

Approved: 3-6-96
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 19, 1996 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:

Jerry Slaughter, KMS
Dr. Richard Meidinger, Topeka
Harold Riehm, Kansas Association of Osteopathic Medicine
Larry Buening, Kansas Board of Healing Arts
Austin K. Vincent, Kansas Midwives Association and Friends of Midwives
James Edwards, D.C., Emporia
Ken Davis, Kansas Physical Therapy Association

Others attending: See attached list

Hearing on SB 640 - Interstate practice of the healing arts

Jerry Slaughter, KMS, testified before the Committee in support of SB 640 which provides that any health professional located in another state who provides a service which constitutes the healing arts must be licensed by the healing arts board. Mr. Slaughter noted that this type of legislation is needed to protect the public, assure that out-of-state practitioners meet the same standards required of in-state practitioners, and to assure the maintenance of quality as the ability of practitioners to practice across state lines is made easier by expanding technology. Mr. Slaughter also suggested amendments to the bill that would strike language, "for compensation" on page 1, and additional language on page 2 relating to physician-to-physician consultation as noted in the balloon amendment of the bill. (Attachment 1) Committee discussion related to consultation of out-of-state physicians and liability insurance.

Dr. Richard Meidinger, Topeka Radiologist, expressed support for SB 640 and noted that this legislation would clarify present language that is currently a regulation of the board relating to out-of-state physicians licensed by the healing arts board.

Larry Buening, Kansas Board of Healing Arts, testified in support of SB 640 and agreed with the language proposed by KMS, as well as recommending an amendment that would strike reference to compensation. Mr. Buening also suggested additional language be added to subsection (i) of K.S.A. 65-2872 that would provide better clarification to that section as noted in the balloon of the bill. (Attachment 2)

There were no opponents to SB 640.

Hearing on SB 638 - Practice of medicine and surgery defined

Jerry Slaughter, KMS, testified in support of SB 638 and noted that the bill adds four new definitions to the healing arts act which are defined as obstetrics, physician, practice of medicine and surgery, and surgery. Mr. Slaughter noted that it is not his intention to do anything in this bill which would change the status quo as it relates to the relationship of one group to another, and that nothing in this legislation impacts either the scope of practice of persons licensed to practice medicine and surgery, or chiropractors, physical therapists, physician assistants, occupational therapists, or any other regulated health profession. Mr. Slaughter offered two amendments to further clarify that the bill is not intended to limit what other professional groups do as noted in the balloon of the bill. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S
Statehouse, at 10:00 a.m. on February 19, 1996.

Harold Riehm, Kansas Association of Osteopathic Medicine, appeared in support of **SB 638** noting that the definition included in the bill would add clarity and understanding to the defined terms. He pointed out that while listing specifics in the bill, some would say this would preclude them from performing selected like services, but he felt their statutory authority to do so is well defined elsewhere in Kansas law. Mr. Riehm also suggested amendments relating to osteopathic medicine as noted in his written testimony. (Attachment 4)

Larry Buening, Kansas Board of Healing Arts, provided information on **SB 638** and noted that the Board voted at its meeting February 17th to oppose the bill. He noted that the Board's decision was that while the bill was well intended, the full impact of the changes could not be clearly determined. (Attachment 5)

Speaking in opposition to **SB 638** included Shelby Smith, representing Kansas Podiatric Medicine, stating his organization has concern that the bill would have a negative impact in relation to the practice of podiatry; Austin K. Vincent, Kansas Midwives Association, felt the bill would eliminate the practice of traditional midwifery in Kansas, (Attachment 6); James Edwards, D.C., noted that the bill would not allow chiropractors to draw blood but would allow medical doctors to perform spinal manipulation or chiropractic adjustments, (Attachment 7); Nancy Shand, Topeka, had concerns with definition of "medicine and surgery" in the bill; Ken Davis, Kansas Physical Therapy Association, opposed the bill because he noted that it would create unwarranted prohibitions to the current practice of physical therapy, (Attachment 8). Written testimony in opposition to the bill was also received from Lisa Wilds, nutritionist, (Attachment 9); Karen and Devin Dooley, Stilwell, (Attachment 10); Stephanie M. Guenther, Overland Park, (Attachment 11); Julie A. Ruiz, Shawnee, (Attachment 12); Darrell, E. Fore, Kansas Chiropractic Association, (Attachment 13); and Terri Roberts, KSNA, (Attachment 14).

Adjournment

The meeting was adjourned at 11:05 a.m.

The next meeting is scheduled for February 20, 1996.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-19-96

NAME	REPRESENTING
Sharon Rietman	KHOM
Lisa G. Wilds MS, LD	Nutritionist
Rich [unclear]	C.B. Chamber
Ellen Foster	" "
David Thell	" "
Les Brown	" "
Al Silverstein	" "
Gary W Parady	" "
Ann Roth	" "
Kathi [unclear]	" "
Zsolt [unclear]	" "
Russ McCullery	" "
David [unclear]	" "
Chuck Bantle	" "
Linda S. Messinger	
Jane [unclear]	HIAP
Tarri Roberts	KSNA

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-19-96

NAME	REPRESENTING
Gone Neely	Kansas SAFE KIDS / KCA
Dawn Reid	KSNA
Paul Marnet	Ks Dept Health + Environment
Anne Spiess	Ks. Assoc of Counties
STEPHANIE GUENTHER	KANSAS FRIENDS OF MIDWIVES
FRED GUENTHER	KANSAS FRIENDS OF MIDWIVES.
Joe Turjanic	KCA
James Edwards DC	KCA
Judith A. Lopez	KCA
Sharon Couch	KCA
Edward D. [unclear]	KCA
Kenneth Davis	Kansas Physical Therapy Assoc. c.
Megan King	Kearney + Assoc.
[unclear]	Kansas Midwives Assn.
Kathy Grace	K M A Kansas Midwifery Assoc.
Wendy Lamp	Kansas midwives Assc.
[unclear]	K. M. A.
[unclear]	K. M. A.
Way Hanson	Ks Medical Society

Melissa Wangemann Hen, Fleet & [unclear]



KANSAS MEDICAL SOCIETY

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WATS 800-332-0156 FAX 913-235-5114

February 19, 1996

TO: Senate Committee on Public Health and Welfare

FROM: Jerry Slaughter
Executive Director



SUBJECT: SB 640; concerning interstate practice of the healing arts

The Kansas Medical Society appreciates the opportunity to appear today on SB 640, which you introduced at our request. This bill provides that any health professional located in another state who provides a service which constitutes the healing arts must be licensed by the healing arts board. There is currently a regulation of the board which requires such licensure, but because of some questions about its statutory basis, we have introduced SB 640 to clear up any doubts.

This bill should not be confused with the technology known as "telemedicine." Nothing in this bill will impair or prohibit the spread of telemedicine technology to Kansas citizens. The only thing SB 640 does is make sure that a physician in another state providing care to a patient in Kansas must be licensed by the healing arts board.

The reasons for requiring licensure are as follows:

(1) protection of the public. The only way to protect the public from incompetent practitioners is to require their licensure by the board, so that problems can be dealt with through the regulatory process;

(2) to assure that out-of-state practitioners meet the same standards required of in-state practitioners. For example, all physicians must carry a prescribed minimum amount of professional liability insurance as a demonstration of financial responsibility in the event of a malpractice claim. In-state physicians must also demonstrate 150 hours of continuing education every three years. Without a licensure requirement for out-of-state physicians, the public cannot be assured that the same standards will be met.

This legislation is pro-patient. Why should there be one standard for physicians who live, pay taxes in and work in Kansas, and a lower standard for physicians who live and work outside our borders? If entrepreneurial physicians in another state want to treat patients in Kansas, then they should pay the same \$150 annually to the board that every in-state physician must pay to be licensed to practice.

Senate Public Health & Welfare

Date: 2-19-96

Attachment No. 1

Senate Public Health and Welfare Committee
Statement on SB 640
February 19, 1996
Page 2

Discussions with the healing arts board recently raised a couple of points that should be considered. On page 1, line 21, the words "for compensation" appear. It was our thought that if services were being provided gratuitously, then licensure might not be required. After reflecting on concerns raised by the board, however, we agree that the language should be stricken, since it creates a loophole of sorts, that would make regulation very difficult.

Another point raised by the board deals with the new language found on lines 21-23, page 2 of the bill. This addition was intended to exempt the type of physician-to-physician consultation that goes on very frequently, and which contributes to better patient care. The board wanted to strengthen the language somewhat, again to not create an inadvertent loophole. We agree, and would recommend that the words "or infrequent" be inserted after the word "episodic."

We believe this legislation is important to assuring the maintenance of quality as the ability of practitioners to practice across state lines is made easier by expanding technology. We would appreciate your support of SB 640. Thank you for considering our comments.

SENATE BILL No. 640

By Committee on Public Health and Welfare

2-8

9 AN ACT concerning the Kansas healing arts act; license prerequisite to
10 practice the healing arts; amending K.S.A. 65-2803 and 65-2872 and
11 repealing the existing sections.

12

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

14 Section 1. K.S.A. 65-2803 is hereby amended to read as follows: 65-
15 2803. (a) It shall be unlawful for any person who is not licensed under
16 the Kansas healing arts act or whose license has been revoked or sus-
17 pended to engage in the practice of the healing arts as defined in the
18 Kansas healing arts act.

19 (b) *For the purpose of this act, any person who is physically located*
20 *in another state or jurisdiction but who, through the use of any medium,*
21 *including an electronic medium, performs ~~for compensation~~ any service* (delete)
22 *which constitutes the healing arts that would affect the diagnosis or treat-*
23 *ment of an individual located in this state, shall be deemed to be engaged*
24 *in the practice of the healing arts in this state and shall be required to be*
25 *duly licensed under the Kansas healing arts act except as otherwise pro-*
26 *vided by this act.*

27 (b)(c) This section shall not apply to any person licensed by the board
28 whose license was expired or lapsed and reinstated within a six month
29 period pursuant to K.S.A. 65-2809 and amendments thereto.

30 (e)(d) This section shall not apply to any health care provider who
31 in good faith renders emergency care or assistance at the scene of an
32 emergency or accident as authorized by K.S.A. 65-2891 and amendments
33 thereto.

34 (d)(e) Violation of this section is a class B misdemeanor.

35 Sec. 2. K.S.A. 65-2872 is hereby amended to read as follows: 65-
36 2872. The practice of the healing arts shall not be construed to include
37 the following persons:

38 (a) Persons rendering gratuitous services in the case of an emergency.

39 (b) Persons gratuitously administering ordinary household remedies.

40 (c) The members of any church practicing their religious tenets pro-
vided they shall not be exempt from complying with all public health
regulations of the state.

43 (d) Students while in actual classroom attendance in an accredited

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1 healing arts school who after completing one (1) year's study treat diseases
2 under the supervision of a licensed instructor.

3 (e) Students upon the completion of at least three (3) years study in
4 an accredited healing arts school and who, as a part of their academic
5 requirements for a degree, serve a preceptorship not to exceed ninety
6 (90) 90 days under the supervision of a licensed practitioner.

7 (f) Persons who massage for the purpose of relaxation, muscle con-
8 ditioning, or figure improvement, provided no drugs are used and such
9 persons do not hold themselves out to be physicians or healers.

10 (g) Persons whose professional services are performed under the su-
11 pervision or by order of or referral from a practitioner who is licensed
12 under this act.

13 (h) Persons in the general fields of psychology, education and social
14 work, dealing with the social, psychological and moral well-being of in-
15 dividuals and/or groups provided they do not use drugs and do not hold
16 themselves out to be the physicians, surgeons, osteopathic physicians or
17 chiropractors.

18 (i) Practitioners of the healing arts in the United States army, navy,
19 air force, public health service, and coast guard or other military service
20 when acting in the line of duty in this state.

21 (j) Practitioners of the healing arts licensed in another state *who pro-
22 vide episodic consultation services to a practitioner who is licensed under
23 this act, or* when and while incidentally called into this state in consul-
24 tation with practitioners licensed in this state, or residing on the border
25 of a neighboring state, duly licensed under the laws thereof to practice a
26 branch of the healing arts, but who do not open an office or maintain or
27 appoint a place to regularly meet patients or to receive calls within this
28 state.

or infrequent

29 (k) Dentists practicing their professions, when licensed and practic-
30 ing in accordance with the provisions of article 14 of chapter 65 of the
31 Kansas Statutes Annotated, or amendments thereto, and any interpreta-
32 tion thereof by the supreme court of this state.

33 (l) Optometrists practicing their professions, when licensed and prac-
34 ticing under and in accordance with the provisions of article 15 of chapter
35 65 of the Kansas Statutes Annotated, or amendments thereto, and any
36 interpretation thereof by the supreme court of this state.

37 (m) Nurses practicing their profession when licensed and practicing
38 under and in accordance with the provisions of article 11 of chapter 65
39 of the Kansas Statutes Annotated, or amendments thereto, and any in-
40 terpretation thereof by the supreme court of this state.

41 (n) Podiatrists practicing their profession, when licensed and practic-
42 ing under and in accordance with the provisions of article 20 of chapter
43 65 of the Kansas Statutes Annotated, or amendments thereto, and any

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor

LAWRENCE T. BUENING, JR.
Executive Director



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(913) 296-7413
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M E M O R A N D U M

am

TO: Senate Committee on Public Health and Welfare

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: February 19, 1996

RE: SENATE BILL NO. 640

Thank you for the opportunity to appear today and provide testimony on behalf of the Kansas State Board of Healing Arts in support of Senate Bill No. 640. The bill generally deals with the issue commonly referred to as telemedicine.

On June 20, 1994, K.A.R. 100-26-1, as adopted by the Board, became effective as a permanent regulation and provides as follows:

"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 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."

Last session, the Board 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.

MEMBERS OF BOARD

RONALD J. ZOELLER, D.C., PRESIDENT
TOPEKA
HOWARD D. ELLIS, M.D., VICE-PRESIDENT
LEAWOOD

DONALD B. BLETZ, M.D., OVERLAND PARK
C.J. CONRADY, JR., ANTHONY
SERGIO DELGADO, M.D., TOPEKA
JAMES D. EDWARDS, D.C., EMPORIA
EDWARD J. FITZGERALD, M.D., WICHITA
ROBERT L. FRAYSER, D.O., HOISINGTON
JOHN P. GRAVINO, D.O., LAWRENCE

LANCE MALMSTROM, D.C., TOPEKA
LAUREL H. RICKARD, MEDICINE LODGE
EMILY TAYLOR, LAWRENCE

Senate Public Health & Welfare
Date: 2-19-96
Attachment No. 2

This past summer and fall, the Special Committee on Health and Welfare studied the need to update the healing arts in relation to telemedicine. That committee concluded that individuals practicing the healing arts in Kansas through telecommunications should be licensed in some form, but did not make any recommendation as to the type of license that should be required.

The Board, at its meeting on Saturday, February 17, again affirmed its position regarding telemedicine and supported Senate Bill No. 640. It is the Board position that Senate Bill No. 640 clarifies statutory language within the Healing Arts Act that already infers that a license to practice is required in order to diagnose and treat patients located in this state.

The Board would suggest that one amendment to the bill be made by deleting "for compensation" at line 21 on page 1. In the opinion of the Board, whether a person receives compensation for services rendered is not an appropriate criteria for determining whether that person must be licensed based upon the activities performed on individuals in this state.

Since this bill also amends K.S.A. 65-2872, the Board would suggest that amendment be made to subsection (i) of that statute to provide better clarity to that section.

In conclusion, the State Board of Healing Arts has conducted a detailed review and analysis of telemedicine. The Board fully supports expansion of telemedicine to provide better, more accessible and perhaps less expensive health care to the citizens of Kansas. However, it is the purpose of the Board to protect the public against unprofessional, improper, unauthorized and unqualified practice of the healing arts. Review of the qualifications of the individuals who desire to practice in this state and the issuance of a license to those who meet the qualifications is the primary means available to the Board to fulfill its statutory purpose.

Again, thank you for the opportunity to present information to you and I would be happy to respond to any questions.

SENATE BILL No. 640

By Committee on Public Health and Welfare

2-8

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10 practice the healing arts; amending K.S.A. 65-2803 and 65-2872 and
11 repealing the existing sections.
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17 pended to engage in the practice of the healing arts as defined in the
18 Kansas healing arts act.

19 (b) *For the purpose of this act, any person who is physically located*
20 *in another state or jurisdiction but who, through the use of any medium,*
21 *including an electronic medium, performs ~~for compensation~~ any service*
22 *which constitutes the healing arts that would affect the diagnosis or treat-*
23 *ment of an individual located in this state, shall be deemed to be engaged*
24 *in the practice of the healing arts in this state and shall be required to be*
25 *duly licensed under the Kansas healing arts act except as otherwise pro-*
26 *vided by this act.*

Delete "for compensation"

27 ~~(b)~~ (c) This section shall not apply to any person licensed by the board
28 whose license was expired or lapsed and reinstated within a six month
29 period pursuant to K.S.A. 65-2809 and amendments thereto.

30 (e) (d) This section shall not apply to any health care provider who
31 in good faith renders emergency care or assistance at the scene of an
32 emergency or accident as authorized by K.S.A. 65-2891 and amendments
33 thereto.

34 ~~(d)~~ (e) Violation of this section is a class B misdemeanor.

35 Sec. 2. K.S.A. 65-2872 is hereby amended to read as follows: 65-
36 2872. The practice of the healing arts shall not be construed to include
37 the following persons:

38 (a) Persons rendering gratuitous services in the case of an emergency.

39 (b) Persons gratuitously administering ordinary household remedies.

40 (c) The members of any church practicing their religious tenets pro-
41 vided they shall not be exempt from complying with all public health
42 regulations of the state.

43 (d) Students while in actual classroom attendance in an accredited

2-3

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1 healing arts school who after completing one (1) year's study treat diseases
2 under the supervision of a licensed instructor.

3 (e) Students upon the completion of at least three (3) years study in
4 an accredited healing arts school and who, as a part of their academic
5 requirements for a degree, serve a preceptorship not to exceed ~~ninety~~
6 ~~(90)~~ 90 days under the supervision of a licensed practitioner.

7 (f) Persons who massage for the purpose of relaxation, muscle con-
8 ditioning, or figure improvement, provided no drugs are used and such
9 persons do not hold themselves out to be physicians or healers.

10 (g) Persons whose professional services are performed under the su-
11 pervision or by order of or referral from a practitioner who is licensed
12 under this act.

13 (h) Persons in the general fields of psychology, education and social
14 work, dealing with the social, psychological and moral well-being of in-
15 dividuals and/or groups provided they do not use drugs and do not hold
16 themselves out to be the physicians, surgeons, osteopathic physicians or
17 chiropractors.

18 (i) Practitioners of the healing arts in the United States army, navy,
19 air force, public health service, and coast guard or other military service
20 when acting in the line of duty in this state.

21 (j) Practitioners of the healing arts licensed in another state who pro-
22 vide episodic consultation services to a practitioner who is licensed under
23 this act, or when and while incidentally called into this state in consul-
24 tation with practitioners licensed in this state, or residing on the border
25 of a neighboring state, duly licensed under the laws thereof to practice a
26 branch of the healing arts, but who do not open an office or maintain or
27 appoint a place to regularly meet patients or to receive calls within this
28 state.

29 (k) Dentists practicing their professions, when licensed and practic-
30 ing in accordance with the provisions of article 14 of chapter 65 of the
31 Kansas Statutes Annotated, or amendments thereto, and any interpreta-
32 tion thereof by the supreme court of this state.

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41 (n) Podiatrists practicing their profession, when licensed and practic-
42 ing under and in accordance with the provisions of article 20 of chapter
43 65 of the Kansas Statutes Annotated, or amendments thereto, and any

employed by or on active duty in the United
States government or any of its departments,
bureaus or agencies when employed or assigned



KANSAS MEDICAL SOCIETY

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February 19, 1996

TO: Senate Public Health and Welfare Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: SB 638; concerning defining the practice of medicine and surgery

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 638, which you introduced at our request. This bill adds four new definitions to the healing arts act, all related to the practice of medicine and surgery. The terms defined are: obstetrics, physician, practice of medicine and surgery, and surgery.

First, we would like to reassure all the other professions who are regulated by the healing arts board, that it is not our intention to do anything in this bill which changes the status quo as it relates to the relationship of one group to another. We do not believe anything in this legislation impacts either the scope of practice of persons licensed to practice medicine and surgery, or chiropractors, physical therapists, physician assistants, occupational therapists, or any other regulated health profession, for that matter.

Our intention is to provide some clarity in the statutes regarding terms describing what physicians do, since the current law is often misunderstood. There are frequent references in other parts of the law to "obstetrics", "surgery", "physician," and "practice of medicine and surgery," yet the definitions in the healing arts act are either absent, or in the case of "physician," sort of backed into: K.S.A. 65-2869 reads "for the purpose of this act, the following persons shall be deemed to be engaged in the practice of medicine and surgery: (c) persons who attach to their name the title M.D., surgeon, physician, physician and surgeon...." The definition of "physician" in this bill really just states current law more directly and clearly.

You will no doubt hear from several credentialed groups who think something in this bill either restricts their scope of practice or expands that of physicians into their domain. Since physicians in current law have a scope of practice that is the broadest of all the health professions (see subsection (b), lines 17-23, page 2 of the bill), it is inconceivable that the new language defining "practice of medicine and surgery" could expand it further. In fact, every other group has a scope of practice that represents a subset or portion of what physicians are already licensed to do.

Senate Public Health and Welfare
Date: 2-19-96
Attachment No. 3

Similarly, we do not believe this bill restricts any other regulated profession's scope of practice. Current law at K.S.A. 65-2872 (see attached) exempts all the other regulated groups from the provisions of the healing arts act. In addition, groups such as physical therapists, who work pursuant to referral from a physician, podiatrist or dentist are exempted in the same section at subsection (g): "persons whose professional services are performed under the supervision or by order of or *referral* from a practitioner who is licensed under this act."

The definition of "practice of medicine and surgery" beginning on line 33, page 1 of the bill is basically a rewrite of current law which appears on page 2, lines 17-23, with the addition of a reference to obstetrics, to take care an ambiguity that some think exists in current law. The new definition has six parts, as follows:

- (i) the use of tests and procedures for examining patients;
- (ii) making a diagnosis and providing treatment;
- (iii) providing health prevention and promotion;
- (iv) prescribing drugs;
- (v) performing surgery; and
- (vi) performing obstetrics.

After discussing the bill with some of the other professional groups, we would like to offer a couple of amendments (see attached balloon) to further clarify that it is not intended to limit what they do. On page 2 in the definition of "surgery," we would like to strike the words "or alters" on line 5, and insert the word "surgically" before the word "altered" on line 7. Both the chiropractors and physical therapists were concerned that the original language would restrict their ability to use ultrasound for nonsurgical purposes, which was not our intention. The suggested amendments should resolve that problem. Further, we would like to add the words "or osteopathic medicine and surgery" on line 32, page 1, before the word "under," to clarify that osteopaths are included in the definition of "physician."

We know that chiropractors are not happy with the current definition of "physician," and that they would like the law further amended to allow chiropractors to call themselves physicians. We believe that is a policy issue that should be dealt with separately, and not in this bill which makes no basic policy changes from current law.

This bill will provide much more clarity to the terms which are used in the healing arts act to describe what physicians do. We urge you to recommend the bill for passage, with the amendments noted above. Thank you for considering our comments.

Law Review and Bar Journal References:

"Legislative Review of Examining and Licensing Functions of State Boards and Commissions," Stanley D. Elofson, 7 W.L.J. 307, 311 (1968).

Attorney General's Opinions:

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

Persons deemed engaged in practice of chiropractic. 89-91

CASE ANNOTATIONS

1. State recognizes practice of chiropractic as one of the healing arts. Taylor v. Maxwell, 197 K. 509, 511, 419 P.2d 822.

2. Acupuncture does not constitute surgery and is not prohibited in the practice of chiropractic. Acupuncture Society of Kansas v. Kansas Bd. of Healing Arts, 226 K. 639, 643, 645, 646, 647, 602 P.2d 1311.

3. Chiropractor who intravenously administered laetrile violated healing arts act; license revocation upheld. Kansas State Board of Healing Arts v. Burwell, 5 K.A.2d 357, 359, 360, 361, 616 P.2d 1084.

65-2872. Persons not engaged in the practice of the healing arts. The practice of the healing arts shall not be construed to include the following persons:

(a) Persons rendering gratuitous services in the case of an emergency.

(b) Persons gratuitously administering ordinary household remedies.

(c) The members of any church practicing their religious tenets provided they shall not be exempt from complying with all public health regulations of the state.

(d) Students while in actual classroom attendance in an accredited healing arts school who after completing one (1) year's study treat diseases under the supervision of a licensed instructor.

(e) Students upon the completion of at least three (3) years study in an accredited healing arts school and who, as a part of their academic requirements for a degree, serve a preceptorship not to exceed ninety (90) days under the supervision of a licensed practitioner.

(f) Persons who massage for the purpose of relaxation, muscle conditioning, or figure improvement, provided no drugs are used and such persons do not hold themselves out to be physicians or healers.

(g) Persons whose professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under this act.

(h) Persons in the general fields of psychology, education and social work, dealing with the social, psychological and moral well-being of individuals and/or groups provided they do not use drugs and do not hold them-

selves out to be the physicians, surgeons, osteopathic physicians or chiropractors.

(i) Practitioners of the healing arts in the United States army, navy, air force, public health service, and coast guard or other military service when acting in the line of duty in this state.

(j) Practitioners of the healing arts licensed in another state when and while incidentally called into this state in consultation with practitioners licensed in this state, or residing on the border of a neighboring state, duly licensed under the laws thereof to practice a branch of the healing arts, but who do not open an office or maintain or appoint a place to regularly meet patients or to receive calls within this state.

(k) Dentists practicing their professions, when licensed and practicing in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(l) Optometrists practicing their professions, when licensed and practicing under and in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(m) Nurses practicing their profession when licensed and practicing under and in accordance with the provisions of article 11 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(n) Podiatrists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(o) Every act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof.

(p) Pharmacists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 16 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(q) A dentist licensed in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated who administers general and local anesthetics to facilitate medical procedures conducted by a person licensed to practice medicine and surgery if such dentist

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SENATE BILL No. 638

By Committee on Public Health and Welfare

2-8

9 AN ACT concerning the Kansas healing arts act; practice of medicine and
10 surgery; amending K.S.A. 65-2802 and 65-2869 and repealing the ex-
11 isting sections.

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

14 Section 1. K.S.A. 65-2802 is hereby amended to read as follows: 65-
15 2802. For the purpose of this act the following definitions shall apply:

16 (a) The healing arts include any system, treatment, operation, diag-
17 nosis, prescription, or practice for the ascertainment, cure, relief, pallia-
18 tion, adjustment, or correction of any human disease, ailment, deformity,
19 or injury, and includes specifically but not by way of limitation the practice
20 of medicine and surgery; the practice of osteopathic medicine and sur-
21 gery; and the practice of chiropractic.

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

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

25 (d) "Licensed" or "licensee" shall mean a person licensed un-
26 der this act to practice medicine and surgery, osteopathic medicine and
27 surgery or chiropractic.

28 (e) "Obstetrics" means providing services related to human preg-
29 nancy, including prenatal care, labor, delivery or recovery from child-
30 birth.

31 (f) "Physician" means a person licensed to practice medicine and sur-
32 gery under this act.

33 (g) "Practice of medicine and surgery" means (i) examination of a
34 human body by use of tests, procedures or any other method for the
35 purpose of determining the patient's health status or cause of any symp-
36 tom of illness, disease or injury; (ii) diagnosis or treatment of any human
37 injury, wound, fracture, deformity, disease, physical or mental illness,
38 psychological disorder or other health condition; (iii) diagnosing, provid-
39 ing treatment or recommending a medical regimen for prevention of hu-
40 man illness or disease, or the promotion of good health; (iv) furnishing,
41 describing or otherwise recommending prescription medicine or drugs;
42 (v) performing any procedure, test, examination or operation which in-
43 volves surgery on a human body; or (vi) performing any procedure, test,

or osteopathic medicine and surgery

3-4

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1 health service or surgical operation which relates to obstetrics.

2 (h) "Surgery" means any invasive procedure, test, examination or op-
3 eration on a human body by the use of any instrument, modality, equip-
4 ment, mechanical or electrical device, laser, ionizing radiation, or thera-
5 peutic ultrasound which severs ~~or alters~~ body tissue in any manner or
6 which causes the structure or function of tissues or systems of the body
7 to be altered in any manner.

surgically

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

11 Sec. 2. K.S.A. 65-2869 is hereby amended to read as follows: 65-
12 2869. For the purpose of this act the following persons shall be deemed
13 to be engaged in the practice of medicine and surgery:

14 (a) Persons who publicly profess to be physicians or surgeons, or pub-
15 licly profess to assume the duties incident to the practice of medicine or
16 surgery or any of their branches.

17 (b) Persons who prescribe, recommend or furnish medicine or drugs,
18 or perform any surgical operation of whatever nature by the use of any
19 surgical instrument, procedure, equipment or mechanical device for the
20 diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity,
21 disease, physical or mental illness or psychological disorder, of human
22 beings engage in the practice of medicine and surgery as defined by this
23 act.

24 (c) Persons who attach to their name the title M.D., D.O., surgeon,
25 physician, physician and surgeon, or any other word or abbreviation in-
26 dicating that they are engaged in the treatment or diagnosis of ailments,
27 diseases or injuries of human beings.

28 Sec. 3. K.S.A. 65-2802 and 65-2869 are hereby repealed.

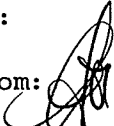
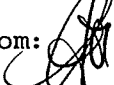

29 Sec. 4. This act shall take effect and be in force from and after its
30 publication in the statute book.

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563
(913) 234-5564 Fax

February 19, 1996

To:  Chairperson Praeger and Members, Senate Committee on Public Health
From:  Harold Riehm, Executive Director, KAOM
Subject: Support for and Suggested Amendments to S.B. 638 

Thank you for this opportunity to appear in support of S.B. 638 and to suggest some minor amendments to that Bill.

For many years KAOM has considered amending K.S.A. 65-2870 so that language retains the distinct reference to osteopathic medicine and surgery yet makes language more explicit and comparable to that language that appears in K.S.A. 65-2869 as it refers to allopathic physicians or M.D.s.

While SB 638 in its initial version resolves the latter we would prefer a version that more specifically addresses osteopathic physicians and surgery and osteopathic medicine and surgery. At numerous places throughout statutes and rules and regulations, reference are made to osteopathic medicine and surgery. We want to make sure that all such references remain appropriate and inclusive. At the same time, there is considerable interest within the osteopathic physician community to retain the distinct "osteopathic reference" where that is consistent with emphasizing that both M.D.s and D.O.s are equally licensed to practice medicine and surgery in Kansas.

Therefore, we respectfully suggest the amendments that appear in the following balloons.

We think this is a good bill that accurately defines "medicine and surgery", "obstetrics" and "surgery". While others may claim that by listing specifics, this will preclude others from performing selected like services, we think their statutory authority to do so is well defined elsewhere in Kansas law.

The definitions included in this Bill add clarity and understanding to the defined terms and for these reasons, with our suggested amendments, we support passage of S.B. 638.

I will be pleased to respond to questions the Committee may have.

Senate Public Health and Welfare
Date: 2-19-96
Attachment No. 4

Session of 1996

SENATE BILL No. 638

By Committee on Public Health and Welfare

2-8

9 AN ACT concerning the Kansas healing arts act; practice of medicine and
10 surgery; amending K.S.A. 65-2802 and 65-2869 and repealing the ex-
11 isting sections-
12

and osteopathic medicine and surgery;

, and repealing K.S.A. 65-2870.

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

14 Section 1. K.S.A. 65-2802 is hereby amended to read as follows: 65-
15 2802. For the purpose of this act the following definitions shall apply:

16 (a) The healing arts include any system, treatment, operation, diag-
17 nosis, prescription, or practice for the ascertainment, cure, relief, pallia-
18 tion, adjustment, or correction of any human disease, ailment, deformity,
19 or injury, and includes specifically but not by way of limitation the practice
20 of medicine and surgery; the practice of osteopathic medicine and sur-
21 gery; and the practice of chiropractic.

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

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

25 (d) "Licensed" or "licensee" shall mean means a person licensed un-
26 der this act to practice medicine and surgery, osteopathic medicine and
27 surgery or chiropractic.

28 (e) "Obstetrics" means providing services related to human preg-
29 nancy, including prenatal care, labor, delivery or recovery from child-
30 birth.

or osteopathic medicine and surgery

31 (f) "Physician" means a person licensed to practice medicine and sur-
32 gery under this act.

33 (g) "Practice of medicine and surgery" means (i) examination of a
34 human body by use of tests, procedures or any other method for the
35 purpose of determin.ing the patient's health status or cause of any symp-
36 tom of illness, disease or injury; (ii) diagnosis or treatment of any human
37 injury, wound, fracture, deformity, disease, physical or mental illness,
38 psychological disorder or other health condition; (iii) diagnosing, provid-
39 ing treatment or recommending a medical regimen for prevention of hu-
40 man illness or disease, or the promotion of good health; (iv) furnishing,
41 prescribing or otherwise recommending prescription medicine or drugs;
42 (v) performing any procedure, test, examination or operation which in-
43 volves surgery on a human body; or (vi) performing any procedure, test,

1 health service or surgical operation which relates to obstetrics.
 2 (h) "Surgery" means any invasive procedure, test, examination or op-
 3 eration on a human body by the use of any instrument, modality, equip-
 4 ment, mechanical or electrical device, laser, ionizing radiation, or thera-
 5 peutic ultrasound which severs or alters body tissue in any manner or
 6 which causes the structure or function of tissues or systems of the body
 7 to be altered in any manner.

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

11 Sec. 2. K.S.A. 65-2869 is hereby amended to read as follows: 65-
 12 2869. For the purpose of this act the following persons shall be deemed
 13 to be engaged in the practice of medicine and surgery:

14 (a) Persons who publicly profess to be physicians or surgeons, or pub-
 15 licly profess to assume the duties incident to the practice of medicine or
 16 surgery or any of their branches.

17 ~~(b)~~ Persons who prescribe, recommend or furnish medicine or drugs,
 18 or perform any surgical operation of whatever nature by the use of any
 19 surgical instrument, procedure, equipment or mechanical device for the
 20 diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity,
 21 disease, physical or mental illness or psychological disorder, of human
 22 beings engage in the practice of medicine and surgery as defined by this
 23 act.

24 ~~(c)~~ Persons who attach to their name the title M.D., D.O., surgeon,
 25 physician, physician and surgeon, or any other word or abbreviation in-
 26 dicating that they are engaged in the treatment or diagnosis of ailments,
 27 diseases or injuries of human beings.

28 Sec. 3. ~~K.S.A. 65-2802 and 65-2869 are hereby repealed.~~

29 Sec. 4. This act shall take effect and be in force from and after its
 30 publication in the statute book.

New Subsection (b)

(b) Persons who publicly profess to be osteopathic physicians or surgeons, or publicly profess to the practice of osteopathic medicine or surgery or any of their branches.

(c)

(d)

K.S.A. 65-2802, 65-2869 and 65-2870 are hereby repealed.

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor

LAWRENCE T. BUENING, JR.
Executive Director



235 S. Topeka Blvd.
Topeka, KS 66603-3068
(913) 296-7413
FAX # (913) 296-0852

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 19, 1996

RE: SENATE BILL NO. 638

Thank you for the opportunity to appear before you and provide information on behalf of the Kansas State Board of Healing Arts regarding Senate Bill No. 638. At its meeting conducted Saturday, February 17, the Board voted to oppose this bill. The Board's decision was that while the bill was well intended, the full impact of the changes could not be clearly determined.

The Board has for years taken the position that obstetrics is a branch of surgery and requires a person practicing obstetrics to be licensed to practice medicine and surgery. However, the definition of obstetrics in lines 28-30 on page 1 may be overly broad. As an example, K.S.A. 65-2871 currently prohibits chiropractors from practicing obstetrics. However, chiropractors may currently perform manipulations on a pregnant woman without it being considered that they are treating the pregnancy itself.

K.S.A. 65-2802 has only been amended once since it was originally enacted in 1957 and that change was 20 years ago. The Board did not feel the definitions of "practice of medicine and surgery" and "surgery" were improper for individuals licensed as M.D.'s and D.O.'s. However, these 2 definitions raised questions in the minds of Board Members as to the impact they would have on other health care providers.

MEMBERS OF BOARD

RONALD J. ZOELLER, D.C., PRESIDENT
TOPEKA
HOWARD D. ELLIS, M.D., VICE-PRESIDENT
LEAWOOD

DONALD B. BLETZ, M.D., OVERLAND PARK
C.J. CONRADY, JR., ANTHONY
SERGIO DELGADO, M.D., TOPEKA
JAMES D. EDWARDS, D.C., EMPORIA
EDWARD J. FITZGERALD, M.D., WICHITA
ROBERT L. FRAYSER, D.O., HOISINGTON
JOHN P. GRAVINO, D.O., LAWRENCE

LANCE MALMSTROM, D.C., TOPEKA
LAUREL H. RICKARD, MEDICINE LODGE

Senate Public Health & Welfare
Date: 2-19-96
Attachment No. 5

In conclusion, the Board believes that Senate Bill No. 638 is well intended and properly addresses various issues. However, the language of the definitions was felt to create more questions than are answered. The Board believes that before any of the changes sought by Senate Bill No. 638 are made law, a thorough analysis and review should be undertaken to determine the impact and breadth of these changes.

Thank you very much for the opportunity to present information to you and I would be happy to respond to any questions.

AUSTIN K. VINCENT
ATTORNEY AT LAW

2222 PENNSYLVANIA
TOPEKA, KANSAS 66605-1255
(913) 234-0022
1-800-945-6170
FAX (913) 234-2927

February 19, 1996

TESTIMONY OF THE KANSAS MIDWIVES ASSOCIATION
AND THE KANSAS FRIENDS OF MIDWIVES
BY AUSTIN K. VINCENT BEFORE
THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
IN OPPOSITION TO SB 638

Legal Situation: In November of 1994, the Board of Healing Arts and the Board of Nursing sought and obtained temporary restraining orders against two traditional midwives. Hearings were held and in March of 1995 the trial court ruled as follows:

The actions of the midwife are not subject to the Healing Arts Act or the Nurse Practice Act;

If the midwife's actions are subject to either Act, those actions are exempt by specific provisions of the Acts; and,

If those actions are not exempt, then both the Healing Arts Act and the Nurse Practice Act are unconstitutional due to their vagueness.

That decision has been appealed to the Kansas Supreme Court, which heard the case on January 24, 1996. A decision from the Supreme Court is expected no earlier than March 8, 1996.

Effect of SB 638-Generally: Present action on SB 638 would preempt that judicial process. More importantly, passage of SB 638 would greatly expand the scope of the Healing Arts Act. Under SB 638, any person who is not licensed by the Board of Healing Arts as a physician would be in violation of the Healing Arts Act and subject to prosecution for ANY of the following acts:

* "examination of a human body by use of tests, procedures or any other method for the purpose of determining [a person's] health status..."

* "diagnosis or treatment of any ... health condition ..."

* "diagnosing [or] providing treatment ... for the promotion of good health..."

* "... recommending a medical regimen for ... the promotion of good health"

Senate Public Health & Welfare

Date: 2-19 96

Attachment No. 6

Kansas Midwives Association
Page two- Opposition to SB 638
February 19, 1996

Effect of SB 638 on Midwifery: First, the proposed definition of "surgery" in (h) would prohibit several procedures midwives have always used in assisting women through childbirth (breaking the bag of waters, examinations to check cervical dilation, cutting the umbilical cord, etc.).

However, the provision that would eliminate the practice of traditional midwifery in Kansas is (g) (vi):

"performing any procedure, test, health service or surgical operation which relates to obstetrics."

The proposed definition of "obstetrics" in (e) { *providing services related to human pregnancy, including prenatal care, labor, delivery or recovery from childbirth* } appears to sweep in all the services of a traditional midwife.

People have chosen traditional midwifery since man and woman have inhabited the earth for a variety of reasons: privacy, cost and religious conviction. Still others simply do not have delivery services within a safe distance.

Very few doctors will come to your home to deliver a baby and, to the best of my knowledge, a certified nurse midwife cannot deliver a child at home. It is only the traditional midwife that consistently serves women in the home.

Questions:

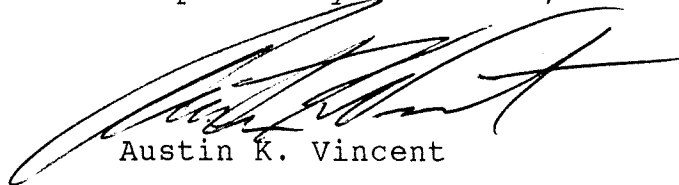
Do you really intend to restrict the "promotion of good health" to licensed physicians?

Do you want to prohibit competent midwifery assistance, given the high cost and the shortage of accessible delivery services in certain areas of our state?

Do you wish to encourage home births without midwifery assistance?

Is it the legislature's intent to tell mothers and fathers where they must receive services and who must deliver their babies.

Respectfully Submitted,



Austin K. Vincent

KANSAS CHIROPRACTIC ASSOCIATION
Senate Bill 638 Testimony
February 19, 1996

The Kansas Chiropractic Association wants to thank you for the opportunity to present testimony in opposition to SB 638. In our opinion, this bill is a Trojan horse that tries to hide the dangers it contains. This bill deletes 56 words from the medical practice act and adds a staggering 224 words. Those 224 words will have a devastating effect on the chiropractic profession, the healing arts and the citizens of Kansas. Here are just a few of the problems that SB 638 presents.

Problem 1 - Let's be frank about the primary reason this bill was introduced. It's all about obstetrics. The Kansas Medical Society does not need "obstetrics" added to their law in order to deliver babies. However, they do need the term in their law in order to stop midwives from practicing. Although the Kansas Chiropractic Association does not have a position on midwifery, we think it is important that you know how midwives will be affected.

KSA 65-2872 addresses who are NOT deemed to be practicing the healing arts. Several types of providers are protected from prosecution including dentists, optometrists, psychologists, podiatrists, and persons who massage, etc. But there's a key section (o) in the law which states

"Every act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof."

In other words, if you add obstetrics to the medical practice act without exempting midwives, the practice of midwifery will be outlawed. If you have any doubt that that is the true intent of the obstetrics addition, then ask the KMS representatives if they would be willing to exempt midwives. However, if Legislature feels that midwifery needs to be prohibited, you don't need 224 words. All you have to do is add the two words, "practice obstetrics" to their current law 65-2869 (b). (Page 2, at the beginning of line 18)

Problem 2 - Under the chiropractic practice act, doctors of chiropractic are specifically prohibited from practicing obstetrics. Now if you look at Page 1, line 28, "obstetrics means providing services related to human pregnancy." Here's the problem. Many expectant mothers experience low back pain and many obstetricians refer expectant mothers to doctors of chiropractic for care. SB638 would outlaw that if the woman's condition was **in any way related to her pregnancy**. If the Legislature wishes to explore this issue further, it should be done openly rather than the attempted backdoor method before you.

Problem 3 - Even though the Kansas Medical Society doesn't agree, the Kansas State Board of Healing Arts has authorized doctors of chiropractic to use the term "chiropractic physician." SB 638 could change that since Page 1, Line 31 appears to be reserving the term "physician" for those licensed to practice medicine and surgery. Even more interesting is the fact that the term "physician" is defined, yet the word is **never mentioned again** in that section of the bill. If the Legislature wishes to explore this issue further, it should be done openly rather than the attempted backdoor method before you.

Senate Public Health & Welfare
Date: 2-19-96
Attachment No. 7

Problem 4 - Page 1, Line 33 defines the practice of medicine and surgery as "examination of a human body by use of tests, procedures or any other method for the purpose of determining the patient's health status or cause of any symptom of illness, disease or injury." That makes hearing tests the practice of medicine and will abolish the careers of hearing aid representatives in the state of Kansas since they are not exempted in 65-2872. If that's what the Legislature wants to do, then we urge you to address the issue in a straight forward manner rather than this attempted backdoor method.

Problem 5 - Page 1, Line 39 states that it is the practice of medicine and surgery to "recommend a medical regimen for the prevention of human illness." This is a "gag order" that will apply to health food stores, exercise instructors, weight control centers, nutritionists and dietitians. All of them will be affected since they are not exempted in 65-2872. If that's what the Legislature wants to do, then we urge you to address the issue in a straight forward manner rather than this attempted backdoor method.

Problem 6 - On page 2, Line 2 surgery is defined as "any invasive procedure, test, examination or operation on a human body...which causes the structure...of tissues...of the body to be altered in any manner." Under the current definition of surgery, drawing blood for lab tests is not defined surgery and doctors of chiropractic are allowed to order or perform these important tests for their patients. SB 638 would make drawing blood the practice of surgery and doctors of chiropractic would not be able to get the lab work done.

That's important because if a patient in our office has prostate cancer, **it is our responsibility** to determine that so he can be referred for medical care. If a patient in our office has bone cancer, **it is our responsibility** to determine that so he or she can be referred for proper medical care. This bill would absolutely tie our hands in that regard. We simply cannot believe that the Legislature would want to have any part of a bill that would **place patients at risk**.

Problem 7 - This same definition of surgery will also outlaw anyone, including licensed doctors of chiropractic, from performing acupuncture. Presently, many doctors of chiropractic are certified in and practice acupuncture. In fact, doctors of chiropractic are recognized in this country as the experts in this valuable treatment modality. SB 638 would prohibit doctors of chiropractic from performing acupuncture. If the Legislature wants to explore who should be performing acupuncture, then we urge you to address the issue in a straight forward manner rather than the backdoor method before you.

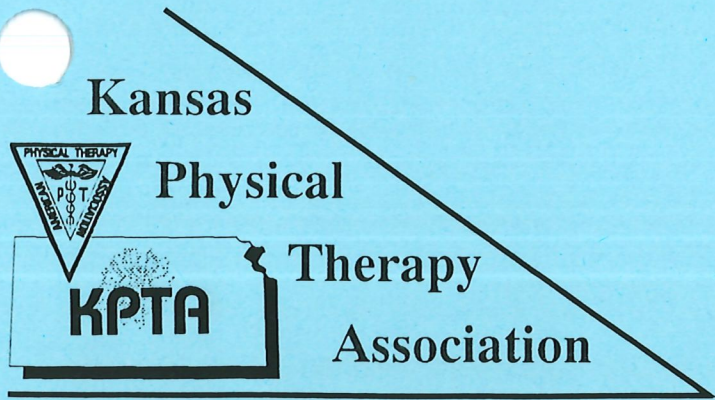
And finally Problem 8 - The current medical law allows medical doctors to prescribe drugs and to perform surgery just as it should. The chiropractic law allows doctors of chiropractic to perform spinal manipulation and prohibits us from prescribing drugs or performing surgery. **Again, just as it should.** SB638 changes all that. Page 1 Line 38 would allow medical doctors to perform spinal manipulation or chiropractic adjustments. This bill, if passed into law, would allow medical doctors to invade the practice of chiropractic.

Now, you might be asking yourself why medical doctors would want to perform spinal manipulation when they have testified for years about how worthless it is. Well, you have to look no further than the United States Department of Health and Human Services for the answer. An agency of that Department determined that most medical treatments for low back pain are **dangerous or ineffective**. The only treatment they found that could relieve symptoms, increase function and hasten recovery was spinal manipulation or chiropractic adjustments. A major Canadian study determined that chiropractic is **more effective, safer and less costly** than medical care. **That** is why medical doctors want to be able to perform spinal manipulation.

If the Kansas Chiropractic Association introduced a bill to allow doctors of chiropractic to perform the surgery, the KMS would rightfully oppose it on the basis that we are **neither trained nor qualified**. The same is true in this situation. Medical schools do not teach spinal manipulation, thus medical doctors are **neither trained nor qualified** to perform this valuable type of treatment. Again, we cannot believe the Legislature would want to have any part of a bill that **would place patients at risk**.

In closing, let me add this. Last year, the Kansas Medical Society introduced legislation to split off from the State Board of Healing Arts and have their own medical board. That legislation was introduced even though the Healing Arts Board opposed the bill and even though the Board had worked extremely well for 38 years. The Kansas Legislature would have no part of that KMS proposal.

This year, the Kansas Medical Society has introduced legislation to effectively place the entire Kansas health care field under their control. The Kansas Chiropractic Association urges you again to have no part in it.



February 19, 1996

To: Committee on Public Health and Welfare
Kansas State Senate

From: Ken Davis, PT - Chairperson, KPTA Legislative Committee

Subject: 1996 Senate Bill No. 638

On behalf of the Kansas Physical Therapy Association and the 1200 physical therapists and physical therapist assistants in the State of Kansas, thank you for the opportunity to appear before you in the matter of 1996 Senate Bill No. 638.

By opposition to Senate Bill No. 638, the members of the physical therapy profession are not questioning the scope of practice of physicians. We appear before you to point out a technical conflict, as it pertains to the passage of the proposed definition of "practice of medicine and surgery," in relation to the current definition of "physical therapy" in K.S.A. 65-2901.

In K.S.A. 65-2901 it states that "the practice of medicine and surgery are not authorized or included under the term 'physical therapy' as used in this act." The proposed definition, therefore, would prohibit the physical therapy profession from performing procedures, which we are currently authorized to perform.

For example under the proposed definition of "practice of medicine and surgery" in Section 1(g):

1. Physical therapy professionals currently perform examination of a human body by use of tests, procedures or any other method for the purpose of determining the patient's health status or cause of any symptom of illness, disease or injury.
2. Physical therapy professionals currently provide treatment of any human injury, wound, fracture, deformity, disease, or physical illness.
3. Physical therapy professionals currently provide treatment for prevention of human illness or disease, or promotion of good health.

Under the proposed definition of "surgery" in Section 1(h):

1. Physical therapy professionals use modality, equipment, mechanical or electrical device, laser, therapeutic ultrasound which alters body tissue, causes the structure or function of tissues or systems of the body to be altered in any manner.
2. Physical therapy professionals perform wound debridement, using sharp and blunt instruments when treating wounds in whirlpools. This would constitute severing of tissue.

In conclusion, we oppose the proposed bill because it would create unwarranted prohibitions to the current practice of physical therapy. We ask that the proposed bill be modified to allow the physical therapy profession to continue to perform physical therapy examination and treatment, using the full range of techniques and modalities currently allowed under K.S.A. 65-2901. Thank you for your consideration of this request.



Testimony before the Kansas Senate Health and Welfare Committee
February 19, 1996

RE: SB 638

By: Lisa G. Wilds, M.S., L.D.
901 NE Kellam Av.
Topeka, KS 66616-1627

(913)233-4066

Senators,

As a citizen, I am opposed to unnecessary government regulation and excessive lobbying by powerful special interest groups. As a woman, I want the option of using an experienced midwife for child birth and it would not matter to me if she were regulated or unregulated by the government. But this bill also directly affects me in my own work.

I am a nutritionist in private practice. I have a master's degree in foods and nutrition from Kansas State University. I am also licensed by the State of Kansas to practice dietetics.

I am trained in assessing the nutritional needs of individuals, and in the use of foods and food supplements in health and disease.

I am concerned that passing the proposed changes to SB 638 would limit my ability to practice nutrition consulting. By broadening the definition of "Practice of Medicine and Surgery" to include all tests and examinations of the human body and all treatments for the prevention of disease or the promotion of health, this bill would make it illegal for various preventive health-care practitioners such as myself to provide assessment and therapy in our respective fields. This in turn may limit the ability of all Kansans to be pro-active in maximizing their own health and in preventing degenerative diseases.

In these times, Kansans need more, not less, access to information which can help them monitor their own health and make good lifestyle choices. Current agricultural practices are resulting in depletion of trace elements from the soil which, in combination with food refining, is contributing to deficiencies of vitamins and minerals in the food supply. Obesity and chronic degenerative diseases are thought by many authorities to be a direct result of the declining nutritional value of foods. Nutrition consulting can help individuals to educate themselves on healthy food selection and proper use of supplements.

In summary, I do not diagnose diseases, prescribe medicines or perform surgery but the proposed changes to the definition of "Practice of Medicine and Surgery" in SB 638, if adopted, would prevent my being able to continue to provide nutrition assessment and counselling by defining it as belonging to the domain of medicine in which I am not licensed. Unnecessarily limiting the scope of practice of non-medical health-care practitioners might infringe on Kansans' constitutionally protected rights to life, liberty and the pursuit of happiness, as well as limiting my ability to earn a living in my chosen field.

I ask the committee to reject the proposed regulation of child birth and to keep the more narrow definition of "Practice of Medicine and Surgery" as it is worded in the current law.

Senate Public Health and Welfare
Date: 2-19-96
Attachment No. 9

To: Public Health and Welfare Committee

From: Karen and Kevin Dooley

Re: Senate Bill 638

I would like to express my concerns over senate bill number 638. As I understand it, this bill could possibly make the practice of traditional midwifery illegal. This greatly concerns me, because for "low risk" pregnancies home is a very safe place for birth.

After doing extensive reading and research during my first pregnancy, I decided that a home birth attended by a qualified and experienced midwife was the right option for me and my family. During my pregnancy I visited five (5) different OB-GYN's with very specific requests for the type of birth I wanted. I thought the best outcome for myself and my baby would be obtained with the least amount of interventions, (e.g. artificially inducing or speeding up the labor process with drugs, mandatory IV's, electronic fetal monitoring, etc.). These are not necessary for normal births and, in fact, can themselves lead to the very distress they are designed to detect.

The OB-GYN's told me they could not agree to these requests because of "hospital regulations", and two even asked me if I had considered a home birth. Although, they would not agree to provide backup medical services for a home birth, again citing "hospital regulations".

My extensive search led me to a very caring, experienced and qualified midwife. Further, I found a family practice physician who supported my home birth decision and agreed to provide back-up medical services if they became necessary. My husband and I visited the midwife for regular prenatal visits which were very educational and personal. Sessions typically lasted over one hour. OB-GYN's typically book patients in 15 minute intervals.

We had a wonderful and safe homebirth. I truly believe that we were being responsible parents in making these health care decisions for our family. Please consider our positive experience and those of many families like ours when deliberating senate bill 638. Please don't limit our health care choices.

Sincerely,

Karen Dooley
Kevin Dooley

Karen and Kevin Dooley
3744 W.183rd Street
Stilwell, Kansas 66085

Senate Public Health & Welfare

Date: 2-19-96

Attachment No. 10

February 18, 1996

Dear Board of Public Health and Welfare,

Recently, I was made aware of senate bill #638, and its implications, and it is as a mother that I am writing to you.

According to section g, the new definition of the practice of medicine includes "performing... tests, health service or surgical operation which relates to obstetrics." It is this that I completely disagree with.

For ages women have been assisted with their labors and births by midwives. There are records of it in the Bible, and it is widely practiced worldwide in present times as well. Many women feel that the best place to give birth is in the privacy of their homes, and the best person to care for them and their babies during this event is a midwife. Senate bill #638 wipes out the possibility of a legal, midwife-assisted home birth.

Personally, I have given birth in my home twice. The midwives who assisted me during my labor, delivery and recovery were very impressive not only with their acute knowledge of the technicalities of birthing, but also the high quality of care that I and my babies received. Since then, I have learned about the apprentice/academic training that these midwives have received, and I believe that this is excellent preparation to becoming an independent midwife.

Birth is an intimate, personal and powerful experience, and it cannot be governed. I ask that you not let senate bill #638 pass, and that the practice of midwifery is legal, recognized, and supported.

Thank you for your consideration on this matter.

Sincerely,



Stephanie M. Guenther
9930 W. 83rd Terr.
Overland Park, KS 66212

Senate Public Health & Welfare
Date: 2-19-96
Attachment No. 11

To: Public Health & Welfare Committee

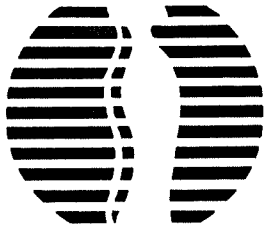
From: Julie A. Ruiz and family.

RE: Senate Bill 638

My family and I **oppose** Senate Bill 638. After thoroughly researching the different choices of birth, we chose a home birth attended by a mid-wife. We are informed parents that feel we made the best decision for our family. We feel fortunate to have these options to choose from.

In addition, I make my living as a Certified Nutritionist and believe that my business offers an important perspective towards healing through proper nutrition. This bill would prohibit me from working as a nutritionist. Please do not limit our choices.

Julie A. Ruiz, David A. Weihe, Aaron Weihe.
5645 Lakecrest Drive, Shawnee, KS 66218



Kansas Chiropractic Association

Before the Senate Committee
on Public Health and Welfare
February 19, 1996

Testimony of Darrell E. Fore, DC
Kansas Chiropractic Association
SB 638

HONORABLE SENATORS

As you review this written presentation and study Senate Bill No. 638 closely, the numerous reasons will become clear why the Kansas Chiropractic Association (KCA) is so strongly opposed to this legislation.

At the outset, this proposed legislation appears to broaden the statutory definition of Medicine and Surgery of the Kansas State Healing Arts Act, with the presumed purpose of placing Obstetrics clearly within the practice of medicine. However, upon closer scrutiny, the faults of this proposed legislation are numerous. Please refer to Page 2, Section 2, which specifies "their branches," which usually means "Specialty Practices," and (b), "Persons who engage in the practice of medicine and surgery as defined by this act." I ask that you keep this terminology in mind as you study this Bill.

Now, if you apply that Section to the definition of Obstetrics, Section 1, (e), could mean that all care related to human pregnancy must be performed by an MD or DO licensee. During pregnancy there are marked postural/structural changes

Senate Public Health and Welfare

Date: 2-19-96

Testimony of Darrell E. Fore, DC

Page 2, February 19, 1996

which most DCs treat routinely. In fact, many Obstetricians refer their patients to DCs for that treatment during pregnancy. Also, much of the pre-natal, labor and recovery care is performed by Nurses, Nurse Practitioners, or Physician's Assistants. Would all of the above care be considered the Practice of Medicine?

Page 1, Section 1, (f), could define "Physician" so much more narrowly than many other states have defined the term.

Page 1, Section 1, (g), defines "practice of medicine and surgery" as the "use of tests, procedures or any other method for the purpose of determining the patient's health status or cause of any symptoms, illness, disease or injury." This could have the potential of preventing a DC from performing any test or examination for those purposes, or to arrive at a diagnosis of a patient's condition; procedures which are required of DCs by the Kansas Healing Arts Act, KSA 65-2871. Further, it could effectively eliminate the school nurse, or the retired nurse in a grocery store, who takes blood pressure, Dentists, Emergency Medical Technicians, Athletic Trainers, or anyone else who might be required to, and are fully qualified to perform certain tests. If this is allowed to stand, it could require the Courts make an interpretation. This Section could also eliminate the Psychologists, as well as Health Spas, American Cancer Society, and all others who might "recommend a medical program for prevention of human illness or disease, or the promotion of good

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Testimony of Darrell E. Fore, DC

Page 3, February 19, 1996

health." Unless the Courts interpret otherwise.

The definition of "Surgery" (Page 2, Section 1, (h)), specifically includes procedures used by many health care providers, as well as virtually all ancillary health care support services. It could even be interpreted to include manipulation as the practice of surgery. This definition could potentially cause Chiropractors, Dentists, Podiatrists, Nurses, Nurse Practitioners, Physician's Assistants, Physical Therapists, Radiological Technicians, Barbers, Cosmetologists, Manicurists, and others to be illegally practicing medicine and surgery. That could require the Courts to interpret and clarify this legislation. All of these named professions serve an extremely valuable service to the people of Kansas, but could effectively be hindered from performing those services by the passage of SB 638.

There are many "coulds" named in this presentation. That is exactly why we so strongly oppose this proposed legislation. There are more questions developed, for more professions than questions answered, for one profession, by Senate Bill No. 638.

If you have questions concerning this presentation, or wish any additional information, please contact the Kansas Chiropractic Association 913-233-0697.

Thank you for your time and attention to this matter.



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the Voice of Nursing in Kansas

Betty Smith-Campbell, M.N., R.N., AnnP
President

Terri Roberts, J.D., R.N.
Executive Director

Terri Roberts J.D., R.N.
Executive Director
Kansas State Nurses Association

(913) 233-8638
February 19, 1996

S.B. 638 HEALING ARTS ACT AND THE PRACTICE OF MEDICINE AND SURGERY

Senator Praeger and members of the Senate Public Health and Welfare, my name is Terri Roberts J.D., R.N. and I am the Executive Director of the Kansas State Nurses Association. Thank you for this opportunity to address S.B. 638 with you today.

Registered and Licensed Practical Nurses are included as an exception to the Healing Arts Act, which in essence states that when we are practicing that which is permitted in the Nurse Practice Act (K.S.A. 65-2872) we are not practicing medicine or surgery. This exception currently in statute is critical in light of the new definitions being proposed by the Kansas Medical Society (KMS) in S.B. 638.

The new definitions being proposed are very broad and encompassing, and may need to be further refined. For example: (iii) diagnosing, providing treatment or recommending a medical regimen for prevention of human illness or disease, or the promotion of good health;

There are certainly more than licensed health professionals working to promote good health. Yes, physicians engage in this activity, as do many other professionals, but does it need to be included in their scope of practice so that anyone not included on the list of exceptions is prohibited from engaging in "good health promotion"?

There appears to be no boundaries around the practice of medicine and surgery in the definitions proposed, and this may be problematic for some who are not specifically exempted, but engage in very basic education and services.

We would ask for the committees careful consideration of these definition changes being proposed, to give medicine the best definition possible, while not impeding the routine practice of others.

Thank you.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

Constituent of The American Nurses Association

Senate Public Health and Welfare

Date: 2-19-96
Attachment No. 14