.A. 65-2809. The amendments to subsection (b) delete existing language adopted in 1976 regarding the establishment of continuing education requirements and provide that such requirements be established by rules and regulations adopted by the Board as a whole. Subsection (d) is amended to require the renewal form be mailed to the last mailing address rather than place of residence and would enable the Board to cancel the license 30 days following date of expiration without having to follow any hearing process under the Kansas Administrative Procedure Act. Subsection (e) would enable the Board to establish certain additional testing or training for an individual who wishes to reinstate but has not been in practice the last 2 years. Subsection (f) likewise enables the Board to establish certain additional testing or training for an individual who has an exempt license for more than 2 years and has not been actively practicing. Subsection (g) creates the category of inactive license which has been recognized by the Board since 1978 and discussed in Attorney General Opinion No. 78-249.

New subsection (h) along with new section 5 addresses an issue which has arisen because of differences between federal and state laws. The purpose of these changes is to enable federal employees

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Senate Public Health and Welfare  
Date: 2-21-95  
Attachment No. 5

to provide gratuitous services at indigent health clinics. Under current federal directives and rules and regulations, persons in military service or federal employment must maintain an active state license meeting the most rigorous of the licensing requirements imposed by the state on licensees actively practicing in that state. As a result and as discussed in Attorney General Opinion No. 94-91, persons holding an exempt license do not meet the federal licensure requirements. This issue has arisen because of the desire of individuals in military or federal service to provide gratuitous services outside of their federal employment. Currently, an individual who holds only a Kansas license must maintain it on an active status and, therefore, may not place it on an exempt status and must, if engaged in any charitable services outside of federal employment, maintain professional liability insurance in compliance with state law. Subsection (h) addresses this issue and would enable individuals holding a federally active license to provide services as a charitable health care provider. New section 5 address the issue of those individuals who are licensed in another state but not Kansas. This section would allow these persons to obtain a limited permit in Kansas for the specific purpose of providing services as a charitable health care provider. Subsection (h) and new section 5 would clear the way for individuals to provide services at indigent health clinics and provide these clinics with greater access to physician services. It should be noted, however, that these changes only accomplish one step. For these persons to provide services without obtaining insurance, amendments to K.S.A. 75-6102 will also be required.

Section 2 amends K.S.A. 65-2811 and addresses an issue raised by Jane S. Lauchland, M.D., the Director of Psychiatry Residency Training at KU Medical Center. Dr. Lauchland's letter is attached. In talking with Robert Wunsch, it is my understanding that the Executive Vice-Chancellor of the University of Kansas Medical Center is supportive of these amendments.

Section 3 of the bill amends K.S.A. 65-2828 to delete a percentage score as being the statutorily required passing grade and replaces the statutory requirement with the ability of the Board to set the passing grade by rule and regulation. In light of current usage of normative and criterion based scoring, percentage grades are no longer appropriate measures of passage under any of the examinations administered by the Board. This section also specifies that the Board may require an individual to undertake additional study prior to retaking the examination if they have failed a certain number of times as established by rule and regulation.

Section 4 merely puts a statutory maximum fee for the newly created inactive license provided for in Section 1 of the bill. A statutory maximum is also created for the postgraduate permit created in section 2 and the limited permit authorized in new section 5.

Section 6 of the bill imposes a duty on each licensee to notify the Board of a change of address within 30 days and allows the imposition of a fine for failure to meet this obligation.

Section 7, in addition to repealing the statutes being amended, would also repeal K.S.A. 65-2829 which requires that the identity of the individual taking the examination not be disclosed. In light of the present usage of standardized tests, this is both unnecessary and impractical. A copy of K.S.A. 65-2829 is attached.

Thank you very much for allowing me time to appear before you in support of Senate Bill No. 271. I would be happy to respond to any questions.

bj



# The University of Kansas Medical Center

School of Medicine  
Department of Psychiatry

December 5, 1994

Kansas Board of Healing Arts  
ATTN: Charlene Abbott  
Licensing Administrator  
235 South Topeka Blvd.  
Topeka, KS 66603

Dear Ms. Abbott:

I am writing pursuant to our phone conversation this morning regarding the Board's policy that requires International Medical Graduates, who have already completed FMGEMS, to pass Steps 1 and 2 of the USMLE during their first year of residency training.

As you are aware, I am the Director of General Psychiatry Residency Training at the University of Kansas Medical Center in Kansas City. Over the past several years, it has become increasingly difficult throughout the nation to recruit qualified physicians to the field of psychiatry; a situation of grave concern given the marked shortage of psychiatrists in the country, and particularly large portions of the state of Kansas.

We are finding that the policy of the Kansas Board regarding passage of the USMLE within the PGY I year is contributing additional hardship in recruitment of resident applicants. Potential resident candidates understandably lean towards residency positions in other states that do not impose this additional pressure, and the potential for sudden dismissal from the program if they fail to successfully complete Steps 1 and 2 within the first year.

In addition, several of our current PGY I residents are considering transferring to out-of-state programs for their PG II year, to avoid the uncertainty involved in awaiting results of the USMLE that they are scheduled to take in the spring of 1995. The personal cost to our residents, who are in the position of having to take, and successfully pass the exams within this time frame, is enormous. They too have commitments to their childrens' schooling, housing, spouses' employment, and financial obligations etc. Intensive studying, which this exam obviously requires (borne out by a startling drop in pass rate by American medical school graduates), combined with the pressures of internship and the mandate to pass take a great emotional toll.

As a program, we are not only facing the potential for unfilled PGY 1 residency slots in July of 1995, but also the possibility of losing some of our current (and I might add excellent) PGY I residents at a time when it is too late to compensate by adjusting our request for additional residents through the National Resident Matching Program (deadline February 1995). We are currently involved in interviewing for our July 1995 PGY I class, and I find it very difficult to answer questions from International Medical Graduate applicants who query the discrimination by the Kansas State Board of Healing Arts as compared to other states who do not share this policy.

Obviously this problem is an interim one, given that within several years all IMG's will have been required to pass both steps of the USMLE in order to qualify for ECFMG certification. It is the current applicants, who met prior ECFMG requirements with FMGEMS, who are caught in this dilemma.

We ask that the Board address this issue at the December 9 meeting, as time is of the essence. We request reconsideration of the imposed time parameter of one year for successful completion of Steps 1 and 2 of the USMLE, thus allowing the IMG applicants in question to retain their temporary license as long as they are actively involved in our training program.

If you require any further information or would like me to appear before the Board at the December 9 meeting, please do not hesitate to contact me at 913-588-6412. We appreciate your consideration of this matter and support of our program.

Sincerely,



Jane S. Lauchland, M.D.  
Director of Psychiatry Residency Training  
Clinical Assistant Professor  
Director of Adult Inpatient Services

JSL:cld

DEC 12 1995

**65-2829.** Written examinations; identity of applicants concealed. All examinations shall be in writing, and the identity of persons taking the same shall not be disclosed upon the examination paper in such a way as to enable the board to know by whom written.

History: L. 1957, ch. 343, § 29; July 1.

State of Kansas

Bill Graves



Governor

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Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Committee on Public Health and Welfare

by

The Kansas Department of Health and Environment

Senate Bill No. 271

Senate Bill No. 271 would address the current problem of federally active licensees being unable to volunteer as Charitable Health Care Providers. We are aware of several cases where willing federal physicians were unable to donate their services to clinics because they did not hold licenses in Kansas. We commend the Board of Healing Arts for moving to resolve this problem.

There are several issues with the bill that we want to bring to your attention.

1. It does not seem clear that Section 1 (h) which creates the new category of federally active license applies only to federal physicians who are originally licensed in Kansas, though we understand that to be the intent.
2. Could the language on P.4, line 17 and 18 in Section 1 (h) that refers to a person "who meets all the requirements for a license to practice the healing arts in Kansas" be construed to require the person to participate in the Health Care Stabilization Fund? Such an interpretation would undermine the intent of the new licensure category.
3. The maximum fee of \$150.00 for a limited permit (Section 4 (q)) would create a significant barrier to recruiting eligible physicians to participate as Charitable Health Care Providers. Is such a high limit necessary?
4. Both Section 1(h), federally active license and New Section 5, limited permit, define a charitable health care provider by reference to K.S.A. 1994 Supp. 75-6102 (f) which says in part that "Charitable health care provider means a person licensed by the state board of healing arts as an exempt licensee or as a health care provider as the term "health care provider" is defined under K.S.A. 65-4921...." The definition included in K.S.A. 65-4921 refers to K.S.A. 40-3401 which defines those persons required to participate in the health care stabilization

Testimony on SB 271  
Page Two

fund. It appears that K.S.A. 1994 Supp. 75-6102 should be amended to include the new categories of federally active license and limited permit in order to insure that those persons would qualify as charitable health care providers.

**Recommendation:** The Kansas Department of Health and Environment respectfully requests that the Committee consider the issues identified above, amend Senate Bill No. 271 as appropriate, and recommend the bill favorably for passage.

Testimony presented by: Richard Morrissey  
Director  
Bureau of Local and Rural Health Systems  
February 21, 1995