

Approved: 2-11-97
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 6, 1997 in Room 313-S of the Capitol.

All members were present except:

Committee staff present:

Norman Furse, Revisor of Statutes
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Pat Johnson, Board of Nursing
Betty Smith Campbell, Kansas State Nursing Association
Charles W. Sexson, Kansas Bureau of Investigation
Sue Denger, Kansas Organization of Nursing Leaders
Shelby Smith, Kansas Podiatric Medical Association
Dr. Richard Bradbury, Salina
Dr. Phyllis Ragley, Lawrence

Others attending: See attached list

Hearing on **SB 164** - Board of nursing authorized to issue exempt licenses and collect fees

Pat Johnson, Executive Administrator, Kansas State Board of Nursing, addressed the Committee in support of **SB 164** which creates an exempt license for nurses and licensed mental health technicians who do not want to carry an active license in Kansas but still want to practice in charitable health care settings. The bill also clarifies statutory language for delegation by nurses in school settings, expands disciplinary action of those licensees who commit crimes, and raises certain fees. Ms. Johnson submitted several amendments to the bill as noted in her written testimony. (See Attachment 1) Committee discussion related to review of records and confidentiality of applicants with criminal history.

Betty Smith Campbell, Kansas State Nursing Association, testified in support of **SB 164** and requested the Committee consider two amendments that would (1) add a prohibition on licensure for convicted felons of crimes against persons and (2) modify the time period that is being proposed for graduate nurses and graduate practical nurses to be able to sit for the computer exam to test for minimum competency and licensure. A balloon of the bill showing the proposed amendments was submitted with her written testimony. (Attachment 2)

Charles W. Sexson, Assistant Director, Kansas Bureau of Investigation, appeared before the Committee in support of **SB 164** but requested an amendment be considered by the Committee that would require a fee charged to the Board of Nursing for criminal history record information from the KBI. Mr. Sexson noted that the KBI is not opposed to providing arrest information to the appropriate entity. (Attachment 3)

Sue Denger, Kansas Organization for Nurse Leaders, submitted written testimony on **SB 164** and expressed her support for the amendments offered by the Kansas State Nursing Association regarding absolute prohibition of licensure of a person with a felony conviction for a violent crime against another person. (Attachment 4)

There were no opponents to **SB 164**.

Hearing on **SB 61** - Scope of practice of podiatry

Shelby Smith, representing the Kansas Podiatric Medical Association, testified before the Committee in support of **SB 61** that would amend the statutory definition of a podiatrist by indicating that a podiatrist is a physician and surgeon of the human foot who practices podiatric medicine and surgery. The bill would allow a podiatrist to amputate a person's toes, which is not allowed under current law. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 313-S
Statehouse, at 10:00 a.m. on February 6, 1997.

Also appearing before the Committee and providing written testimony in support of **SB 61** were Richard L. Bradbury, D.P.M, Salina, (Attachment 6) and Phyllis Ragley, D.P.M., Lawrence, (Attachment 7).

Jerry Slaughter, Executive Director, Kansas Medical Society, appeared before the Committee in opposition to **SB 61** and noted that the KMS met in the fall of 1995 to work out a compromise on similar legislation, but an agreement could not be reached. It was pointed out that the public has a general understanding and expectation that "physicians" are persons who have gone through medical school and a residency training program in one of many specialties. To allow podiatrists to use the term "physician and surgeon of the human foot" would be confusing and misleading to the public. Mr. Slaughter offered amendments to this year's legislation for the Committee to consider that would strike reference to "physician and surgeon of the human foot" as shown in his written testimony. (Attachment 8)

Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine, appeared before the Committee and noted that in past consultation with the Podiatric Association and their representative on the Kansas State Board of Healing Arts, his organization had agreed not to oppose changing the law to permit podiatrists to amputate human toes, however, they do continue to oppose the change in statutory reference to podiatrists as noted in his written testimony. (Attachment 9)

Written testimony was also submitted to the Committee from Larry Buening, Kansas Board of Healing Arts. (Attachment 10)

Adjournment

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

The next meeting is scheduled for February 10, 1997.

Kansas State Board of Nursing

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Patsy L. Johnson, R.N., M.N.
Executive Administrator
913-296-5752

To: The Honorable Senator Sandy Praeger, Chairperson
and Members of the Public Health & Welfare Committee

From: Patsy L. Johnson, M.N., R.N., A.R.N.P.
Executive Administrator
Kansas State Board of Nursing

Date: February 6, 1997

Re: SB 164

Thank you for allowing me to testify on SB 164 for the Board of Nursing. Besides creating an exempt license, the Board has addressed several issues in SB 164 to clarify existing practices.

Section 1. K.S.A. 65-1115.

(a) The Board of Nursing has revised this subsection so that an applicant for licensure does not have to submit to the Board proof that the individual is a high school graduate or has obtained the equivalency. There may be a few schools that do not require a high school diploma for entrance into a nursing program, but most do. The Board could request the applicant to submit proof if there is some question. The change in the statute will remove one step in the application process. We do not believe that step is necessary.

(c)(2) New language has been added to clarify that nurses licensed in another state after taking the national licensure examination may be licensed in Kansas, a process known as endorsement. The Board does verify that the applicant has been licensed in another state and has no disciplinary action on the license.

Janette Pucci, R.N., M.S.N.
Education Specialist
296-3782

Patricia McKillip, R.N., Ph.D.
Education Specialist
296-3782

Diane Gl
Practi
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Senate Public Health and Welfare
Date: 2-6-97
Attachment No. /

(c)(5) For several years now the Board has required applicants who have failed the licensure examination four times to submit a study plan and complete it before testing a fifth time. This approach has not worked. Applicants have had difficulty developing such plans. There also has been no significant increase in pass rates after the implementation of this requirement. The Board has chosen to take a different approach.

Registered professional and practical nurse applicants have the opportunity to take the national licensure examination four times per year. The Board proposes that if an applicant is not successful in passing the licensure examination within 36 months, then the individual would be required to repeat the nursing courses from an approved school before being allowed to take the test again. Rather than the individual trying to develop a study plan and complete it, schools of nursing have already developed courses taught by professionals. This would allow the applicant a greater chance in becoming licensed.

(c)(6) Individuals sometimes apply for licenses but do not complete the application process by providing required documents. This might be verification of licensure from another state, school transcripts, or continuing nursing education certificates. The Board wishes to establish by regulation how long the agency will hold the application before considering it abandoned. After that time period, a person would be required to submit another application and fee.

(e) The Board wishes to combine the 90 plus 30 day temporary permit into a single 120 day temporary permit for the registered professional nurse. This change reduces the number of temporary permits issued yet gives applicants the full benefit of the 120 day permit.

(f) The Board still wishes to establish an exempt license or certificate for registered professional and licensed practical nurses, licensed mental health technicians, and advanced registered nurse practitioners who wish to provide voluntary nursing or mental health technician services for charitable health care. This provision would allow nurses to maintain the exempt license without meeting continuing nursing education requirements for renewal. Rules and regulations would be written by the Board to designate who would be eligible for the exempt

Although the story line for the program is more complex than the simple details I just gave, the thought I wish to convey is that Carol was truthful, Carol was honest, Carol was remorseful. The television story displayed what nursing is. When a nurse commits a crime, there is a question mark drawn about that person's character. There is a shadow over those basic elements that guide our nursing practice.

(a)(2) In K.S.A. 65-1120 the Board requests to expand the grounds for taking action on a license to all felonies, misdemeanors, and violations of municipal ordinances. There are two reasons for considering all misdemeanors rather than just misdemeanors involving illegal drug offenses. Because of plea bargaining, some felonies are reduced to misdemeanor charges. Often there are more serious crimes actually being committed. Also, with the expansion of home health, this places more nurses into less structured situations with often a very vulnerable clientele. Misdemeanors such as bad checks, shoplifting, and larceny send up red flags for the Board. DUI's are also misdemeanors that might not be considered as a violation unless there were other indicators to tie it to current abuse of alcohol. See Attachment A for a summary of types of felonies and misdemeanors for the last four years.

The Board does believe that individuals can be rehabilitated. The current practice of the Board is to review each case on an individual basis. Although the statute has referred to rehabilitation, the Board wants to place upon the applicant or licensee the responsibility to establish proof of rehabilitation. The Board should not have to prove the person is not rehabilitated. If the evidence of rehabilitation is sufficient, then the individual will be allowed to practice nursing.

(f) The Board would like to obtain arrest information as well as the criminal convictions from the Kansas Bureau of Investigation. A person may be arrested for one type of crime, but be convicted for a lesser charge. The arrest history will provide better information particularly to indicate patterns of criminal activity. Board members and staff are aware of the limitations for use of arrest information. Currently the Board requests criminal history records less than ten times per year.

It was overlooked in the preparation of this bill, but I ask that K.S.A. 65-4209, denial, revocation or suspension of a license for the licensed mental health technician be added as amended in Balloon 2. The amended statute would contain the same changes for the same reasons as in K.S.A. 65-1120. See Balloon 2.

Section 5. K.S.A. 65-1124.

(k) The Board has revised the existing exemption for nurses to delegate nursing procedures in the school setting. The revision allows the Board to write rules and regulations that are directed at the delegation process rather than prescribing a list of procedures that nurses in school settings may delegate to unlicensed persons. School nurses have been delegating under the provisions of K.A.R. 60-15-101 through 60-15-104 since 1988. They have set a positive role model for the expanded delegation we are now seeing in other areas of health care. A list of nursing procedures would be too limiting. Although there is other delegation language in K.S.A. 65-1124, subsection (m), school nurses have requested that subsection (k) not be removed. Subsection (k) provides rule and regulation authority that the Board and school nurses believe is needed. Rule and regulation authority is not in subsection (m).

Section 6. K.S.A. 65-1131.

The Board has made changes in K.S.A. 65-1131 for the advanced registered nurse practitioner that is similar to K.S.A. 65-1115 for registered professional nurses.

(a)(2) The Board has added language that allows advanced registered nurse practitioners from other states to endorse into Kansas after verification of certification.

(a)(4) The new provision will allow the Board to set a time limit on how long the agency will hold applications awaiting required documentation for certification.

(c) The Board wishes to establish an exempt status for ARNP's to work in charitable health care settings.

Section 7. K.S.A. 65-1152.

(b) The Board is currently working on the rules and regulations for accreditation of schools of nursing. In doing so the Board discovered that there would be differences in rules and regulations for undergraduate and graduate programs. The Board requests a change in this statute to accredit registered nurse anesthesia programs under the standards for advanced practice programs rather than undergraduate programs.

Section 8. K.S.A. 65-4203.

(a) The subsection has been revised to allow the Board not to get documentation of high school graduation for the mental health technology (MHT) applicant. The MHT schools screen for high school graduation or equivalency.

(b) Unlike the registered professional and practical nurses, the Board does not want to allow endorsement from another state for the mental health technicians. The four states which license mental health technicians have different licensure examinations. Since the examinations are not standardized, the Board wants to require applicants to pass the Kansas exam. Deletion of item (2) removes the endorsement provision for the mental health technician.

(c) If a graduate of a mental health technology program does not pass the licensure examination in 36 months, then the individual has to repeat the mental health technology courses before being allowed to examine again. The Board offers the mental health technology exam three times a year.

(d) The Board wishes to set a time limit on how long the agency will hold applications awaiting required documentation for licensure.

(f) This subsection also establishes an exempt status for licensed mental health technicians to work in charitable health care settings.

Section 9. K.S.A. 65-4208.

(b) In order to be consistent with the fee structure for nurses, the Board would like to increase the statute limitation for renewal of the mental health technician license. We also need to raise the reinstatement fee so it will be greater than the renewal fee. By oversight this change was not made in the bill, but we offer a balloon raising the reinstatement fee to \$70 (line 26). See Balloon 3.

Also, in this subsection, a fee structure is created for the initial and renewal of exempt LMHT licenses.

Section 10. K.S.A. 65-4921.

(c) Provisions for charitable health care providers under the Kansas Tort Claims Act is found in 1995 Supp. K.S.A. 75-6102. See Attachment B. The definition of health care provider for the charitable health care provision is found in K.S.A. 65-4921. The Board has amended that statute so the advanced registered nurse practitioner is added to the definition.

In summary, SB 164 creates an exempt license for nurses and licensed mental health technicians who do not want to carry an active license in Kansas but still want to practice in charitable health care settings. The bill also clarifies statutory language for delegation by nurses in school settings, expands disciplinary action of those licensees who commit crimes, and raises certain fees. The Board hopes you will act favorably upon SB 164 with the amendments that have been proposed.

Thank you.

1 K.S.A. 65-1117 and amendments thereto. The board shall have authority
 2 to write rules and regulations to carry out the provisions of this section.
 3 Sec. 3. K.S.A. 1996 Supp. 65-1118 is hereby amended to read as
 4 follows: 65-1118. (a) The board shall collect in advance fees provided for
 5 in this act as fixed by the board, but not exceeding:

6	Application for license—professional nurse	\$75
7	Application for license—practical nurse	50
8	Application for biennial renewal of license—professional nurse and prac-	
9	tical nurse	60
10	Application for reinstatement of license	70
11	Application for reinstatement of licenses with temporary permit	100
12	Certified copy of license	25
13	Duplicate of license	25
14	Inactive license	20
15	Application for certificate of qualification—advanced registered nurse	
16	practitioner	50
17	Application for certificate of qualification with temporary permit—ad-	
18	vanced registered nurse practitioner	100
19	Application for renewal of certificate of qualification—advanced regis-	
20	tered nurse practitioner	20 60
21	Application for reinstatement of certificate of qualification—advanced	
22	registered nurse practitioner	50
23	Application for authorization—registered nurse anesthetist	75
24	Application for authorization with temporary authorization—registered	
25	nurse anesthetist	110
26	Application for biennial renewal of authorization—registered nurse	
27	anesthetist	60
28	Application for reinstatement of authorization—registered nurse	
29	anesthetist	75
30	Application for reinstatement of authorization with temporary authori-	
31	zation—registered nurse anesthetist	100
32	Verification of license to another state	30
33	Application for exempt license—professional and practical nurse	50
34	Application for biennial renewal of exempt license—professional and prac-	
35	tical nurse	50
36	Application for exempt certification—advanced registered nurse	
37	practitioner	50
38	Application for biennial renewal of exempt certificate—advanced regis-	
39	tered nurse practitioner	50
40	(b) The board may require that fees paid for any examination under	
41	the Kansas nurse practice act be paid directly to the examination service	
42	by the person taking the examination.	
43	Sec. 4. K.S.A. 1996 Supp. 65-1120 is hereby amended to read as	

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1-8

BALLOON 2

65-4209. Denial, revocation or suspension of license. (a) The board may deny, revoke, limit or suspend any license to practice as a mental health technician issued or applied for in accordance with the provisions of this act, or may publicly or privately censure a licensee or may otherwise discipline a licensee upon proof that the licensee:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice mental health technology;

(2) Is unable to practice with reasonable skill and safety due to current abuse of drugs or alcohol;

(3) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(4) is incompetent or grossly negligent in carrying out the functions of a mental health technician;

(5) has committed unprofessional conduct as defined by rules and regulations of the board;

(6) has been convicted of a felony or has been convicted of a misdemeanor ~~involving an illegal drug offense, if the board determines, after investigation, that the person has not been sufficiently rehabilitated~~ or a violation of a corresponding municipal ordinance unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust;

(7) has committed an act of professional incompetency as defined in subsection (e);

(8) to have willfully or repeatedly violated the provisions of the mental health technician's licensure act or rules and regulations adopted under that act and amendments thereto; or

(9) to have a license to practice mental health technology denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (9).

(b) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds to believe the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the Kansas administrative procedure act.

BALLOON 2

(c) No person shall be excused from testifying in any proceedings before the board under the mental health technician's licensure act or in any civil proceedings under such act before a court of competent jurisdiction on the ground that the testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) As used in this section, "professional incompetency" means:

- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;
- (2) repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board; or
- (3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice mental health technology.

(f) The board upon request shall receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to **arrests and** criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

(g) All proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

1 gaged in mental health technician practice in Kansas but is a charitable
 2 health care provider as defined by K.S.A. 75-6102 and amendments
 3 thereto. Each exempt licensee shall be subject to all provisions of the men-
 4 tal health technician act, except as otherwise provided in this subsection
 5 (e). Each exempt license may be renewed biennially subject to the provi-
 6 sions of this section. The holder of the exempt license shall not be required
 7 to submit evidence of satisfactory completion of a program of continuing
 8 education for renewal. To convert an exempt license to an active license,
 9 the exempt licensee shall meet all the requirements of subsection (b) or
 10 K.S.A. 65-4205 and amendments thereto. The board shall have authority
 11 to write rules and regulations to carry out the provisions of this section.

12 (g) The board may adopt rules and regulations as necessary to ad-
 13 minister the mental health technician's licensure act.

14 Sec. 9. K.S.A. 65-4208 is hereby amended to read as follows: 65-
 15 4208. The board shall collect in advance the fees provided for in this act,
 16 the amount of which shall be fixed by the board by rules and regulations,
 17 but not to exceed:

18 (a) Mental health technician programs:	
19 Annual renewal of program approval	\$110
20 Survey of a new program	220
21 Application for approval of continuing education providers	200
22 Annual fee for continuing education providers	75
23 (b) Mental health technicians:	
24 Application for license	\$50
25 Application for renewal of license	30 60
26 Application for reinstatement	36
27 Application for reinstatement of license with temporary permit	75
28 Certified copy of license	12
29 Duplicate of license	12
30 Inactive license	20
31 Examination	40
32 Reexamination	40
33 Verification of current Kansas license to other states	11
34 Application for exempt license	50
35 Application for biennial renewal of exempt license	50

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36 Sec. 10. K.S.A. 65-4921 is hereby amended to read as follows: 65-
 37 4921. As used in K.S.A. 65-4921 through 65-4930, and amendments
 38 thereto:

39 (a) "Appropriate licensing agency" means the agency that issued the
 40 license to the individual or health care provider who is the subject of a
 41 report under this act.

42 (b) "Department" means the department of health and environment.

43 (c) "Health care provider" means: (1) Those persons and entities de-

Kansas State Board of Nursing

MISDEMEANORS

FELONIES

	1993	1994	1995	1996		1993	1994	1995	1996
Driving violations			3	8	Drugs	4	4	4	2
DUI/intoxication	2	9	13	18	Bad Check			1	
Bad Check	8	7	15	22	Battery/Assault		2	1	1
Battery/Assault	8	9	10	8	Murder				1
Forgery	1	1	1		Forgery	1	1	1	2
Theft	6	4	10	4	Theft/Burglary	4	9	9	6
Possession Gun	1		3		Criminal solicitation				1
Aiding felon				2	Aiding felon			1	
False report	2	3		4	Forgery	1	1	1	2
Fraud	2	4	1	1	Fraud	2	1	2	1
Shoplifting	5	6	7	5	Threat-crime/terror	1		1	
Larceny	1	3	1	3	Larceny			1	
Possession drugs	1	2	2	1	Arson		1		
Incident with minor		4	4	1	Bribery	1			
Disorderly conduct		3	11	3	Disorderly conduct			1	
Loitering		1	2		Postal code		1		
Tresspass		6	2	2	Tresspass			1	
Embezzlement		1	1		Embezzlement			1	
Incident - sex		1	2	2	Incident - sex			1	
Danger to property				2	Damage to property		1		
Misdemeanors involving illegal drugs	14	26	33	8					
TOTAL	51	90	118	86	TOTAL	14	21	26	16

Attachment A

1-19

Attachment B
Kansas Tort Claims Act

75-6102 STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

55. School district's responsibility in failing to follow established procedure involving child abuse allegations against third party's employee/bus driver examined. *Kansas State Bank & Tr. Co. v. Specialized Transportation Services, Inc.*, 249 K. 348, 363, 819 P.2d 587 (1991).

56. County treasurer and state department of revenue lack immunity for negligent examination of motor vehicle title application. *Mid American Credit Union v. Board of Sedgwick County Comm'rs*, 15 K.A.2d 216, 219, 806 P.2d 479 (1991).

57. State employee's acceptance of bribe as not within scope of employment and does not further state's business. *Commerce Bank of St. Joseph, N.A. v. State*, 251 K. 207, 214, 833 P.2d 996 (1992).

58. Cited in holding police owed no special duty to intoxicated bar patron permitted to leave and later found frozen to death nearby. *Mills v. City of Overland Park*, 251 K. 434, 448, 837 P.2d 370 (1992).

59. Department of transportation and city immune from liability under act for nonplacement of protected left-turn signal on connecting link highway. *Force v. City of Lawrence*, 17 K.A.2d 90, 91, 838 P.2d 896 (1992).

60. Public golf course noted as recreational use exception (75-6104(o)); nature of employee's negligence generally question for trier of fact. *Gruhin v. City of Overland Park*, 17 K.A.2d 388, 389, 836 P.2d 1222 (1992).

61. Liability of state noted where law enforcement employee breaches specific duty owed to individual rather than general public (75-6109(n)). *Washington v. State*, 17 K.A.2d 518, 519, 839 P.2d 555 (1992).

62. Action under act properly appealed pursuant to 12-105b. *Larson v. Ruskowitz*, 252 K. 963, 965, 850 P.2d 253 (1993).

63. Discretionary function exception (75-6104(e)), duty city owed in owning/operating electric plant and distribution system examined. *Lamb v. City of Elsmore*, 18 K.A.2d 641, 643, 857 P.2d 1380 (1993).

64. Whether defendants were immune from liability under 42 U.S.C.A. 1983 because defendants may have been immune under KTCA (75-6101 et seq.) examined. *Reidenbach v. U.S.D. #437*, 878 F.Supp. 178, 181 (1995).

75-6102. Definitions. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or

in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except (1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections and (2) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor. "Employee" also includes an employee of an indigent health care clinic. "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order or (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 1995 Supp. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would

reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 1995 Supp. 75-6120, and amendments thereto; or

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary; or

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 1995 Supp. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3).

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 1995 Supp. 75-6120, and amendments thereto.

(h) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(i) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L.

1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; July 1.

Cross References to Related Sections:

Persons licensed by state board of healing arts as exempt licensees, see 65-2809.

Attorney General's Opinions:

Person covered by act; faculty of Kansas College of Technology. 89-81.

Volunteers working for state long-term care ombudsman. 90-21.

Interlocal cooperation agreements; separate legal entities; municipalities; school districts. 91-4.

Application of Kansas tort claims act to Kansas healthy kids corporation and corporation for change. 93-62.

Persons engaged in residency training for services to indigent health care clinics are covered under Kansas tort claims act. 93-74.

Licensure exempt status for military physicians under Kansas healing arts act; continuing education; liability insurance; expiration. 94-91.

City-county health department employees are covered by the Kansas tort claims act. 94-135.

Kansas development finance authority; officers' and directors' exemption from liability; applicability of Kansas tort claims act. 94-140.

Giving a false alarm by fire department; possible liability under Kansas tort claims act. 95-40.

CASE ANNOTATIONS

5. Board of county commissioners liable for negligent acts and omissions of sheriff's department under tort claims act. *Eames v. Board of County Comm'rs*, 733 F.Supp. 322, 324 (1990).

6. School district's responsibility in failing to follow established procedure involving child abuse allegations against third party's employee/bus driver examined. *Kansas State Bank & Tr. Co. v. Specialized Transportation Services, Inc.*, 249 K. 348, 364, 819 P.2d 587 (1991).

7. State department of revenue properly sued for negligent examination of motor vehicle title examination. *Mid American Credit Union v. Board of Sedgwick County Comm'rs*, 15 K.A.2d 216, 224, 806 P.2d 479 (1991).

8. Police officers' duty to exercise care and diligence required of officers; when protected by act. *Allen v. Board of Comm'rs of County of Wyandotte*, 773 F.Supp. 1442 (1991).

9. Public golf course noted as recreational use exception (75-6104(o)); nature of employee's negligence generally question for trier of fact. *Gruhin v. City of Overland Park*, 17 K.A.2d 388, 389, 836 P.2d 1222 (1992).

10. Liability of state noted where law enforcement employee breaches specific duty owed to individual rather than general public (75-6109(n)). *Washington v. State*, 17 K.A.2d 518, 520, 839 P.2d 555 (1992).

11. Discretionary function exception (75-6104(e)), duty city owed in owning/operating electric plant and distribution system examined. *Lamb v. City of Elsmore*, 18 K.A.2d 641, 644, 857 P.2d 1380 (1993).

12. Whether city-county board of health has the capacity to sue or be sued examined. *Lindenman v. Umscheid*, 255 K. 610, 630, 875 P.2d 964 (1994).

13. Whether foster parents were independent contractors or SRS employees for KTCA (75-6101 et seq.) examined. *Mitz-*



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the Voice of Nursing in Kansas

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

Terri Roberts, J.D., R.N.
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February 6, 1997

S.B. 164 NURSE PRACTICE ACT CHANGES

Senator Praeger and members of the Senate Public Health and Welfare Committee, my name is Betty Smith-Campbell Ph.D., R.N. and I am the current President of the Kansas State Nurses Association. We are pleased to be here today to testify on S.B. 164 which makes some necessary changes to the Nurse Practice Act.

Overall, the professional organization is very supportive of the changes being proposed in the bill to include:

Establishment of exempt license or certification for registered professional and licensed practice nurses, licensed mental health technicians, and advanced registered nurse practitioners who wish to provide voluntary services for charitable health care providers.

Establishment of an application fees for exempt license or certification.

Increase of the fee cap for licensed mental health technician (LMHT) and advanced registered nurse practitioner (ARNP) license and certification renewal.

Clarification of the existing exemption for nurses to delegate nursing procedures in the school setting.

Extension of time for temporary permits from 90 days to 120 days.

Changing the reference in the Registered Nurse Anesthetists statute to refer to the ARNP School Curriculums instead of the RN School Curriculum standards.

We would however, like this committee to consider two amendments to the Nurse Practice Act. The first amendment would be to add a prohibition on licensure for "convicted felons of crimes against persons" (see ballon attached). The issue of licensing convicted felons as registered nurses is one that in the recent year has received considerable attention with the death of a female coed

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to c

Constituent of The American Nurses Association

Senate Public Health & Welfare
Date: 2-6-97
Attachment No. 2

from Pittsburg State University by a senior nursing student with a prior felony conviction for second-degree murder. Currently in Kansas, child care workers, teachers and physicians cannot be licensed/renewed if they are convicted felons. In Oregon, Florida and Texas nurses convicted of felons are prohibited from licensure.

We support an absolute prohibition on licensing felons convicted of crimes against persons and ask for your support of this amendment as proposed.

↑ Additionally we would ask that some consideration be given to modifying the time period that is being proposed for Graduate Nurses and Graduate Practical Nurses to be able to sit for the computer exam to test for minimum competency and licensure. We would like to see the time frame reduced from 36 months to 24 months (ballon attached). The 36 months time frame allows for the test to be taken approximately 12 times and the 24 month time frame would still permit 8 retakes of the exam. The current statute allows only 4 retakes prior to completing an additional course of study. We support a two-year time frame and the opportunity for up to 7 retakes after initial failure.

The bill also proposes that the Board of Nursing be able to obtain "arrest records" from the KBI for all applicants for licensure, and or renewal. From a due process perspective we believe this expansion of authority is quite broad and may be unnecessary.

Thank you.

1 follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may
 2 deny, revoke, limit or suspend any license, certificate of qualification or
 3 authorization to practice nursing as a registered professional nurse, as a
 4 licensed practical nurse, as an advanced registered nurse practitioner or
 5 as a registered nurse anesthetist that is issued by the board or applied for
 6 under this act or may publicly or privately censure a licensee or holder
 7 of a certificate of qualification or authorization, if the applicant, licensee
 8 or holder of a certificate of qualification or authorization is found after
 9 hearing:

10 (1) To be guilty of fraud or deceit in practicing nursing or in procuring
 11 or attempting to procure a license to practice nursing;

12 (2) to have been guilty of a felony or ~~to have been guilty of a mis-~~
 13 ~~demeanor involving an illegal drug offense; if the board determines, after~~
 14 ~~investigation, that such person has not been sufficiently rehabilitated or~~
 15 ~~a violation of corresponding municipal ordinance unless the applicant or~~
 16 ~~licensee establishes sufficient rehabilitation to warrant the public trust;~~

17 (3) to have committed an act of professional incompetency as defined
 18 in subsection (e);

19 (4) to be unable to practice with skill and safety due to current abuse
 20 of drugs or alcohol;

21 (5) to be a person who has been adjudged in need of a guardian or
 22 conservator, or both, under the act for obtaining a guardian or conser-
 23 vator, or both, and who has not been restored to capacity under that act;

24 (6) to be guilty of unprofessional conduct as defined by rules and
 25 regulations of the board;

26 (7) to have willfully or repeatedly violated the provisions of the Kansas
 27 nurse practice act or any rules and regulations adopted pursuant to that
 28 act, including K.S.A. 65-1114 and 65-1122 and amendments thereto; or

29 (8) to have a license to practice nursing as a registered nurse or as a
 30 practical nurse denied, revoked, limited or suspended, or to be publicly
 31 or privately censured, by a licensing authority of another state, agency of
 32 the United States government, territory of the United States or country
 33 or to have other disciplinary action taken against the applicant or licensee
 34 by a licensing authority of another state, agency of the United States
 35 government, territory of the United States or country. A certified copy of
 36 the record or order of public or private censure, denial, suspension, lim-
 37 itation, revocation or other disciplinary action of the licensing authority
 38 of another state, agency of the United States government, territory of the
 United States or country shall constitute prima facie evidence of such a
 fact for purposes of this paragraph (8).

41 (b) *Proceedings.* Upon filing of a sworn complaint with the board
 42 charging a person with having been guilty of any of the unlawful practices
 43 specified in subsection (a), two or more members of the board shall in-

Kansas State Nurses Association
 Proposed Amendments to S.B. 164
 February 6, 1997

except that no license, certificate of qualification or authorization
 to practice nursing as a registered professional nurse, as a licensed
 practical nurse, as an advanced registered nurse practitioner
 or registered nurse anesthetists shall be granted to a person with
 a felony conviction for a crime against persons (Article 34, Chpt.21).

NOTE: This same amendment should be included in the LMHT
 Statute.

7-2
2-4

Kansas State Nurses Association
Proposed Amendments to S.B. 164
February 6, 1997

1 ifications required of a registered professional in this state. Verification
2 of the applicant's licensure status shall be required from the original state
3 of licensure.

4 ~~(2)~~ (3) *Refresher course.* Notwithstanding the provisions of subsec-
5 tions (a) and (b), an applicant for a license to practice as a registered
6 professional nurse who has not been licensed to practice professional
7 nursing for five years preceding application shall be required to success-
8 fully complete a refresher course as defined by the board.

9 ~~(3)~~ (4) *Renewal license.* A licensed professional nurse licensed under
10 this act shall be eligible for renewal licenses upon compliance with K.S.A.
11 65-1117 and amendments thereto.

12 ~~(4)~~ (5) *Repeated examination failure.* Persons who are unsuccessful
13 in passing the licensure examination after four failures shall petition the
14 board for permission prior to subsequent attempts. The board may re-
15 quire the applicant to submit and complete a plan of study prior to taking
16 the licensure examination for the fifth time or any subsequent attempt.
17 within 36 months after graduation shall be required to produce evidence
18 of successful completion of a repeated nursing curriculum from an ac-
19 credited school of professional nursing.

----- 24 -----

20 (6) *An application for initial licensure or endorsement will be held*
21 *awaiting completion of meeting qualifications for a time period specified*
22 *in rules and regulations.*

23 (d) *Title and abbreviation.* Any person who holds a license to practice
24 as a registered professional nurse in this state shall have the right to use
25 the title, "registered nurse," and the abbreviation, "R.N." No other per-
26 son shall assume the title or use the abbreviation or any other words,
27 letters, signs or figures to indicate that the person is a registered profes-
28 sional nurse.

29 (e) *Temporary permit.* The board may issue a temporary permit to
30 practice nursing as a registered professional nurse for a period not to
31 exceed 90 120 days. The 90 day temporary permit may be renewed for
32 an additional 30 days but not to exceed a combined total of 120 days. A
33 temporary permit for 120 days may be issued to an applicant for licensure
34 as a registered professional nurse who is a graduate of a professional
35 school of nursing in a foreign country after verification of licensure in
36 that foreign country and approval of educational credentials.

37 (f) *Exempt license.* The board may issue an exempt license to any
38 licensee as defined in rules and regulations who makes written application
39 for such license on a form provided by the board and remits a fee as
40 established pursuant to K.S.A. 65-1118 and amendments thereto. The
41 board may issue an exempt license to a person who is not regularly en-
42 gaged in the practice of professional nursing in Kansas but is a charitable
43 health care provider as defined by K.S.A. 75-6102 and amendments

2-5

1 refresher course as defined by the board.

2 ~~(3)~~ (4) *Renewal license.* A licensed practical nurse licensed under this
3 act shall be eligible for renewal licenses upon compliance with K.S.A. 65-
4 1117 and amendments thereto.

5 ~~(4)~~ (5) *Repeated examination failure.* Persons who are unsuccessful
6 in passing the licensure examination ~~after four failures shall petition the~~
7 ~~board for permission prior to subsequent attempts. The board may re-~~
8 ~~quire the applicant to submit and complete a plan of study prior to taking~~
9 ~~the licensure examination for the fifth time or any subsequent attempt.~~
10 ~~within 36 months after graduation shall be required to produce evidence~~
11 ~~of successful completion of a repeated practical nurse curriculum from an~~
12 ~~accredited school of practical nursing.~~

----- 24

13 (6) *An application for initial licensure or endorsement will be held*
14 *awaiting completion of meeting qualifications for a time period specified*
15 *in rules and regulations.*

16 (d) *Title and abbreviation.* Any person who holds a license to practice
17 as a licensed practical nurse in this state shall have the right to use the
18 title, "licensed practical nurse," and the abbreviation, "L.P.N." No other
19 person shall assume the title or use the abbreviation or any other words,
20 letters, signs or figures to indicate that the person is a licensed practical
21 nurse.

22 (e) *Temporary permit.* The board may issue a temporary permit to
23 practice nursing as a licensed practical nurse for a period not to exceed
24 ~~90~~ 120 days. ~~The 90-day temporary permit may be renewed for an ad-~~
25 ~~ditional 30 days not to exceed a combined total of 120 days. A temporary~~
26 ~~permit for 120 days may be issued to an applicant for licensure as a~~
27 ~~licensed practical nurse who is a graduate of a practical school of nursing~~
28 ~~in a foreign country after verification of licensure in that foreign country~~
29 ~~and approval of educational credentials.~~

30 (f) *Exempt license.* The board may issue an exempt license to any
31 licensee as defined in rules and regulations who makes written application
32 for such license on a form provided by the board and remits a fee as
33 established pursuant to K.S.A. 65-1118 and amendments thereto. The
34 board may issue an exempt license to a person who is not regularly en-
35 gaged in the practice of practical nursing in Kansas but is a charitable
36 health care provider as defined by K.S.A. 75-6102 and amendments
37 thereto. Each exempt licensee shall be subject to all provisions of the nurse
38 practice act, except as otherwise provided in this subsection (f). Each
39 exempt license may be renewed biennially subject to the provisions of this
40 subsection. The holder of the exempt license shall not be required to submit
41 evidence of satisfactory completion of a program of continuing nursing
42 education for renewal. To convert an exempt license to an active license,
43 the exempt licensee shall meet all the requirements of subsection (c) or

Kansas State Nurses Association
Proposed Amendments to S.B. 164
February 6, 1997

2-6

1 follows: 65-4203. (a) ~~Except as is hereinafter provided,~~ *Qualification.* An
 2 applicant for a license to practice as a mental health technician shall file
 3 with the board a written application for such license, on forms prescribed
 4 by the board, and shall submit satisfactory evidence that the applicant:

5 (1) ~~Has been satisfactorily rehabilitated if the applicant has ever been~~
 6 ~~convicted of a felony;~~

7 (2) ~~possesses a high school education or its recognized equivalent;~~
 8 ~~and~~

9 (1) *Have graduated from a high school accredited by the appropriate*
 10 *legal accrediting agency or has obtained the equivalent of a high school*
 11 *education, as determined by the state department of education;*

12 ~~(3) has~~ (2) *have satisfactorily completed an approved course of mental*
 13 *health technology; and*

14 (3) *file with the board a written application for a license.*

15 (b) A license to perform as a mental health technician may only be
 16 issued by the board to an applicant: (1) meeting the qualifications set
 17 forth in subsection (a) and who has successfully passed a written exami-
 18 nation in mental health technology as prescribed and conducted by the
 19 board; or

20 (2) ~~who has been duly licensed by examination under the laws of~~
 21 ~~another state, territory or foreign country if, in the opinion of the board,~~
 22 ~~the requirements for licensure in such other jurisdiction equal or exceed~~
 23 ~~the qualifications required to practice as a mental health technician in~~
 24 ~~this state.~~

25 (c) Persons who are unsuccessful in passing the licensure examination
 26 after four failures shall petition the board for permission prior to subse-
 27 quent attempts. The board may require the applicant to submit and com-
 28 plete a plan of study prior to taking the licensure examination for the fifth
 29 time or any subsequent attempt. ~~within 36 months after graduation shall~~----- 24
 30 *be required to produce evidence of successful completion of a repeated*
 31 *mental health technology curriculum from an accredited school of mental*
 32 *health technology.*

33 (d) *An application for initial licensure will be held awaiting comple-*
 34 *tion of meeting qualifications for a time period specified in rules and*
 35 *regulations.*

36 ~~(d)~~ (e) The board may issue a one-time temporary permit to practice
 37 as a mental health technician for a period not to exceed 120 days when
 38 a reinstatement application has been made.

39 ~~(e)~~ (f) *Exempt license. The board may issue an exempt license to any*
 40 *licensee as defined in rules and regulations who makes written application*
 41 *for such license on a form provided by the board and remits a fee as*
established pursuant to K.S.A. 65-4208 and amendments thereto. The
board may issue an exempt license to a person who is not regularly en-

Kansas State Nurses Association
 Proposed Amendments to S.B. 164
 February 6, 1997



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

**TESTIMONY
CHARLES W. SEXSON
ASSISTANT DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE PUBLIC HEALTH AND WELFARE COMMITTEE
REGARDING SENATE BILL 164
FEBRUARY 6, 1997**

Madam Chairman and Members of the Committee:

I appear today in behalf of the Kansas Bureau of Investigation to request an amendment to Senate Bill 164. On page 7, lines 36-40, the bill relates to K.S.A. 65-1130(f) wherein criminal history record information from the Kansas Bureau of Investigation is made available, without charge, to the Board of Nursing.

Pursuant to Chapter 17, 1986 Session Laws, the Director of the KBI is authorized to charge a reasonable fee for access to criminal history record information. Accordingly, the KBI charges a \$10.00 fee for single name record inquiries from non-criminal justice entities. The fees are used by the agency to help maintain the State Central Record Repository and offset the costs of processing requests for information.

Providing criminal history record information, without charge, to the Board of Nursing is inconsistent with fees that are charged to other state agencies for similar licensure and registration requirements. For example, K.S.A. 65-2839a(c) provides that the Board of Healing Arts may receive criminal history record information from the KBI, but there is no reference to the information being provided at no charge.

It has always been the position of the KBI, that for licensing purposes, the cost of the record checks should be borne by the licensee and not by the taxpayers at large. Therefore, the KBI requests the reference to "without charge" be struck from line 37 on page 7 of the bill.

The KBI is not opposed to the release of "arrest" information to the Board of Nursing, as provided on page 7, line 38, of the bill.

Thank you for your consideration.



Testimony Before the Senate Public Health and Welfare Committee

S. B. 164 Nurse Practice Act Changes

February 6, 1997

Senator Praeger and members of the Senate Public Health and Welfare Committee, my name is Sue Denger, RN, MA. I am currently the Chair of the Commission on Education and a member of the Board of Directors of the Kansas Organization for Nurse Leaders (KONL). This organization was previously known as the Kansas Organization of Nurse Executives. We are pleased to be here to comment on S. B. 164.

Overall, KONL supports S.B. 164. We are also supportive of the testimony presented earlier today by the Kansas State Nurses' Association (KSNA).

Of particular note is the KSNA recommendation to amend the bill to reflect absolute prohibition of licensure of a person with a felony conviction for a violent crime against persons. It is our view that such persons pose significant risk to the safety of the citizens of Kansas.

We also share KSNA's perspective about the Board of Nursing being able to obtain arrest records for applicants for initial licensure or renewal. We believe that such activity may be an invasion of privacy. We believe that the expansion of authority to obtain arrest records is quite broad and may be unnecessary.

Thank you for your consideration.

TESTIMONY
Senate Public Health & Welfare Committee
Senate Bill No. 61
February 6, 1997

Background

SB 61 was introduced at the request of the Kansas Podiatric Medical Association (KPMA) to do two things: one, clarify in the Podiatry Act that podiatrists are physicians and surgeons of the foot; and two, update the Act by eliminating the horse and buggy 1927 statutory prohibition on the amputation of toes.

For the past two years the Kansas Board of Healing Arts (KBHA) has supported both changes in the Podiatry Act, as set forth in Section 1(b) of the bill.

The Kansas Medical Society (KMS) has opposed this legislation for the past two years. I believe they may support an amendment to existing law granting podiatrists the authority to amputate toes. However, I hope their position does not dictate public policy.

Rationale

Podiatrists prescribe medicine and perform foot surgeries every day. They have been consistently defined as a physician of the foot under Kansas law since at least 1949, to wit: 1949, K.S.A. 74-2801; 1953, Regulation 72-1-9; 1959, Attorney General Opinion (AGO); 1980, AGO 80-217; 1991 District Court decision; and most recently, 1994 AGO 94-148.

KPMA wants to clarify in the Podiatry Act what is a fact of life, and a fact of Kansas law. We are well aware of the opposition's interest in a competitive advantage and narrowing access is the arena of health care reform. Iowa Governor Branstad noted his concern when he signed into law their bill defining "podiatric physicians". He stated third party payers have used the term "physician" as a screen for denying reimbursement to podiatrists.

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Testimony SB 61
February 6, 1997
Page Two

All of our bordering states, Missouri, Nebraska, Oklahoma and Colorado as well as at least a total of 35 states define podiatrists as physicians. The federal government defines a doctor of podiatric medicine as a physician for both Medicare and Social Security.

Additionally, the issues of access and provider of choice are clearly drawn into focus by State and National figures:

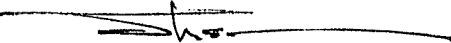
Blue Cross and Blue Shield statistics have shown that podiatric surgeons perform 80% of the most common foot operation codes in Kansas.

Medicare data shows podiatric surgeons perform: 82% of all hammertoe operations; 71% of all metatarsal operations; 70% of all bunionectomies; and 59% of all rearfoot procedures.

The two policy issues in SB 61 are not complex or technical: one, the expansion of scope of practice for podiatrists - allows amputation of toes; two, the public health and safety - the State's neutral watchdog agency (KBHA) is supportive of this legislation.

Thank you for every courtesy and consideration extended to us. The time has come to update and clarify the Kansas Podiatry Act. It has been SEVENTY YEARS!

Respectfully,



Shelby Smith, Lobbyist
Kansas Podiatric Medical Association

P.S. In generic terms today's state of the art podiatric education and training is a four year baccalaureate degree, four years of podiatric medical school, and a residency ranging from one to three years.

RICHARD L. BRADBURY, D.P.M.

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Testimony of Richard L. Bradbury, D.P.M.
to the Public Health and Welfare Committee

February 06, 1997

Topeka, Kansas

Subject: SB 61

Thank you for giving me the opportunity to speak with you this morning. I am Dr. Richard Bradbury from Salina, Kansas. I am President-Elect of the Kansas Podiatric Medical Association. I am board certified in Podiatric Orthopedics and board qualified in Podiatric Surgery.

My presence here today is to support SB 61, and to give you some insight into how current state statutes can affect my practice. Daily, I am responsible for the care of people with a variety of foot problems. On an average day, I can be seen treating an infant with congenital foot deformity, or a great-grandmother with infected ingrown toenails. My evenings are often spent at one of the local hospitals examining and treating patients at the request of medical colleagues. One day a week I spend performing hospital surgery, which can include major foot reconstructions.

On at least six separate occasions during the last year, a very disturbing situation has arisen. Patients presented with serious foot infections with risk of limb loss or systemic spread of the infection. The treatment of choice was drainage of the infection with possible removal of the involved toe.

Given current restrictions on digital amputation, I could not take my patients to surgery to provide the needed treatment. Instead, I had to refer them to another provider who was not so restricted. Also, I was forced to explain to the patient, their family, and their internist or family physician that I faced loss of my license if I provided the needed care which might include removal of the infected toe. No explanation could provide comfort to these people.

Ladies and gentlemen, this is wrong. If any one of you injured a foot which required surgical reconstruction, I am qualified and allowed to put you back together. Yet, if you need to have an infected toe removed, you must see someone else. Please help change this. Support SB 61.

Senate Public Health & Welfare

Date: 2-6-97

Attachment No. 6



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EXECUTIVE SECRETARY

WAYNE PROBASCO
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February 6, 1997

Dear Chairwoman Praeger and Committee Members:

My name is Phyllis Ragley. I am the Past President of the Kansas Podiatric Medical Association. I have practiced podiatric medicine and surgery in Lawrence since 1980. I am President-Elect of the American Academy of Podiatric Sports Medicine and have served on a select committee of our National Board of Examiners. I have been an editor of a special issue of the Journal of the American Podiatric Medical Association concerning medical-legal matters. I am also licensed to practice law in Kansas. I will be speaking to you this morning about the facts which have prompted and substantiate the revision of KSA 65-2002 (b), in Senate Bill 61 before you.

An impetus for modifying KSA 65-2002(b) is that the original podiatry act was written in 1927. Over the last 70 years, much has changed in the didactic education and residency training of our profession, as has been the case in allopathic and osteopathic medicine. Our young practitioners today complete one, two, and three year residency training. Unfortunately, some of these young and talented practitioners do not consider practicing podiatric medicine and surgery in Kansas due to the restrictive nature of our current law.

Modifying KSA 65-2002 (b) to define podiatrists as physicians and surgeons of the human foot not only follows federal and state legal precedent, but also Kansas history.

In 1949, the Kansas Legislature authorized 74-2801, as noted in 72-1-9, which stated that "A podiatrist shall be defined as a physician of the foot." Today, we seek clarification that our current practice act reflect this 48 year old legislative precedent that we are, in fact, the physician and surgeon of the human foot.

Currently, at least 35 states define podiatrists as physicians, including all of our contiguous states, with others pending.

Federally, Medicare, the Social Security Act, defines a doctor of podiatric medicine as a physician 42 USC 1395 (r) (3).

KAR 28-34 (a) (i) defines a physician as a person licensed in Kansas to practice medicine and surgery.

In Kansas a physician is defined as one who practices medicine and surgery. To practice medicine and surgery in Kansas, as defined by KSA 65-2869, one must have the independent legal authority to operate and prescribe medicine. Only medical doctors, doctors of osteopathy, doctors of podiatric medicine, and doctors of dental science, satisfy this essential, statutory criteria.

KPMA

Executive Office:
615 S. Topeka Blvd.
Topeka, Kansas 66603

Senate Public Health & Welfare

Date: 2-5-97

Attachment No. 7

In Kansas, three Attorney General Opinions have dealt with the issue of podiatrists as a physician who practices medicine and surgery.

As early as 1959, an Attorney General's Opinion stated that a podiatrist was a physician within the federal Uniform Narcotics Drug Act.

Attorney General Opinion 80-217 states that a podiatrist does practice medicine and surgery, according to KSA 65-2369.

Most recently, Attorney General Opinion 94-148 stated that the term physician included podiatrists and suggested that the podiatry act itself address the definition of podiatric physician.

Clearly, these three thoughtful and cogent Attorney General opinions establish that Kansas podiatrists are defined as physicians.

In a 1991 Shawnee County district court case, *Malstrom et al v. KBHA, et al*, Judge Terry Bullock held that physicians practice medicine and surgery and that these individuals, by statute, are allowed to prescribe medication and conduct surgical procedures.

It should also be noted that the Kansas Board of Healing Arts has supported the language of our bill before you over the last three years.

The totality of all these legal facts and opinions, as well as the repeated support from the Kansas Board of Healing Arts, substantiates the requested modification of KSA 65-2002(b), to read that a podiatrist is a physician and surgeon of the human foot.

From a professional viewpoint, we request the modification of KSA 65-2002(b) to more accurately reflect the training and skills of today's podiatric physician and surgeon, by providing for digital amputations. In all but 13 states, or 75% of all states, podiatrists can perform digital amputations. With the modification of KSA 65-2002 (b), hospitals and surgi-centers can then provide the appropriate credentialing forum for podiatric surgeons requesting to perform amputations.

We would like to include the following statistics. **Medicare data**, from 1986-1988, shows podiatric surgeons performed the following:

32% of all hammertoe operations

71% of all metatarsal operations

70% of all bunionectomies

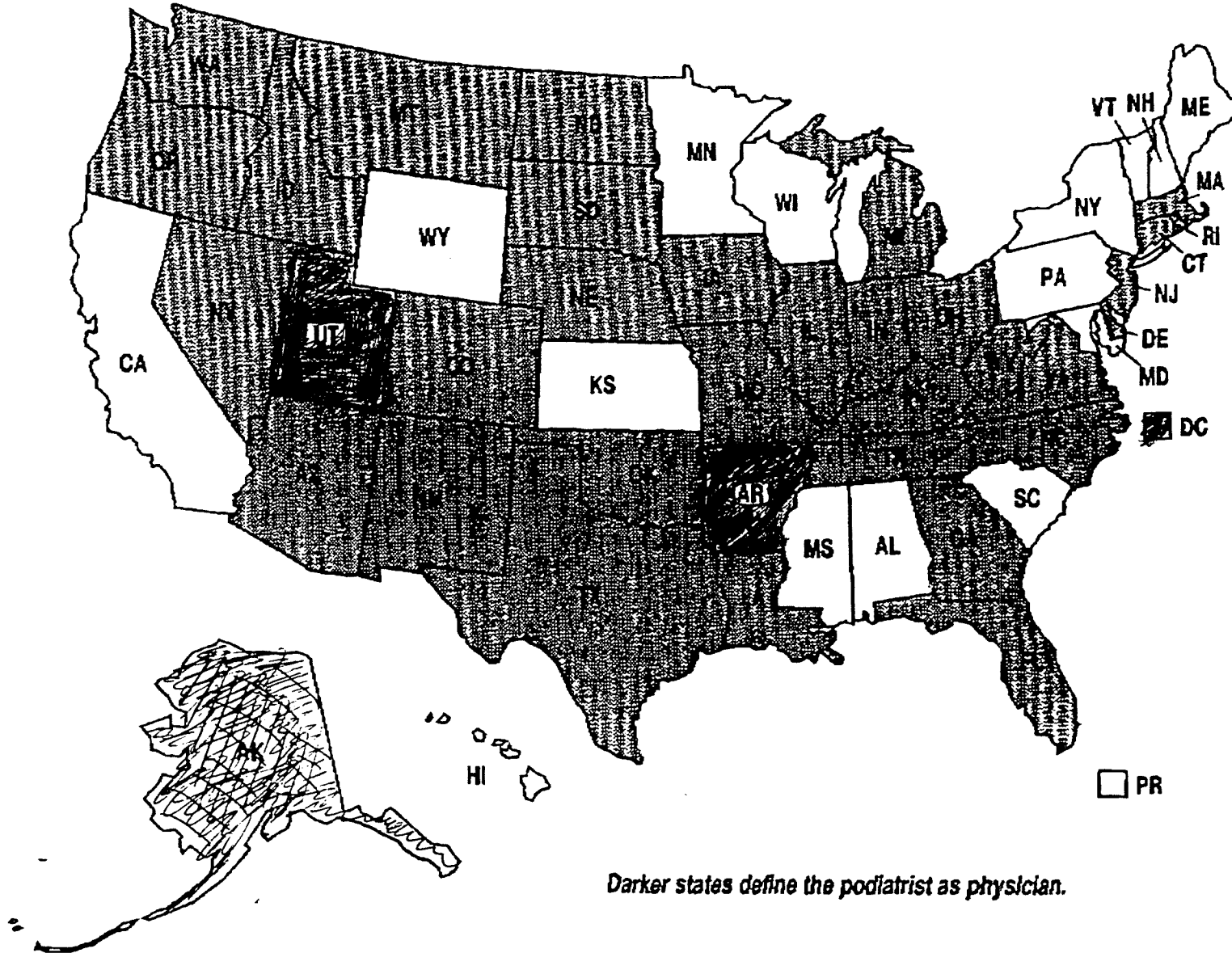
59% of all rearfoot procedures

Blue Cross and Blue Shield of Kansas reviewed five, common foot operation codes from July 1993 to June 1994, and subsequently, found that podiatric surgeons performed **80%** of those particular operations in Kansas. This data clearly reflects that Kansas podiatric surgeons are the surgeons of choice to perform foot operations.

In conclusion, the Kansas Podiatric Medical Association has been addressing a number of podiatric medical and surgical practice issues since 1990. Upon the recommendations of a former KDHE Secretary, Kansas Attorney General Opinion, and Federal Trade Commission attorneys, we are pursuing this legislative correction of these collective matters. Today, we again present clear and unbiased opinions from the Kansas Board of Healing Arts, the Kansas Attorney General's office, a Kansas District Court case, and Kansas and federal law, in support of Senate Bill 61. We trust that the totality of our facts and presentations will be considered on the merits.

On behalf of the Kansas Podiatric Medical Association, I would like to thank you, Chairwoman Praeger, and this Committee, for the opportunity to address you this morning. We very much appreciate your time and consideration. I will gladly respond to your questions.

AS OF 2/97, THIRTY FIVE STATES DEFINE PODIATRISTS AS PHYSICIANS



Source: APMA Department of Health Affairs.
State Reference Manual

Education: Long, arduous, and continuing

A doctor of podiatric medicine must navigate a rigorous course of study, training and licensing comparable to — and in some cases exceeding — that of other medical specialties.

A

study to be specialized to treat a specific part of the body. A podiatric physician successfully navigates a rigorous course of study, training and licensing comparable to — and in some cases exceeding — that of other medical specialties.

Minimum education	MD	DPM
Premedical education minimum — three years	Yes	Yes
Medical school — minimum of four years	Yes	Yes
Minimum professional school course hours	4,000	4,000
Postgraduate training of at least one year	Yes	Yes

Mimimum curriculum	MD	DPM
Anatomy	Yes	Yes
Anesthesia	Yes	Yes
Bacteriology	Yes	Yes
Biochemistry	Yes	Yes
Child Abuse Detection & Treatment	Yes	Yes
Biomechanics/Foot Orthopedics	No	Yes
Dermatology	Yes	Yes
Didactic Podiatry	No	Yes
Geriatric Medicine	Yes	Yes
Human Sexuality	Yes	No
Hygiene	Yes	Yes
Immunology	Yes	Yes
Medicine	Yes	Yes
Neurology	Yes	Yes
Obstetrics & Gynecology	Yes	No
Orthopedic Surgery	Yes	Yes
Ophthalmology	Yes	No
Otolaryngology	Yes	No
Pathology	Yes	Yes
Pharmacology	Yes	Yes
Physical Medicine	Yes	Yes
Physical & Laboratory Diagnosis	Yes	Yes
Physical Therapy	No	Yes
Physiology	Yes	Yes
Preventive Medicine	Yes	Yes
Podiatric Medicine	No	Yes
Podiatric Surgery	No	Yes
Psychiatry	Yes	Yes
Radiology	Yes	Yes
Shoe Therapy	No	Yes
Syphilology	Yes	Yes
Surgery	Yes	Yes
Therapeutics	Yes	Yes
Tropical Medicine	Yes	No
Urology	Yes	No

After premedical college studies, he or she must complete more than 4,000 hours of studies at a fully accredited college of podiatric medicine. In addition, the podiatrist — unlike the dentist — must complete one year of postgraduate residency training in a general acute care facility.

Finally, the doctor of podiatric medicine must pass a national board examination and the California licensing exam.

Some podiatric physicians elect to take two or more years of residency training. Many take additional steps to be certified in such specialties as foot and ankle surgery or children's foot disorders.

To begin the quest, a budding DPM must pass the Medical College Admission Test and compete for a place in an accredited college of podiatric medicine. These are stern requirements. In a recent year, fewer than one-quarter of all applicants were accepted by the California College of Podiatric Medicine.

Continuing education in approved programs is required to maintain state licensing.

Yes, treating the disorders and diseases of the foot requires years of specialized education and training.

The doctor of podiatric medicine earns the title as the specialist for medical care for the feet.

Sources for tables: 1. Medical Board of California. *Laws Relating to the Practice of Physicians and Surgeons, Podiatrists, et al.* Article 4, Sections 2080-2099; Article 22, Sections 2481-2484. 2. California College of Podiatric Medicine, San Francisco.

a written order of its findings and if the Board finds that such complaint and evidence are sufficient to warrant the revocation of the license it shall order the Secretary to strike from the rolls of licensed podiatrists the name of the respondent and a copy of such findings and order of the Board shall be served upon the respondent and his attorney. [Authorized by G. S. 1949, 65-2008; effective June 17, 1953.]

72-1-8. Reinstatement of license after revocation. Any person whose license to practice podiatry has been revoked after proper complaint and hearing by the Board may make application for reinstatement but such application for reinstatement may not be made at any period of less than six months after such revocation and shall be in writing by setting forth why such license shall be reinstated.

The Board at its regular meeting after the receipt of such application for reinstatement may make inquiry and such proof as it deems necessary and shall enter such order as it deems just and proper with reference to any application for reinstatement. [Authorized by G. S. 1951 Supp. 65-2003; effective June 17, 1953.]

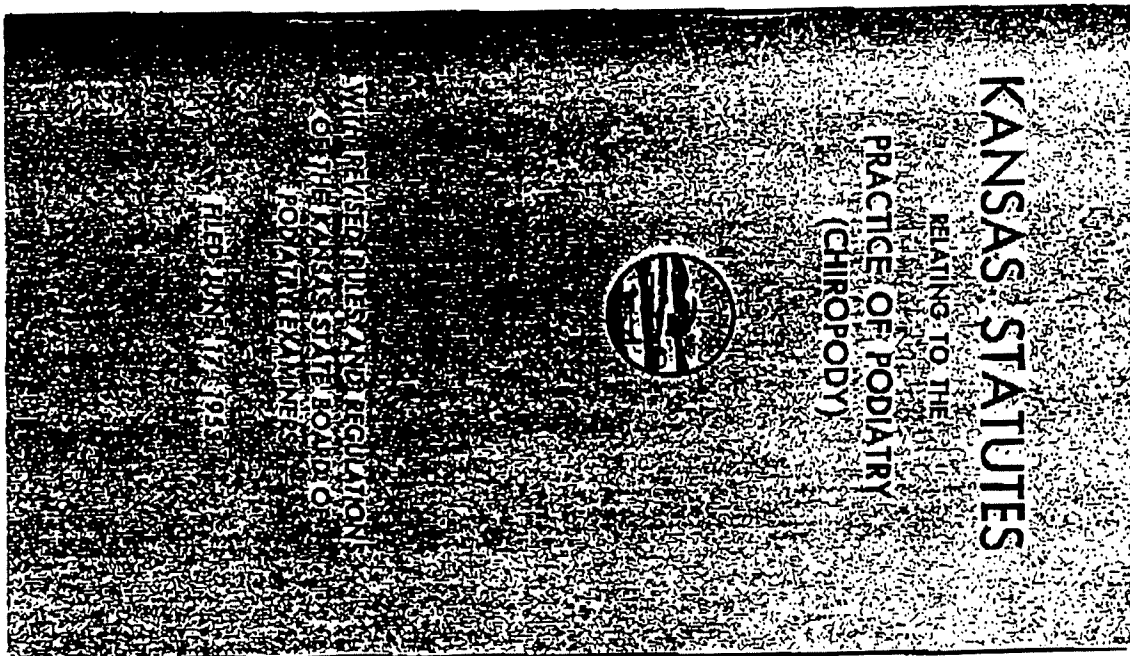
* **72-1-9. Podiatrist or chiroprapist defined.** A podiatrist (chiroprapist) shall be defined as a physician of the foot. [Authorized by G. S. 1949, 74-2801, etc.; effective June 17, 1953.] *

72-1-10. Surgery prohibited. A license to practice podiatry shall not authorize the licensee to amputate the human foot or toes and neither shall any podiatrist administer any anesthetic other than local. [Authorized by G. S. 1951 Supp. 65-2002; effective June 17, 1953.]

72-1-11. Use of medicines. A podiatrist (chiroprapist) shall be authorized to use such drugs as are indicated in the treatment of diseases of the foot. [Authorized by G. S. 1949, 74-2801, etc.; effective June 17, 1953.]

72-1-12. Persons not required to qualify under the act. The above rules and regulations shall not apply to the following: physicians and surgeons or osteopaths as they are authorized to practice their profession in this state. Nothing herein shall prohibit the recommendation, advertising, fitting for sale of corrective shoes, arch supports and all similar mechanical appliances or foot remedies by manufacturers, wholesalers or retail dealers. [Authorized by G. S. 1951 Supp. 65-2002; effective June 17, 1953.]

72-1-13. Amendments of rules. These rules may be amended at any meeting of the Board by a majority vote of the members. Any statutory enactments by the legislature of the state of Kansas in any way inconsistent with the rules or regulations of this Board shall supersede and automatically repeal any such inconsistent rule or rules. [Authorized by G. S. 1949, 74-2801, etc.; effective June 17, 1953.]

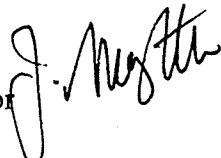




KANSAS MEDICAL SOCIETY

February 6, 1997

TO: Senate Public Health & Welfare Committee

FROM: Jerry Slaughter
Executive Director 

SUBJECT: SB 61; concerning expansion of podiatry scope of practice

The Kansas Medical Society appreciates the opportunity to appear today on SB 61, which would amend the podiatry act in two ways: (1) it would allow podiatrists to call themselves "physician and surgeon of the foot"; and (2) allow them to amputate toes. Under current law, both of these requested changes are not permitted. We oppose HB 2756 as it is currently written.

We met with representatives of the Podiatry Association in the fall of 1995, prior to their introduction of similar legislation last session. We indicated our willingness to discuss possible areas of compromise, but identified an issue we simply could not support. We have on several occasions reiterated our willingness to continue discussing those areas where there might be agreement, but the podiatrists have not pursued further discussions with us. Consequently, we have no choice but to oppose the bill as it has been introduced.

First let me clarify a common misunderstanding that contributed to two confusing Attorney General opinions which podiatrists have used in the past to support their claim that they can use the term "physician." There are only three branches of the healing arts under the Kansas Healing Arts Act; allopathic medicine (MD's), osteopathic medicine (DO's), and chiropractic (DC's). It may be confusing to some because podiatrists are regulated by the Healing Arts Board, as are physicians and chiropractors. However, podiatrists are governed by their own practice act, K.S.A. 65-2001, *et seq.*, while the Healing Arts Act is at K.S.A. 65-2801 *et seq.* The laws are entirely separate and podiatrists are not licensed to engage in the healing arts; they are licensed to engage in podiatry. In fact, the Healing Arts Act at K.S.A. 65-2872 states "the practice of the healing arts shall not be construed to include the following persons: (n) Podiatrists practicing their profession...."

Furthermore, although the podiatry act authorizes podiatrists to prescribe drugs and perform surgery on the human foot, this does not make them physicians. Dentists can prescribe drugs and perform surgery, but they are not asking to be called physicians. Optometrists can prescribe drugs, yet they are not asking to be called physicians. Certified nurse midwives do obstetrics, but they cannot advertise themselves as physicians. The point is, many other professionals do some of the things that physicians do, yet that does not make them physicians.

Senate Public Health & Welfare Committee
Testimony on SB 61
February 6, 1997
Page 2

The public has a general understanding and expectation that "physicians" are persons who have gone through medical school and a residency training program in one of many specialties. To allow podiatrists to use the terms "physician and surgeon of the human foot" (lines 23-24 of the bill) will be confusing and misleading to the public. Podiatrists will advertise themselves as "physicians," and the public may think they are getting a physician specializing in orthopedics, when they are really getting a podiatrist. With all due respect to podiatrists, there is a difference.

We know you get tired of us coming to this committee year after year, on bill after bill, opposing groups who either want to be physicians, or call themselves physicians, without going to medical school. To us there is an important principle in all this. We believe that the breadth and depth of medical school and residency training (a total of 7 years at a minimum, and up to 10 years in some specialties) is unparalleled among the health professions. While other providers limit their scope of training and experience to certain parts or systems of the body, only physicians, whatever their specialty, have the benefit of a comprehensive, rigorous educational experience involving the whole patient.

As we mentioned earlier, similar legislation was introduced last year. In the spirit of trying to work with the podiatrists at the request of the House committee, we proposed amendments which were incorporated into the bill. We agreed to not oppose the bill further if those amendments were added, and we will honor that commitment this year if SB 61 is amended in a similar manner. We have attached a balloon that is identical to the language we agreed to last year.

In summary, we are strongly opposed to SB 61 as it is currently written. We believe it sets a bad precedent by allowing podiatrists to call themselves physicians, which will be misleading to the public. We urge you either to amend the bill as we have proposed, or report the bill adversely. Thank you for considering our comments.

SENATE BILL No. 61

By Committee on Public Health and Welfare

1-17

9 AN ACT concerning the practice of podiatry; amending K.S.A. 65-2002
10 and repealing the existing section.

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

13 Section 1. K.S.A. 65-2002 is hereby amended to read as follows: 65-
14 2002. (a) It shall be unlawful for any person to profess to be a podiatrist,
15 to practice or assume the duties incidental to podiatry, to advertise or
16 hold oneself out to the public as a podiatrist, or to use any sign or adver-
17 tisement with the word or words podiatrist, foot specialist, foot correc-
18 tionist, foot expert, practapedist or chiropodist, or any other term or terms
19 indicating that such person is a podiatrist or that such person practices
20 or holds oneself out as practicing podiatry or foot correction in any man-
21 ner, without first obtaining from the board a license authorizing the prac-
22 tice of podiatry in this state, except as hereinafter provided.

23 (b) A licensed podiatrist ~~means a physician and surgeon of the human~~
24 ~~foot who~~ shall be authorized to prescribe such drugs or medicine, and to
25 perform such surgery on the human foot or toes, as may be necessary to
26 the proper practice of ~~podiatry podiatric medicine and surgery,~~ but no
27 podiatrist shall amputate the human foot ~~or toes~~ or administer any an-
28 esthetic other than local.

29 (c) This act shall not prohibit the recommendation, advertising, fitting
30 or sale of corrective shoes, arch supports, or similar mechanical appli-
31 ances, or foot remedies by manufacturers, wholesalers or retail dealers.

32 Sec. 2. K.S.A. 65-2002 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.

podiatry

or any part thereof, except the toes,


8-3

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 6, 1997

To: Chairperson Praeger and Members, Senate Public Health Committee
From:  Harold E. Riehm, Executive Director, KAOM
Subject: Testimony in Opposition of Some Provisions of S. B. 61

Thank you for this opportunity to express our concern about a provision of S.B. 61. For two years KAOM has testified on a similar Bill, having previously expressed our opposition to podiatrists amputating the human foot, using a general anesthetic and changing the definition of a licensed podiatrist to one meaning a physician and surgeon of the human foot.

In past consultation with the Podiatric Association and their representative on the Kansas State Board of Healing Arts, we had agreed not to oppose changing law to permit podiatrist to amputate human toes. We do not oppose that change found in S.B. 61. We continue to oppose, however, the change in statutory reference to podiatrists.

Osteopathic physicians share with allopathic physicians (M.D.s) the term "physician". Both are fully licensed to practice medicine and surgery--full service medicine. Throughout Kansas Statutes, the term "person licensed to practice medicine and surgery" refers only to D.O.s and M.D.s. We see no reason to change that long standing reference.

If there is a case of reimbursement problems created by the inability of podiatrists to refer to themselves as a physician and surgeon of the human foot, then we think those problems should be addressed directly, rather than attempting to change a definition or description.

For years, referring only to fully licensed physicians--D.O.s and M.D.s--as physicians has worked well. We think there is a perception as to what "physician" means to the health consuming public. To permit its expanded use by podiatric doctors would raise questions regarding dentists, and perhaps others.

We respectfully request that this change in reference language be deleted from H.B. 2756. With this deletion, we would support its passage.

Thank you for this opportunity to present our views.

Senate Public Health and Welfare
Date: 2-6-97
Attachment No. 9

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

MEMORANDUM

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

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

DATE: February 5, 1997

RE: **SENATE BILL NO. 61**

Thank you for the opportunity to submit written testimony on behalf of the State Board of Healing Arts in support of Senate Bill No. 61.

Senate Bill No. 61 is identical to 1996 House Bill No. 2756. On February 17, 1996, the Board as a whole met and took a position of support for 1996 House Bill No. 2756 and that position has not changed. Amputation of toes are felt to be within the area of training and expertise of podiatrists. The other changes contained in Senate Bill No. 61 appear to be consistent with Attorney General Opinion No. 94-148 issued November 10, 1994. That opinion stated the term "physician" includes podiatrists for purposes of regulation by the Board. A copy of this Attorney General Opinion is attached.

Thank you for the opportunity to provide written testimony in support of this bill.

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
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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

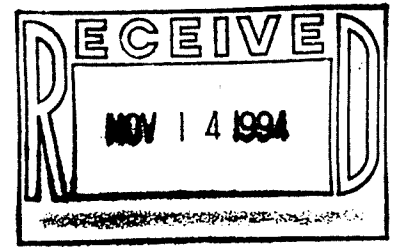
Senate Public Health & Welfare
Date: *2-6-97*
Attachment No. *10*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597



ROBERT T. STEPHAN
ATTORNEY GENERAL

November 10, 1994

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 94-148

The Honorable Pat Ranson
State Senator, Twenty-Fifth District
1701 Woodrow Court
Wichita, Kansas 67203

Re: Public Health--Regulation of Podiatrists--License
Required; Scope of Practice; Applicability of Act

Public Health--Healing Arts--Kansas Healing Arts
Act--Persons Deemed Engaged in the Practice of
Medicine and Surgery

Synopsis: The term "physician" includes podiatrists for
purposes of regulation by the Kansas healing arts
board. How inclusive the term is for other
purposes depends on the applicable statutory
definition. Cited herein: K.S.A. 1993 Supp.
8-1001, as amended by L. 1994, ch. 353, § 9;
17-2707; K.S.A. 44-508; K.S.A. 1993 Supp. 59-2902;
60-427; 65-5a01; 65-6b01; K.S.A. 65-1,114; 65-2001;
65-2002; 65-2016; 65-2869; 65-2871; 65-2891a;
65-2892; 65-2897; 65-28,102; 65-2901; 65-3209;
65-4003; 65-4202; 65-5a01; 65-5502; 65-6b01; K.S.A.
1993 Supp. 65-6112, as amended by L. 1994, ch. 154,
§ 1; K.S.A. 74-2805.

*

*

*

Dear Senator Ranson:

As senator for the twenty-fifth district you inquire whether
podiatrists are "physicians" under Kansas law.

10-2

podiatrists are physicians for purposes of health care reform legislation. In our judgment the question can be answered only within the context of the specific legislation and depends upon how narrowly or broadly the term "physician" is defined for purposes of that specific legislation.

Several Kansas statutes define the term "physician" to include podiatrists. For example, for purpose of the physician-patient privilege, a physician is "a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts. . . ." K.S.A. 1993 Supp. 60-427(a). Under the workmen's compensation act, a health care provider means any "person licensed . . . to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry or podiatry." K.S.A. 44-508(i).

In the following statutes the term physician does not specifically include podiatrists although a physician is defined to mean a person licensed to practice medicine and surgery: K.S.A. 65-5a01(c) (children with special health care needs); 65-2897a(b) (physician's assistants); 65-28,102(d) (natural death act); 65-2901 (physical therapists); 65-3209(g) (uniform anatomical gift act); K.S.A. 65-4003(17) (alcoholism and treatment act); K.S.A. 65-4202(b) (mental health technicians); 65-6112 (m) (emergency medical services act); 65-1,114(a) (concerning diabetes); 65-6b01(a) (prescribing and administering laetrile); K.S.A. 65-5502(e) (respiratory therapy practice act). Various statutes outside chapter 65 also limit the term physician to persons licensed to practice medicine and surgery. See K.S.A. 1993 Supp. 8-1001(c) (withdrawal of blood for chemical blood test); K.S.A. 1993 Supp. 17-2707(b) (professional corporations); K.S.A. 1993 Supp. 59-2902(j) (treatment act for mentally ill persons); K.S.A. 1993 Supp. 72-5212 (a)(5) (school health tests and inoculations).

Conversely not all statutes concerning public health which use the word "physician" or health care provider limit it to persons licensed to practice medicine and surgery. See workers compensation statute; K.S.A. 44-508(i), K.S.A. 65-2871, (chiropractors); 65-2891(e) (provision of emergency care); 65-2892 (examination and treatment of minors for venereal disease); 65-2892a (examination and treatment of minors for drug abuse). The broad range of these statutes makes it clear that "physician" can be defined within the context of its purpose.