

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Vice-Chairperson Jim Morrison, at 1:30 p.m. on March 17, 1997 in Room 423-S-of the State Capitol.

All members were present except: Representative Carlos Mayans

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

Conferees appearing before the committee:

Randy Tangier, Audit Manager, Legislative Division of Post Audit
Elizabeth Saadi, Ph.D., Director, KDHE Office of Health Care Information
Dawn Reid, Assistant Director, Kansas State Nurses Association
Jim Cain, Chairman, Governor's Mental Health Planning Council
Canda Byrne, Advocacy Coordinator, Kansas Mental Health Coalition
Jerry Slaughter, Executive Director, Kansas Medical Society
Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Mark Stafford, General Counsel, Kansas Board of Healing Arts
Jerry Palmer, Kansas Trial Lawyers
Wendy McFarland, Lobbyist, American Civil Liberties Union (ACLU)

Others attending: See Guest List (Exhibit 1)

The committee minutes of March 13, 1997 were approved.

Vice-Chairperson Morrison opened the hearing on **SB 10 - Health care database, performance audit for 1998 legislative session.**

Emalene Correll, Legislative Research Associate, distributed a "crib sheet" listing of those persons and entities defined as a health care provider by K.S.A. 49-3401 (see Exhibit 2).

Randy Tangier, Legislative Post Audit, testified that the bill moves the due date of the performance audit of the Health Care Data Program to the start of the 1998 Legislative Session and gave reasons for the delay (see Exhibit 3).

Elizabeth Saadi, Ph.D., KDHE Health Care Information, testified KDHE's support of the bill; and raised the question of who will finance the contractual services for the audit. After discussion, Dr. Saadi stated she understood financing will be addressed by Assessment and Taxation (see Exhibit 4).

Dawn Reid, Kansas State Nurses Association, spoke in support of **SB 10** and offered an amendment to the effect that **SB 130** (membership of the Health Care Data Governing Board) be incorporated into **SB 10**; that the number of board members be increased to 9 (with one of the additional positions being a licensed professional nurse and the other position being a member of the Kansas Health Institute); and that the amended bill be effective upon publication in the Kansas Register (see testimony, Exhibit 5). Representative Wells questioned the time frame of the audit--would it be for 12 months, or longer? Mr. Tangier responded that the law does not specify a particular audit period; but the audit will look at the most current information available and the period may be 12 or 15 months.

Representative Geringer asked Ms. Reid if the amendments were presented to the Senate Committee. She answered they were amended into **SB 130** and it passed the Senate 40-0. The bill was not scheduled for hearing in this committee.

After discussion, Representative Henry moved that **SB 10** be amended by incorporating the provisions of **SB 130**; and that the effective date of the bill be upon publication in the Kansas Register. Representative Storm seconded the motion. The motion carried.

Representative Wells moved, seconded by Representative Geringer, that **SB 10**, as amended, be passed

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S of the State Capitol, at 1:30 p.m. on March 17, 1997.

favorably. Discussion followed, and Representative Hutchins asked Dr. Saadi about the financing of the contractual services required for the audit. Dr. Saadi answered that she understood that it will be included in the Legislative Post Audit budget now being considered. Call of the motion was made; the motion carried.

Vice-Chairperson Morrison opened the hearing on **SB 60 - Governor's mental health services council.**

Jim Cain, Chairman of the Governor's Mental Health Planning Council, testified in support of the bill. He stated that one problem was noticed on page 2, line 11, wherein the number of members should be amended so as to reflect proportionate representation for adults and children/youth. Mr. Cain stated the terminology for adult and children/youth is as included in the bill, sort of a traditional definition of each.

Representative Haley asked if the proposed makeup of the board caused an overlap in those eligible to be a member in that someone may have an adult and also a child with mental problems. Mr. Cain answered that if someone is representing a youth, and the youth becomes an adult, at the end of the appointment, there is no assurance that the member would continue to represent the youth who becomes an adult. Mr. Cain also stated that this bill is an attempt to reduce the size of the board and yet remain in compliance with federal law.

Canda Byrne, Kansas Mental Health Coalition, in supporting **SB 60**, recommended that it be amended to add, as members, partners, siblings and spouses of adult consumers with serious and persistent mental illness (see Exhibit 6). Representative Horst asked if that could be accomplished by using "immediate family members." Ms. Byrne agreed that would be appropriate.

Representative Powell asked how this board's purpose differs from that of the Coalition. Ms. Byrnes said her organization is the legislative arm for some of its listed members. Representative Powell asked the value of naming some to the board who represent the public at large and who do not have family members with mental illness. Ms. Byrne replied public members may not be well versed in mental care.

Vice-Chairperson Morrison directed attention to the written testimony of Ellen Piekalkiewicz, Director of Policy and Planning, Association of Community Mental Health Centers of Kansas, Inc., in support of **SB 60** (See Enclosure 7).

There being no others present to testify, the hearing was closed. The chairman called for action on the bill.

Representative Haley moved that SB 60 be amended on page 2, line 12, to change "four" to "three."
Representative Hutchins seconded the motion. The motion carried.

Representative Powell moved that the number of members of the board be three members representing adults, three members representing youth and children, and two members from the general public. Representative Hutchins seconded the motion. In discussion, Representative Haley commented that he believed the two public members should have some background and be cognizant of the issues. If in some way that could be assured, he would be supportive of the amendment. Representative Henry asked Mr. Cain if the public has been represented on past boards. Mr. Cain answered that he did not know; but that under section (c) the ratio of children and adult representation was set out. Mr. Cain said the Youth Authority had raised the question of youth participation. He suggested we add two members and thus meet the ratio requirement. Representative Powell amended his motion by amending SB 60 on page 2, line 5, and on page 2, line 11, by changing "11" to "13" and adding on page 2, line 11, "two members shall be members of the general public." Representative Hutchins seconded the amended motion. The motion carried.

Representative Geringer moved, seconded by Representative Hutchins, that SB 60 be passed favorably, as amended. The motion carried.

Vice-Chairperson Morrison opened the hearing on **SB 221 - Health care providers peer review and risk management.**

Jerry Slaughter, Kansas Medical Society, presented testimony supporting the bill. He explained that the bill clarifies the legal protections to make reports and/or records submitted to peer review committees or officers privileges not subject to release or admissible in evidence in any judicial or administrative proceeding. Mr. Slaughter stated that **SB 221** will not hamper a board's ability to gather relevant information or limit its ability to discipline licensees (see Exhibit 8). Mr. Slaughter offered two balloon amendments--one to cause a disciplinary proceeding to be held in closed session; the other to cause a licensing agency to independently obtain proof of its findings and present it in an open meeting, which would not be a waiver of the peer review

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S of the State Capitol, at 1:30 p.m. on March 17, 1997.

privilege.

Emalene Correll suggested that the "crib sheet" (Exhibit 2) would be useful in studying this bill. She asked if the amendment made to Section 1(B)(c) on page 3, lines 22-33, should also be made in Section 2(e) on page 5, lines 26-36. Mr. Slaughter stated the Society would not have an objection to that.

Harold Riehm, Kansas Association of Osteopathic Medicine, testified in support of **SB 221**, and proposed an amendment to allow compensation for review committee members (see Exhibit 9). He testified that the last year such compensation was paid, it was at a rate of \$17 per hour, and \$14,400 was paid in total for that year. Mark Stafford, General Counsel for the Board of Healing Arts, testified in support of the bill that it does not alter the policy of the state for peer review but ensures that a person's license will not be disciplined solely on the basis of confidential information (see Exhibit 10).

Jerry Palmer, Kansas Trial Lawyers, testified in opposition to **SB 221**, stating that the bill protects the secrecy of peer review board activities --which is adverse to what the public has a right to know. He offered an amendment to require more discipline by the agency in that it would have to substantiate its basis of discipline. He believes the amendment carries forward the intent of the Senate; and with this amendment, the Trial Lawyers would support the bill (see Exhibit 11).

Wendy McFarland, ACLU, spoke in opposition to **SB 221**, stating that the bill shields the public from important information concerning medical professions by preventing access to proceedings used to investigate malpractice (see Exhibit 12).

Several concerns were raised with the proposed amendments, so the Vice-Chairperson advised that **SB 221** would be carried over to tomorrow's agenda for possible action.

The meeting was adjourned at 3:15 p.m.

The next meeting is scheduled for March 18, 1997.

**HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
MARCH 17, 1997**

NAME	REPRESENTING
Jim Cain	GOVERNOR'S MENTAL HEALTH COUNCIL
Harold Pitts	KCOA
Chris Beal	
Cindy Pennington	KAI
Lorraine Ann Brown	KAA
Mike Hammond	Commissioner Sage Miss SD SRS
Bryce Miller	GMHSPC
Randy Tomisor	Post Audit
Roger Traudie	KTC
Mark Haefke	SRS
Jerry R. Palmer	KS Trial Lawyers Assn
Dawn Reed	KSWA
Maha Rumi	AG's OFFICE
Tom A. Phillips	KOA/E
Lori Saadi	KDHE
Chip Wheelan	KS Psychiatric Society
Preston Barton	DD Council
JERRY SLAVICK	KJMS

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
MARCH 17, 1997

NAME	REPRESENTING
Jai Sookwan	MH/DD.
LARRY BUENING	BD OF HEALING ARTS
Mark Stafford	"
Rita Noll	HCSE
Bob Harder	Mid. Prof. Services
Tommy Lee	KTLA
Nora Hanson	KWK
Terri Roberts	KSNA

Definition of Health Care Provider

The definition of health care provider in K.S.A. 65-4921 includes the following:

1. Those persons and entities defined as a health care provider under K.S.A. 1996 Supp 40-3401: Those persons are:
 - a person licensed to practice any branch of the healing arts,
 - a person who holds a temporary permit to practice any branch of the healing arts,
 - a person engaged in a postgraduate training program approved by the Board of Healing Arts,
 - a medical care facility licensed by the Department of Health and Environment,
 - a health maintenance organization issued a certificate of authority by the Commissioner of Insurance,
 - a podiatrist licensed by the Board of Healing Arts,
 - an optometrist licensed by the Board of Examiners in Optometry,
 - a pharmacist licensed by the State Board of Pharmacy,
 - a licensed professional nurse who is authorized to practice as a registered nurse anesthetist,
 - a licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia,
 - a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by law to form such a corporation and who are health care providers as defined by this subsection [K.S.A. 1996 Supp. 40-340, subsection (f)],
 - a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection [see above] and who are legally authorized to render the professional services for which a limited liability company is organized,
 - a partnership of persons who are health care providers under this subsection,
 - a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined in this subsection,
 - a dentist certified by the Board of Healing Arts to administer anesthetics under K.S.A. 65-2899,
 - a physical therapist registered by the Board of Healing Arts,
 - a psychiatric hospital licensed under K.S.A. 75-3307b,
 - a mental health center or mental health clinic licensed by the

- Secretary of Social and Rehabilitation Services,
the definition under K.S.A. 40-3401 does not include any state institution for the mentally retarded, any state psychiatric hospital, any person holding an exempt license issued by the Board of Healing Arts, or any person holding a visiting clinical professor license from the Board of Healing Arts;
2. a dentist licensed by the Kansas Dental Board;
a dental hygienist licensed by the Kansas Dental Board;
a professional nurse licensed by the Board of Nursing;
a practical nurse licensed by the Board of Nursing
a mental health technician licensed by the Board of Nursing;
a physical therapist assistant certified by the Board of Healing Arts;
an occupational therapist registered by the Board of Healing Arts;
an occupational therapy assistant registered by the Board of Healing Arts; and
a respiratory therapist registered by the Board of Healing Arts.

Prepared by Emalene Correll
Legislative Research Department

**Testimony Before the
HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
on Senate Bill 10**

**March 17, 1997
Legislative Division of Post Audit
Randy Tongier, Audit Manager**

Current State law requires a performance audit of the Health Care Data Program to be done by either Legislative Post Audit or a firm under contract with Legislative Post Audit. The audit is to identify the total costs of the Program (both to the State and to providers of the data) and the benefits of the Program. The law further requires that the resulting audit report be submitted to the Legislature at the start of the 1997 Legislative Session.

To meet that timeliness requirement, the audit work would have to have been started during the Summer of 1996. In preparation for that task, Legislative Post Audit staff met with administrators of the Health Care Data Program last Spring to determine the status of the Program. We found that, although some data had been collected and disseminated by that time, the Program wasn't fully developed yet, and hadn't been operating long enough to allow a meaningful assessment of costs and benefits.

In response to that finding, Post Audit staff suggested to the Post Audit Committee that delaying the audit for a year would provide more meaningful and useful audit results. The Post Audit Committee concurred, and, to avoid noncompliance with State law, introduced Senate Bill 10. This bill amends current State law to delay the due date for the audit until the start of the 1998 Legislative Session.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Health and Human Services Committee

by

The Kansas Department of Health and Environment

Senate Bill 10

The Kansas Department of Health and Environment wishes to support Senate Bill 10 with its proposed change of the year of audit from 1997 to 1998. This change is appropriate since the first year of the Governing Board's work was spent developing rules and regulations for submitting data to and releasing data from the database. Fiscal year 1998 is the more appropriate year to conduct the audit since the Governing Board's data collection activities did not begin until FY95.

The agency does question how language in the statute will be addressed as it relates to KDHE being responsible for paying for contractual services for the audit. The Governor has placed funds for this audit in the Division of Legislative Post-Audit's budget and not in KDHE's budget.

Testimony presented by:

Elizabeth W. Saadi, Ph.D.
Director
Office of Health Care Information
Center for Health and Environmental Statistics
March 17, 1997

HOUSE HEALTH/HUMAN SERVICES

Attachment 4
3 - 17 - 97



700 SW Jackson, Suite 601
Topeka, Kansas 66603-3731

913/233-8638 * FAX 913/233-5222

the Voice of Nursing in Kansas

Betty Smith-Campbell, Ph.D., R.N.
President

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

For more information contact:
Dawn L. Reid, LLM,JD,RN
Kansas State Nurses Assoc.
913-233-8638

March 17, 1997

**S.B. 10 HEALTH CARE DATA POST AUDIT
PROPOSAL TO ATTACH
S.B. 130 COMPOSITION OF THE HEALTH CARE DATA
GOVERNING BOARD**

Representative Morrison and members of the House Committee on Health and Human Services, my name is Dawn Reid, LLM,JD,RN and I am the assistant director of the Kansas State Nurses Association. I am here today to speak in support of S.B 10 and to propose an amendment to it by attaching S.B. 130.

S.B. 10 and S.B. 130 propose changes to K.S.A. 65-6808 and K.S.A. 65-6803. Both statutes are found in Article 68 which addresses the collection of health care data which is governed by the Health Care Data Governing Board. S.B. 10 proposes to postpone the legislative post audit of the Health Care Data Governing Board for another year (1998). The purpose of the Health Care Data Governing Board is to collect, analyze and report on health care data and health trends within the state. The ultimate goal of the Board is to provide the legislature with health care data in order to make more informed decisions regarding health issues, and ultimately, where state and taxpayer monies for health care will be directed to in Kansas. Many of the data collection projects that the Board has undertaken involve some aspect of nursing. Nurses are; collecting the actual data; conducting the nursing activities and actions that are being collected; the results from patient care activities are collected; notations in patient records made by nurses are collected; and nurses are actually filling out the forms for data collection.

One of the first official actions of the Board was to adopt the CARE form, which is the pre-admission form that is completed by RN's or Social Workers on persons over 65 upon dismissal or transfer from their nursing home or hospital. KSNA has also been actively involved in the Board's pilot project to use a revised version of the licensure application to collect information on Advanced Practice Nurse Practitioners. This data collection project includes health care efficacy, efficiency, and data such as the amount of time spent to treat patients, the amount of time spent educating patients, and the amount of time spent on administrative details.

S.B 130 Composition of the Health Care Data
Governing Board
March 17, 1997
page 2

There are over 25,000 RNs in Kansas, comprising the largest number of health care providers in the state. RN's work in virtually every setting in which any type of health care service is delivered. Where health care service is delivered, data is gathered. These areas include; hospitals, schools, home health agencies, public health departments, hospices, nursing homes, and state and federal agencies.

Currently the composition of the Board is made up of traditional medical care practitioners and health care institution representatives. KDHE (Secretary O'Connell) has proposed the addition of a voting seat for the Kansas Health Institute. We fully support Dr. Gessert for that seat, and as a medical doctor, feel that he is highly qualified.

However, with the dramatic and ongoing changes in the delivery of health services, the increased focus on cost, efficacy and efficiency of treatment modalities, data collection and interpretation must be made from a multi-treatment perspective. Nurses have a unique perspective on health care that focuses on prevention, wellness, and the teaching of healthier lifestyles. A representative with that type of perspective is missing from the current board's composition. The senate amended the bill to add the RN seat to be appointed by KSNA.

It must be pointed out that there is **NO COMPENSATION** for being a member of the Board. Board members receive no mileage, subsistence allowance, or other expense compensation for serving on the Board, thus there would be **NO FISCAL IMPACT** on adding a RN seat.

Constructively, S.B. 10 concerns the legislative post-audit of the performance of the health care database, Article 68, K.S.A. 65-6808. S.B. 130 concerns the composition of the Health Care Data Governing Board (Article 68, K.S.A. 65-6803). Both concern the collection of health care data, thus attaching S.B. 130 does not violate any constitutional constructs.

Additionally, adding two seats to the Board at this time will assist the Board in to determine the emerging health care issues that will continue to increase. In order to expedite this process, we suggest using the publication provision in S.B. 130 (effective upon publication in the Kansas Register, versus publication in the statute book).

Thank you.

b:dtr/green/sb

Health Care Data Governing Board

Organizational Membership

March, 1997

5-3

(Please note: Board members have 3 year terms, meet quarterly, and are not paid compensation, subsistence allowance, mileage expenses)

Voting

KMS
Jerry Slaughter
KMS Appointed

Consumer Rep.
John Noonan
Governor Appointed

KU Health Ser. Adm.
Michael Fox
*Appointed by the
Chancellor of KU Med*

KHA
Don Wilson
KHA Appointed

Adult Care Industry
John Grace
Governor Appointed

Rotating Health
Services
Research
KU, KSU, WSU
Board of Regents Appoints

KU Med
David Voran, Exec.
*Appointed by the Vice
Chancellor of KU Med*

Health Insurer Rep.
Tom Miller
Governor Appointed

KHI
Dr. Charles Gessert
KHI Appointed

Revised
Selection Criteria

Proposed in
S.B. 130 as
amended by the
Senate committee

John Noonan-AARP
John Grace-KAUSA
Tom Miller-BCBS

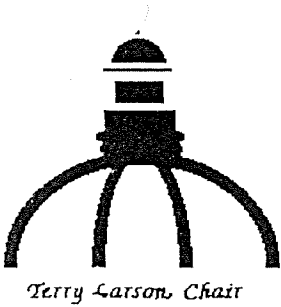
Non-Voting

KDHE
James J. O'Connell, Chair
Appoints advisory panel taskforce

Dept. Insurance
Richard Hunker

SRS
Ann Koci

KSNA
RN
KSNA Appointed



KANSAS MENTAL HEALTH COALITION

P.O. Box 675, Topeka, Ks. 66601-0675

Telephone: (913) 233-0755 Fax: (913) 233-4804

"Joining together in one voice on critical needs of persons with mental illness."

For More Information Contact:

Canda Byrne, MSN, ARNP, CS

Advocacy Coordinator

P. O. Box 675

Topeka, Kansas 66601

(913) 233-0755

March 17, 1997

Testimony for The House Health and Human Services Committee on Senate Bill 60

Representative Mayans and members of the Health and Human Services Committee, I am Canda Byrne. I am the Advocacy Coordinator for the Kansas Mental Health Coalition. The Kansas Mental Health Coalition is comprised of consumers, families, providers and advocates of persons with mental illness. The most recent list of our membership is attached. The Coalition promotes the achievement of a broad array of integrated community and institutional services so that individual needs are met to provide the highest quality of life in the least restrictive environment.

I am here today to speak in support of Senate Bill 60. We would, however, like to request one change in the wording of this bill. We would like to request that parents, siblings and spouses of adult consumers with serious and persistent mental illness be added. It is our belief that by limiting those who can serve to only parents of children and adult consumers it will restrict the number of family members who could serve and be a strength to the Council. We also believe that by only specifying family members it often leaves seats open to second and third cousins, who may not be involved family members.

We are very aware of the good work the council has been doing and feel a full turnover of the Planning Council would leave much of this important work undone. Therefore, we would hope to see a gradual change in membership.

Thank you for allowing me to testify today. I would be happy to stand for questions.

HOUSE HEALTH/HUMAN SERVICES

Attachment 6-1

3 - 17 - 97

The Kansas Mental Health Coalition Membership
as of March 10, 1997

The Association of Mental Health Centers of Kansas, Topeka
Bert Nash Community Mental Health Center, Inc., Lawrence
Breakthrough House of Topeka
Bryce Miller, Topeka
Center for Counseling & Consultation, Great Bend
Comcare of Sedgwick County, Wichita
Cowley County Mental Health Center, Arkansas City
Crawford County Community Mental Health Center, Pittsburg
Crawford County Mental Health Association, Pittsburg
Eli Lilly
Family Life Center, Columbus
Family Service and Guidance Center of Topeka
Four County Mental Health Center, Independence
Franklin County Mental Health Center, Ottawa
GlaxoWellcome
Greg Olson, Wellington
Herbert Kupec, Lawrence
High Plains Mental Health Center, Hays
Horizons Mental Health Center, Hutchinson
Iroquois Center for Human Development, Greensburg
Johnson County Mental Health Center, Mission
Kansas Alliance for the Mentally Ill, Topeka
Kansas Mental Illness Awareness Council, Topeka
Kansas Hospital Association
Kansas Psychiatric Society, Topeka
Kansas Psychological Association, Topeka
Kanza Mental Health and Guidance Center, Hiawatha
Meadowlark Homestead, Inc., Newton
Menninger, Topeka
Mental Health Center of East Central Kansas, Emporia
Mental Health Consortium, Topeka
National Association of Social Workers, Topeka
Northeast Kansas Mental Health and Guidance Center, Leavenworth
Parkview Hospital of Topeka
Pawnee Mental Health Services, Manhattan
Prairie View, Newton
Robert Chase, Humboldt
Roy Menninger, Topeka
Shawnee Community Mental Health Center, Topeka
Southwest Guidance Center, Liberal
Wyandott Mental Health Center, Kansas City



**Association of Community
Mental Health Centers of Kansas, Inc.**

700 SW Harrison, Suite 1420, Topeka, KS 66603-3755
Telephone (913) 234-4773 Fax (913) 234-3189

**Testimony to House Committee on Health and Human Services
on S.B. 60
March 17, 1997**

Ron Denney
President
Independence

David Wiebe
President Elect
Mission

Scott Jackson
Vice President
Columbus

Kermit George
Secretary
Hays

Keith Rickard
Treasurer
Leavenworth

David Boyd
Member at Large
Columbus

Bill Persinger
Past President
Topeka

Paul M. Klotz
Executive Director
Topeka

**Ellen Z. Piekalkiewicz
Director of Policy and Planning**

Thank-you for this opportunity to testify today in support of S.B. 60. The Governor's Mental Health Services Planning Council, required by federal law, serves as an important advisory body to the Governor on mental health issues. It also serves as an important forum for the various mental health interest groups, providers, families, and direct consumers to meet on a regular basis to discuss issues of concern.

We support the intent of S.B. 60 which is to streamline the council, per federal requirements and to ensure equal representation. We believe that the suggested changes have the potential to strengthen the council.

HOUSE HEALTH/HUMAN SERVICES

Attachment 7
3 - 17 - 97



KANSAS MEDICAL SOCIETY

March 17, 1997

TO: House Health and Human Services Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: SB 221; relating to the confidentiality of certain peer review and risk management reports and records

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 221, which amends the risk management and peer review laws to clarify that the protections of these laws extend to reports or records submitted as part of the disciplinary hearings process of the Board of Healing Arts.

It might be helpful to review the background of these laws, since there are quite a few new members of the committee. In the mid-80's the legislature enacted two laws designed to encourage self-policing and reporting of substandard practices by physicians and other health care providers. The risk management statute, K.S.A. 65-4921, et seq., requires hospitals and other facilities to develop internal risk management programs based on mandatory reporting by involved professionals. The peer review statute, K.S.A. 65-4915, et seq., provides confidentiality and protection for the records and proceedings of bona fide peer review committees, in order to encourage a candid and thorough process which results in improved patient care.

The reason the records, reports and proceedings of such committees are protected from discovery is that without such protection, it would be extremely difficult, if not impossible, to get physicians and other health care providers to participate in open and frank discussions about the patient care practices of their peers. The fear of retribution lawsuits would effectively kill any meaningful peer review, and efforts to improve the quality of patient care would be severely hampered. These two laws create a legal framework within which effective peer review and self policing can be accomplished, without impeding a plaintiff's investigation of alleged medical malpractice, because health care providers are still subject to deposition and other fact finding regarding any underlying claims.

SB 221 is designed to make sure the confidentiality protections provided for peer review or risk management reports and records in these two laws are not lost simply because the Healing Arts Board conducts a disciplinary hearing which uses such reports or records. This change will not hamper the Board's ability to gather all relevant information about a particular incident or allegation, nor will it limit or hamper its ability to discipline licensees.

HOUSE HEALTH/HUMAN SERVICES

Attachment 8-1
3-17-97

House Health & Human Services Committee
Testimony of KMS on SB 221
March 17, 1997
Page 2

A floor amendment was added during Senate debate which deserves comment. The amendment appears on the bottom of page 3 and top of page 4 of the bill. The first part of the amendment makes sure that the only part of a disciplinary hearing which could be closed is that portion at which a peer review record or testimony is made a part of the proceeding. It also limits participation in the closed portion of the hearing to specified individuals. We support that part of the amendment, but believe that the language which appears on lines 22 - 25 needs to be reinserted to make the provision read correctly.

The second part of the amendment appears at lines 5 - 10 on page 4 of the bill. This language was intended to make sure that the licensing agency does not rely solely on the peer review records or reports to make its disciplinary case involving a licensee. In other words, it would have to do its own investigation and prove its case with more than just the peer review records. We support that concept, but after studying the language at length, believe it needs to be clarified. We have attached a balloon with the amendments we are suggesting.

We believe the changes included in SB 221, plus the amendments described above, are consistent with the original intent of the peer review law. We would urge you to adopt the balloon amendment, and report SB 221 favorably for passage. We appreciate the opportunity to offer these comments for your consideration.

1 group and authorized to perform peer review; or

2 (B) a health care provider monitoring the delivery of health care at
3 correctional institutions under the jurisdiction of the secretary of correc-
4 tions.

5 (b) Except as provided by K.S.A. 60-437 and amendments thereto
6 and by subsections (c) and (d), the reports, statements, memoranda, pro-
7 ceedings, findings and other records of *submitted to or generated by*
8 peer review committees or officers shall be privileged and shall not be
9 subject to discovery, subpoena or other means of legal compulsion for
10 their release to any person or entity or be admissible in evidence in any
11 judicial or administrative proceeding. Information contained in such re-
12 cords shall not be discoverable or admissible at trial in the form of tes-
13 timony by an individual who participated in the peer review process. *The*
14 *peer review officer or committee creating or initially receiving the record*
15 *is the holder of the privilege established by this section.* This privilege may
16 be claimed by the legal entity creating the peer review committee or
17 officer, or by the commissioner of insurance for any records or proceed-
18 ings of the board of governors.

19 (c) Subsection (b) shall not apply to proceedings in which a health
20 care provider contests the revocation, denial, restriction or termination
21 of staff privileges or the license, registration, certification or other au-
22 thorization to practice of the health care provider. *A licensing agency*
23 *conducting a disciplinary proceeding in which admission of any report*
24 *or record under this section is proposed shall hold the hearing in closed*
25 *session when any such report or record is disclosed. [Unless otherwise*
26 *provided by law, a licensing agency conducting a disciplinary pro-*
27 *ceeding may close only that portion of the hearing in which disclo-*
28 *sure of a report or record privileged under this section is proposed.*
29 *In closing a portion of a hearing as provided by this section, the*
30 *presiding officer may exclude any person from the hearing location*
31 *except the licensee, the licensee's attorney, the agency's attorney,*
32 *the witness, the court reporter and appropriate staff support for*
33 *either counsel.] The licensing agency shall make all [the] portions of the*
34 *agency record in which such report or record is disclosed subject to a*
35 *protective order prohibiting further disclosure of such report or record.*
36 *Such report or record shall not be subject to discovery, subpoena or other*
37 *means of legal compulsion for their release to any person or entity. No*
38 *person in attendance at any a closed session held as a part of a [portion*
39 *of a] disciplinary proceeding shall be required to testify; nor shall the*
40 *testimony of such person be admitted into evidence, in any other civil,*
41 *criminal or administrative action, regarding the existence or contents of*
42 *a report or record under this section which is disclosed in a disciplinary*
43 *proceeding [at a subsequent civil, criminal or administrative hear-*

A licensing agency in conducting a disciplinary proceeding in which admission of any report, record or testimony relating to any report or record under this section is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed.

1 *ing, be required to testify regarding the existence or content of a*
 2 *report or record privileged under this section which was disclosed*
 3 *in a closed portion of a hearing, nor shall such testimony be admit-*
 4 *ted into evidence in any subsequent civil, criminal or administrative*
 5 *hearing. A licensing agency in conducting a disciplinary proceeding*
 6 *shall cause to be investigated independently from any testimony,*
 7 *report or record under this section such matters as may be con-*
 8 *tained in such testimony, report or record and shall cause to be*
 9 *presented such independently obtained information as part of the*
 10 *disciplinary proceeding in open meeting of the licensing agency].*

11 (d) Nothing in this section shall limit the authority, which may oth-
 12 erwise be provided by law, of the commissioner of insurance, the state
 13 board of healing arts or other health care provider licensing or disciplinary
 14 boards of this state to require a peer review committee or officer to report
 15 to it any disciplinary action or recommendation of such committee or
 16 officer; to transfer to it records of such committee's or officer's proceed-
 17 ings or actions to restrict or revoke the license, registration, certification
 18 or other authorization to practice of a health care provider; or to terminate
 19 the liability of the fund for all claims against a specific health care provider
 20 for damages for death or personal injury pursuant to subsection (i) of
 21 K.S.A. 40-3403 and amendments thereto. Reports and records so fur-
 22 nished shall not be subject to discovery, subpoena or other means of legal
 23 compulsion for their release to any person or entity and shall not be
 24 admissible in evidence in any judicial or administrative proceeding other
 25 than a disciplinary proceeding by the state board of healing arts or other
 26 health care provider licensing or disciplinary boards of this state.

27 (e) A peer review committee or officer may report to and discuss its
 28 activities, information and findings to other peer review committees or
 29 officers or to a board of directors or an administrative officer of a health
 30 care provider without waiver of the privilege provided by subsection (b)
 31 and the records of all such committees or officers relating to such report
 32 shall be privileged as provided by subsection (b).

33 (f) Nothing in this section shall be construed to prevent an insured
 34 from obtaining information pertaining to payment of benefits under a
 35 contract with an insurance company, a health maintenance organization
 36 or an administrator of a health benefits plan.

37 Sec. 2. K.S.A. 65-4925 is hereby amended to read as follows: 65-
 38 4925. (a) The reports and records made pursuant to K.S.A. 65-4923 or
 39 65-4924, and amendments thereto, shall be confidential and privileged,
 40 including:

41 (1) Reports and records of executive or review committees of medical
 42 care facilities or of a professional society or organization;

8-4

A licensing agency conducting a disciplinary proceeding may not rely solely on peer review committee records, testimony or reports and must prove its findings with independently obtained testimony or record which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.


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

March 17, 1997

To: Chairman Mayans, Vice-Chairman Morrison and Members, House Committee on Health and Human Services

From:  Harold E. Riehm, Executive Director, KAOM

Subject: Testimony in Support of S.B. 221 and Proposed Amendment

Thank you for this opportunity to testify in support of S.B. 221 and to propose an amendment to the Bill.

We are aware of the amendments proposed by the Kansas Medical Society to S.B. 221 and support those amendments.

This is an important Bill. If health care providers are to be effective participants in a peer review process--and we think it imperative that they are--then we must take whatever reasonable efforts we can to insure confidentiality of their input. We think this Bill, with the KMS amendments, establishes such reasonable provisions for insuring that confidentiality.

KAOM also wishes to offer an amendment to S.B. 221, which relates to peer review but does not deal directly with the issue raised in the Bill in its present form.

Our amendment (see attached page) was offered by the Board of Healing Arts on the Senate side during hearings on S.B. 221. Because there was some controversy on the other contents of the Bill, the Committee did not consider the amendment. We do not want to endanger passage of S.B. 221, but we do think this is an important amendment.

The Amendment would permit the Board of Healing Arts, at its discretion, to compensate members of the Board's respective REVIEW COMMITTEES (presently four in number).

Currently, there is doubt as to whether Review Board members can be paid anything other than normal compensation for attendance at a meeting, subsistence, and travel--all related to the formal meeting of the Committee at which decisions are made. The doubt is whether these providers can be compensated for hours spent outside formal meetings, reviewing cases in preparation for the meetings.

When the Board utilizes consultants for reviewing cases, they may be and are compensated at hourly rates substantially higher than what is being sought here. Due to a confusing interpretation by the State Attorney General, the Board has ceased compensating Review Board members for hours spent outside meetings. THIS AMENDMENT WOULD MAKE IT CLEAR THAT SUCH COMPENSATION IS PERMITTED, AT THE DISCRETION OF THE BOARD. The Board would set the level of compensation (probably at or near the previous rate paid of \$70/hour).

We think this is a needed and reasonable authority for the board and a way to insure that quality, concerned persons can be recruited to serve on the respective Review Committees.

HOUSE HEALTH/HUMAN SERVICES
Attachment 9-1
3 - 17 - 87

PROPOSED AMENDMENT TO SB 211

New section 3. K.S.A. 65-2840c is hereby amended to read as follows. K.S.A. 65-2840c. Review committees shall be established and appointed by the state board of healing arts for each branch of the healing arts as necessary to advise the board in carrying out ~~implement~~ the provisions of this act. Each review committee shall be composed of three members and designated alternates. ~~Two~~ Each of the members and their designated alternates shall serve for a period of two years, all of whom shall be ~~members of the same branch of the healing arts as the person who is being reviewed~~ licensed by the board to practice the branch of the healing arts for which the review committee is established. ~~The third member of the review committee shall be appointed on an ad hoc basis, and shall be of the same branch of the healing arts and specialty, if any, as the person whose conduct is being reviewed.~~ Members of the state board of healing arts shall not be eligible to act as members of the review committee. ~~Members of the review committee who are licensees of the state board of healing arts may be selected from names submitted by the state professional association for the branch of the healing arts involved. The board of healing arts shall ensure that no conflict of interest exists by reason of geography, personal or professional relationship, or otherwise, between any of the review committee members and any person whose conduct is being reviewed.~~ The members of such review committees attending meetings of any review committee shall be paid compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto. Notwithstanding any other provision of law, the board may compensate review committee members on an hourly basis as deemed appropriate by the board to review records relating to matters being investigated by the board.

NOTE: THIS AMENDMENT TO S.B. 221, IS SUPPORTED BY THE BOARD OF HEALING ARTS, THE KANSAS ASSOCIATION OF OSTEOPATHIC MEDICINE AND THE KANSAS MEDICAL SOCIETY.

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

BEFORE THE HOUSE COMMITTEE ON PUBLIC HEALTH AND HUMAN SERVICES

Testimony of Mark W Stafford, General Counsel
in support of 1997 Senate Bill No. 221
as amended by the Senate Committee of the Whole

March 17, 1997

Members of the committee, thank you for the opportunity to appear before you on behalf of the Kansas State Board of Healing Arts and to speak in support of Senate Bill No. 221. The Board requested introduction of this bill. Concerns had been expressed that potential gaps in the confidentiality provisions of the peer review and risk management statutes make health care provider groups reluctant to release confidential documents to the Board. This bill is not an attempt to depart from what is already the law in Kansas. Rather, the bill is an attempt to refine what has already been established as public policy of the state.

Section 1 of the bill amends K.S.A. 1996 Supp. 65-4915. This section includes pertinent definitions, and creates a privilege relating to documents created by a peer review committee. The proposed amendment would identify the holder of the privilege as the committee which creates or first receives the document. When the licensing board uses the peer review document in a disciplinary proceeding, the peer review committee's privilege is not waived by the disclosure. The addition to subsection (c) would authorize and require the licensing board to take appropriate steps to preserve the confidentiality of the information when a document is to be used in a disciplinary hearing. This language is patterned after similar provisions in the risk management statutes, appearing at K.S.A. 65-4925(a), (b), and (c).

Section 2 of the bill amends K.S.A. 65-4925. As with the use of peer review materials in a disciplinary proceeding, a licensing board which uses risk management materials in a proceeding would be required to take appropriate steps to maintain the confidentiality of the materials.

HOUSE HEALTH/HUMAN SERVICES
Attachment 10-1
3-17-97

MEMBERS OF BOARD

HOWARD D. ELLIS, M.D., PRESIDENT
LEAWOOD
JOHN P. GRAVINO, D.O., VICE-PRESIDENT
LAWRENCE

DONALD B. BLETZ, M.D., OVERLAND PARK
C.J. CONRADY, JR., ANTHONY
JAMES D. EDWARDS, D.C., EMPORIA
EDWARD J. FITZGERALD, M.D., WICHITA
ROBERT L. FRAYSER, D.O., HOISINGTON
LANCE MALMSTROM, D.C., TOPEKA
LAUREL H. RICKARD, MEDICINE LODGE

CHRISTOPHER P. RODGERS, M.D., HUTCHINSON
HAROLD J. SAUDER, D.P.M., INDEPENDENCE
EMILY TAYLOR, LAWRENCE
ROGER D. WARREN, M.D., HANOVER
JOHN P. WHITE, D.O., PITTSBURG
RONALD J. ZOELLER, D.C., TOPEKA

Testimony of Mark W. Stafford
Senate Bill No. 221
March 17, 1997
Page 2

The Senate Committee of the Whole amended the bill. The amendments were not intended to alter peer review as we now know it, and there was no intent to make peer review records public. The purpose of the amendments were to ensure that a person's license would not be disciplined solely on the basis of confidential information. The Board emphatically agrees with the purpose of the amendments. The Kansas Medical Society will be offering a balloon to further the intent of the amendments made in the Senate. We have reviewed and discussed this language, and ask you to support their amendment.

This bill has been seen by some as an opportunity to dismantle the peer review system. I urge you to reject that notion. The public policy of the State of Kansas has already been established. The statutes now provide for a mechanism to review the quality of health care, to identify instances of practice below the standard of care, and to take appropriate action against providers who do practice below the standard of care. This process operates well when there is the ability to truthfully and accurately record events which have taken place, and to do so in confidence except in compelling situations such as disciplinary proceedings by a licensing agency. Senate Bill 221 does not attempt to change this policy.

PALMER, LOWRY & LEATHERMAN

Jerry R. Palmer
Kirk Lowry
Leatherman

ATTORNEYS AT LAW
Columbian Building
112 W. 5th, Suite 102
TOPEKA, KANSAS 66603-3810
(913) 233-1836
FAX (913) 233-3703

*Certified Civil Trial Advocate
by the
National Board of Trial Advocacy

MEMO

TO: HOUSE, HEALTH AND HUMAN SERVICE COMMITTEE

FROM: JERRY R. PALMER, Conferee on Behalf of the Kansas
Trial Lawyers Association

DATE: 3/17/97

RE: SB 221 — KTLA TESTIMONY PROPOSED AMENDMENT
AND COMMENTS ON THE KMS AMENDMENTS

I appreciate the opportunity to appear before the Committee on this important bill. In this cover memo I would like to discuss the KMS amendment.

First Amendment: Reinstitution of language struck in the Senate, p. 3, lines 22 - 25.

We would agree that the language that was struck should be restored as it is clarified then in the Senate amendment which follows from lines 25 - 33.

Amendment on p. 4, lines 5 - 10:

Insofar as the first sentence of the amendment clarifies the intent of the Senate, the first sentence might be substituted if it provided after the word "prove" and before the word "its" in the third line, the word "all." So that it would now read: "a licensing agency conducting a disciplinary proceeding may not rely solely on peer review committee records, testimony or reports and must prove all its findings with independently obtained testimony or record which shall be presented as part of the disciplinary proceedings in open meeting of the licensing agency."

The second sentence, however, we believe only confuses or may contradict the intent of the first sentence. Since everything the Legislature says a court construes to have some meaning, a section indicating that this "shall not be deemed a waiver of the peer review privilege. . ." might be interpreted to mean that the evidence that is both contained in the peer review report and provided by the independent presentation would all be held or

interpreted to be confidential. That certainly is not the intent of the Senate.

With just the first sentence, plus the amendment that we have suggested, it could read: "In the event such independently obtained information is not offered in evidence, then the privileged report or record loses its privileged status and becomes part of the open hearing portion of the transcript of the proceeding" would make it clear that the public portion of the record will contain the data that backs the findings and that they will not be kept a secret.

A compromise modified amendment then would delete the language suggested by the medical society and read as follows: "a licensing agency conducting a disciplinary proceeding may not rely solely on peer review committee records, testimony or reports, and must prove all its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceedings in an open meeting of the licensing agency. In the event such independently obtained information is not offered in evidence, then the privileged report or record loses its privileged status and becomes part of the open hearing portion of the transcript of the proceeding."

That compromise would be acceptable.

**TESTIMONY OF JERRY R. PALMER
KANSAS TRIAL LAWYERS ASSOCIATION**

March 17, 1997

Re: Senate Bill 221

The Kansas Trial Lawyers Association is an organization whose members regularly represent the victims of personal injury and thus has an interest in Senate Bill 221.

The aspect of Senate Bill 221 that concerns our organization is the part that would make peer review records or materials gathered during the peer review process unavailable to members of the public, even if those records were used in a disciplinary proceeding where a licensee had their license suspended, revoked or limited.

We are not here today to challenge the peer review process confidentiality. That is an argument that should be made on another day when the issue could be addressed directly. That issue really focuses on private organizations (such as hospitals and medical societies), and the discipline of their members. The premise, which may be questionable in itself: that health care providers will not be honest in their assessment of colleagues and properly discipline them unless they can do it in privacy, may, in itself, not be sufficient for form the basis for a public policy. That is not the issue nor the basis for our concerns here today on this bill.

Our concern is that the Board of Healing Arts is a state agency and the issues pertain to the licensing of physicians and other health care providers. The proceedings are those where discipline may be imposed. Part of that public record that is developed that might sustain the position of the Board in either revocation, suspension or limitation on a

license, would be unavailable to public scrutiny. They would be unavailable to this legislature if it chose to inquire about how the Board was doing its job, whether it was either too harsh or too loose in the administration of the act. It makes inaccessible to the public information that would be relevant to the choice of a health care provider. It makes unavailable information that would be valuable to someone who was injured by the acts of a health care provider.

The Senate wisely put in a limitation on the secrecy of these proceedings. The bill is wholly unacceptable unless it has this kind of buffer, or an improved buffer as we will explain below. This bill would not only make secret at a licensing hearing the hearings and conclusions of the peer review committee, but would extend that secrecy to "reports and records given to or obtained by the committee from another source." In other words, records that in themselves are not confidential or protected, become so because they have come under the cloak of the peer review process because they have been gathered and delivered into the peer review process.

The Senate's approach was to add words which are found on p. 4, lines 5-10, which requires the agency to investigate independently and acquire the information that is admitted from the peer review process. But most importantly, the clause "and shall cause to be presented such independently obtained information as part of the disciplinary proceeding in open meeting of the licensing agency." The effect of that clause then is to make available to the public the same information that was acquired through the peer review process, but in addition, make it in such form that the public could hear it at the public hearing or obtain copies of that

material from the transcript of the hearing. This was an amendment made on the floor of the Senate, and it was an important one. It doesn't, though, deal with the situation of what happens in the event the agency admits information from peer review, but does not duplicate that through the independent investigation and admission of that evidence. We would suggest then an amendment to the end of the sentence at line 10 which we have referred to in a cover memo.

That will encourage the agency to obtain the independent information or forfeit the privileged status of the information. It puts teeth into the Senate amendment, and carries out both the policies of those who have initiated this process as well as the policies adopted by the Senate (ie., protecting the privilege of peer review but letting the public know the relevant information which has caused a health care practitioner to be disciplined). If the bill does not contain the Senate language, we would strongly urge the Committee to defeat the bill because it is conferring secrecy to a state licensing procedure, is contrary to the notations contained in the Open Records Act, and is contrary to the consumer interests in this country in depriving people of relevant information for them to make choices about health care providers. The objection generally made in this nation is not to the quantity of information that is being made available to consumers, but to the limitations on the quantity of that information which has been gathered at the expense of the state.

People want to know who has been disciplined and why, so that they can make their choice as to who will service themselves and their family in the continually competitive health care arena. The public needs

-4

more, not less, information and the Legislature should not adopt a policy cloaking the licensor of health care professionals in the dark robes of secrecy.

Respectfully submitted,

JERRY R. PALMER

ACLU

American Civil Liberties Union

Wendy McFarland - Lobbyist
(913) 575-5749

SB 221

F. SCOTT FITZGERALD IN REFERRING TO THE VULNERABILITY OF THOSE WHO ARE SICK SAID "THERE IS NO DIFFERENCE BETWEEN MEN, IN INTELLIGENCE OR RACE, SO PROFOUND AS THE DIFFERENCE BETWEEN THE SICK AND THE WELL."

IT IS, IN FACT, THE VULNERABILITY OF THOSE WHO FIND THEMSELVES SICK AND RELIANT UPON THE ABILITIES OF HEALTH CARE PROVIDERS THAT OFTEN CAUSE THEM TO VOLUNTARILY RELINQUISH RIGHTS THEY WOULD OTHERWISE VIGOROUSLY ASSERT IN THE HOPE THAT THESE RIGHTS WOULD AID IN THEIR RECOVERY.

IN THE UNITED STATES, 35 MILLION AMERICANS ARE HOSPITALIZED ANNUALLY, AND WE SPEND MORE THAN ONE-HALF TRILLION DOLLARS ON MEDICAL CARE EACH YEAR, 12 PER CENT OF OUR GROSS NATIONAL PRODUCT. WE WORRY ABOUT OUR LIVES, OUR HEALTH AND OUR MONEY. OFTEN WE CONSIDER OUR RIGHTS ONLY AFTER SOMETHING HAS GONE WRONG AND THEN LAWSUITS ARE HIGH ON OUR LIST OF POSSIBLE REACTIONS.

THIS IS A MISTAKE. PREVENTING VIOLATIONS OF OUR RIGHTS IN MATTERS OF MEDICAL TREATMENT IS A MUCH MORE CONSTRUCTIVE AND EFFECTIVE APPROACH THAN LEGAL "TREATMENT."

THE STATE HAS A DUTY TO PROTECT ITS PATIENTS FROM MALPRACTICE BY HEALTH CARE PROVIDERS, ESPECIALLY WHEN IT SHOULD KNOW THAT MALPRACTICE WAS LIKELY TO BE COMMITTED UPON THEM.

THE PEOPLE OF KANSAS WILL ALL, ONE DAY, BE THE PATIENTS OF KANSAS HEALTH CARE PROVIDERS. THE PEOPLE, THROUGH YOU THE LEGISLATURE OF KANSAS, HAVE APPOINTED THE KANSAS BOARD OF HEALING ARTS AS THE REGULATORY AGENCY EMBODIED WITH THE POWER TO LICENSE HEALTH CARE PROVIDERS.

ONCE THE BOARD OF HEALING ARTS GRANTS THE LICENSE, IT ALMOST NEVER TAKES IT AWAY AND APPEARS TO HAVE NO FORMAL METHOD FOR MONITORING ACTUAL PRACTICE OTHER THAN RELYING UPON THE FINDINGS OF PEER REVIEW COMMITTEES. THE BOARD IS IN THE POSITION OF SOLELY RELYING UPON THE DETERMINATIONS OF COMMITTEES MADE UP OF HEALTH CARE PROVIDERS POLICING THEIR OWN.

HOUSE HEALTH/HUMAN SERVICES

Attachment 12-1
3 - 17 - 97

THESE PEER REVIEW COMMITTEES RARELY IDENTIFY VOLUNTARILY, THOSE WITH A PROPENSITY TO COMMIT MALPRACTICE. WHEN THOSE PERSONS ARE IDENTIFIED, I WOULD PUT FORTH THE ARGUMENT THAT NOT ONLY SHOULD THE BOARD OF HEALING ARTS KNOW OF THE FINDINGS, BUT THE PEOPLE OF KANSAS SHOULD ALSO HAVE A RIGHT TO KNOW.

THIS BILL APPEARS TO DISALLOW THE PEOPLE, THE PRESS, THE LEGISLATURE, THE PATIENT OR THE PATIENT'S ATTORNEY AND VIRTUALLY ANYONE ACCESS TO THE PROCEEDINGS USED TO INVESTIGATE MALPRACTICE. NOT ONLY DOES IT PREVENT THEM FROM ATTENDING ANY PROCEEDINGS, IT ALSO PREVENTS THEM FROM VIEWING ANY REPORTS PRODUCED BY THE PEER REVIEW COMMITTEES.

HOW THEN, ARE THE PEOPLE OF KANSAS BEING SERVED BY THE BOARD OF HEALING ARTS OR ANY DESIGNATED COMMITTEE INVOLVED IN IDENTIFYING INCOMPETENT HEALTH CARE PROVIDERS WHEN THEY ARE NOT ALLOWED TO KNOW WHO IS BEING CHARGED WITH COMMITTING MALPRACTICE NOT TO MENTION WHO IS BEING FOUND TO HAVE COMMITTED MALPRACTICE?

THE INABILITY OF THE BOARD OF HEALING ARTS AND OTHER AGENCIES TO PROTECT THE PUBLIC FROM IMPAIRED PROFESSIONALS HAS BEEN A SOURCE OF MUCH PUBLIC CRITICISM. KANSANS HAVE HISTORICALLY AND ACCURATELY VIEWED THESE LICENSING AGENCIES, WHICH ARE DOMINATED BY MEMBERS OF THE PROFESSION RATHER THAN MEMBERS OF THE PUBLIC, AS EXISTING PRIMARILY TO PROTECT DOCTORS RATHER THAN TO PROTECT THE PUBLIC.

THEIR PURPOSE COULD BE GREATLY IMPROVED IF YOU WOULD SEE TO IT THAT COMPLAINTS FROM PATIENTS WOULD BE HANDLED FAIRLY AND EXPEDITIOUSLY AND THAT THE PROCESS AND RESULTS WOULD BE MADE PUBLIC.

IT IS NOT THE ACLU'S PURPOSE TO CASTIGATE MEDICAL PROFESSIONALS THE VAST MAJORITY OF WHICH ARE COMPETENT, COMPASSIONATE AND DEDICATED TO GIVING THE BEST CARE POSSIBLE TO THEIR PATIENTS.

WE ONLY ASK THAT YOU REPRESENT THE INTERESTS OF THOSE MOST VULNERABLE TO THE INCOMPETENCE OF MEDICAL PROFESSIONALS BY MAKING THE FINDINGS OF PEER REVIEW COMMITTEES AND EVIDENCE USED TO ARRIVE AT THOSE FINDINGS AVAILABLE TO THE PEOPLE OF KANSAS. THEY HAVE A RIGHT TO KNOW IF THE MEDICAL PROFESSIONAL TREATING THEM IS COMPETENT TO DO SO.