

Approved: 3-6-97
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 18, 1997 in Room 526-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Betty M. Glover, Executive Director, State Child Death Review Board
Gianfranco Pezzino, M.D., State Epidemiologist, KDHE
Tom Bell, Kansas Hospital Association
Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts
Dr. James D. Edwards, member, Kansas State Board of Healing Arts
Jerry Slaughter, Executive Director, Kansas Medical Society

Others attending: See attached list

Hearing on SB 240 - Treatment facility communications disclosure

Betty M. Glover, Executive Director, State Child Death Review Board, testified in support of SB 240 which would exempt records needed by SCDRB from the provisions of confidentiality established by K.S.A. 65-5603. The bill would allow the Board access to mental health records in relation to reviewing cases of suicide deaths of young Kansans as noted in her written testimony. (Attachment 1) Teen suicide and confidentiality of those records were discussed by the Committee.

There were no opponents to the bill.

Action on SB 240

Senator Langworthy made a motion the Committee recommend **SB 240** favorably for passage, seconded by Senator Hardenburger. The motion carried.

Hearing on SB 304 - Authorizing the establishment of local child death review boards

Betty M. Glover, Executive Director, State Child Death Review Board, testified in support of SB 304 which would authorize the establishment of local child death review boards and provide for the sharing of information between the state and local boards. The state board would provide a protocol under which a local child death review board would operate as noted in her written testimony. (Attachment 2) The Committee discussed the cost of mailings covered by the Attorney General's office and reporting of information between the boards be done only once.

There were no opponents to the bill

Action on SB 304

Senator Salmans made a motion to amend **SB 304** to state that information need be reported only once by the state and local boards, seconded by Senator Hardenburger. The motion carried.

Senator Langworthy made a motion the Committee recommend **SB 304 as amended** favorably for passage, seconded by Senator Hardenburger. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S
Statehouse, at 10:00 a.m. on February 18, 1997.

Hearing on SB 211 - Infections or contagious disease reporting

Gianfranco Pezzino, M.D., State Epidemiologist, KDHE, testified in favor of SB 211 which would amend disease reporting statutes and add administrators of hospitals and nursing homes as well as licensed nurses to those required to report certain infectious or contagious diseases. Laboratories would also be required to report culture or test results that are indicative of certain infectious or contagious agents. Dr. Pezzino stated that these changes are necessary to enable the public health system to handle the challenge of controlling infectious diseases at a time of resurgence of new, emerging and old, reemerging infections as noted in his written testimony. (Attachment 3)

Tom Bell, Kansas Hospital Association, testified before the Committee in support of the intent of SB 211 that would make the reporting process more effective by expanding the scope of the statutory reporting requirements, but urged the Committee to look at the definition of "health care provider" as addressed in the bill. (Attachment 4)

Hearing on SB 221 - Health care providers peer review and risk management

Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts, testified in support of SB 221 which would clarify language in the bill relating to the peer review committee as noted in his written testimony. A balloon of the bill was also submitted that would compensate members of the committee on an hourly basis. (Attachment 5) During Committee discussion it was noted that the rate of pay to members of the peer review committee would be \$70.00 per hour, and that such reimbursement would come from the Healing Arts fee fund.

Dr. James D. Edwards, member of the Kansas State Board of Healing Arts, testified in opposition to the amendment to SB 221 relating to compensation of \$70.00 per hour for members of the peer review committee as noted in his written testimony. (Attachment 6)

Jerry Slaughter, Executive Director, Kansas Medical Society, testified before the Committee in support of SB 221 and noted that even though the current peer review law protects documents generated by the peer review committee, it does not protect reports and records given to or obtained by the committee from another source. A balloon of the bill showing the proposed amendment that would add language on page 3, line 4 of the bill that would correct this deficiency in the statute was submitted with his written testimony. (Attachment 7)

Also speaking in support of SB 221 was Tom Bell, KHA. (Attachment 8)

Because of lack of time, the hearing on SB 221 will be continued on Wednesday, February 19, 1997.

Adjournment

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

The next meeting is scheduled for February 19, 1997.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-18-97

NAME	REPRESENTING
MEGGAN GRIGGS	KEARNEY LAW OFFICE
Jane Emery	KSNA
Vicki Quinn	KANA
Jodi Lange	ESU Newman Division of Nursing
Debra Martin	ESU Newman Division of Nursing
Jenise Riling	ESU Newman Div of Nursing
Bonnie Jackson	ESU Newman Div of Nursing
Tom Bell	Ks. Hosp. Assn.
Harold Richm	"KAOA"
Jane Leonard Kimball	Senator Marcus
Amy Gumpell	R. Pic Lang Jnr
Susan Baker	Hein + Wein
Mary Ellen Corlee	Via Christi Health System
GREG RESER	KANSAS DEPT. HEALTH + ENVIRONMENT
Joann Wiley	Salver Hared Legislature - Speaker
Jill Bridges	Division of the Budget
Kelly Feyh	AG
Michael A. Rumm	AG
David L. Sherman	AG



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

Statement of Betty M. Glover
Executive Director, State Child Death Review Board
Before the Senate Public Health and Welfare Committee
RE: Senate Bill 240
February 18, 1997

MAIN PHONE: (913) 296-2215
FAX: 296-6296
TTY: 291-3767

Senator Praeger and Members of the Committee:

I appreciate this opportunity to speak in favor of SB 240 which would exempt records needed by the State Child Death Review Board (SCDRB), from the provisions of confidentiality established by K.S.A. 65-5603. I am the executive director of the State Child Death Review Board. The Board is placed under the auspices of the Office of the Attorney General and includes ten members appointed according to the enabling legislation. This Board is a multi-disciplinary, multi-agency one which is charged with reviewing the death of every Kansas child who dies before its 18th birthday. I have attached a list of our current Board members to this testimony.

The SCDRB was established by action of the 1992 legislature. As part of the enabling statute, the Board was given the power to subpoena records required in order to fully examine the circumstances surrounding each death of a child under 18. The records generally needed in order to complete this examination are those from law enforcement, hospitals, coroners SRS and mental health providers. In most instances, the use of a subpoena is not necessary. Nor do we need records from each of those entities in each case. As each case is opened, a determination is made based on the circumstances and manner of death which kinds of records to request. Discretion is used to ensure that only necessary records are requested. The records gathered by the Board are kept confidential and are "... not subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding ..." (K.S.A. 22a-243(k))

The need for this amendment arose from the Board's need for access to mental health records in relation to reviewing different manners of deaths. For example, these records are necessary in the case of suicide deaths of young Kansans. In order to fully examine all of the circumstances which led to a child deciding to take his or her own life, and to be able to understand the way in which systems of care were utilized prior to the death, it is very important to be able to access these records. We have been successful at times in using our subpoena power, but have also run into a roadblock because the Board is not named as one of the exceptions in this statute. There have been cases over the last two years which we have had to close out without knowing what mental health services had been offered, how any recommendations had been followed, or what other factors may have been part of the fatal decision by the child.

An important charge given the Board is to analyze the services offered to a child prior to a death and provide recommendations for prevention of future deaths under similar conditions. Without access to mental health records, especially in deaths such as suicide, the Board's ability to accomplish this is limited.

The Board and the Attorney General respectfully requests your support of this amendment.

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State Child Death Review Board Members

Attorney General Appointment:

Nancy Lindberg, Chairperson
Assistant to the Attorney General
Topeka

Director of KBI appointment:

Don Winsor
KBI Special Agent
Topeka

Secretary of Social and Rehabilitation Services appointment:

Roberta Sue McKenna
Youth Services Attorney, SRS
Topeka

Secretary of Health and Environment appointment:

Lorne A. Phillips, Ph.D.
State Registrar
Topeka

Commissioner of Education appointment:

Robert V. Haderlein, DDS
Girard

State Board of Healing Arts appointments:

Katherine Melhorn, MD (pediatrician member)
University of Kansas School of Medicine - Wichita

George E. Thomas, MD (pathologist member)
Forensic Pathologist
Shawnee County Coroner/Medical Examiner
Topeka

Herbert Doubek, MD (coroner member)
District Coroner
Belleville

Attorney General appointment to represent advocacy groups:

Jo Helmer
Children's Advocate
Marion

Kansas County and District Attorneys Association appointment:

Christine Tonkovich
Douglas County District Attorney
Lawrence



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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Statement of Betty M. Glover
Executive Director, State Child Death Review Board
Before Senate Public Health and Welfare Committee
RE: Senate Bill 304
February 18, 1997

Senator Praeger and Members of the Committee:

Thank you for this opportunity to speak in favor of the changes outlined in this bill. The amendments would authorize the establishment of local child death review boards and provide for the sharing of information between the local and state boards. It would also provide that the state board would provide a protocol under which a local child death review board would operate.

The enabling legislation did not contemplate local child death review boards. However, the state board has long supported communities developing local board to review the deaths of children in their areas. At this time, Wyandotte County has a local child death review board which reviews the deaths of certain children. Saline and Sedgwick Counties have expressed interest in establishing local boards as well. A barrier which has been defined is that there is no vehicle through which the local boards can obtain records not usually accessible to them, or to which the state board has access but no ability to release them.

The state board believes that through its experience of examining the circumstances surrounding the deaths of approximately 1000 Kansas children, it can provide a sound protocol for local boards which will ensure that important information is considered consistently across the state. This will allow for local boards to have more immediate access to information, but also allow for complete information to be available on a state-wide basis.

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State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony Presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 211

Senate Bill 211 is a proposed amendment to KSA 65-118. Currently, only physicians, physician assistants, dentists, social workers, school administrators and teachers are required to report presence of infectious diseases. Important sources for disease reporting are left out such as nurses, laboratories, hospitals and nursing homes, making the Kansas Department of Health and Environment less able to detect outbreaks or to assess the impact of public health control measures. KSA 65-118 also provides for protection from civil or criminal liability for those who report cases of diseases, and for strict confidentiality of the information reported.

This bill proposes to include laboratories, hospitals, nursing homes, nurses and the Kansas vital registrar to the list of professionals and institutions required to report infectious diseases, like other professional categories already mentioned in KSA 65-118.

Surveillance is a key component of public health. Its purposes are to monitor trends of important diseases, detect outbreaks and trigger public health actions to prevent the spread of diseases.

The primary source of data for the surveillance of communicable diseases is the reporting of cases of selected diseases by individuals or institutions (KSA 65-118). The statute establishes what categories of individuals or institutions are required to report cases of designated diseases. An additional important feature of KSA 65-118 is that it provides immunity from civil or penal liability for those who report diseases as required by this statute. The Secretary of Health and Environment specifies in KAR 28-1-2 which diseases are to be reported to the public health authorities.

One limitation that this bill addresses is that some important categories of health professionals and institutions (i.e., nurses, hospitals, laboratories, and nursing homes) are not required by the current statute to report designated communicable diseases, in spite of the fact that they routinely collect such information.

Nursing homes have been recognized as potential important sites of spread of communicable diseases, some of them serious, monitoring these diseases in nursing homes is currently considered an important public health practice. Finally, the bill authorizes the state registrar to share information with the Director of Health from death certificates indicating the presence of any of the designated communicable disease in the decedent.

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Such surveillance system is to assure that the public health system is notified as promptly as possible when a patient may be affected by the designated communicable diseases, thus enabling a more prompt intervention aimed at stopping disease transmission.

This bill brings the surveillance of communicable diseases in Kansas up-to-date with modern surveillance concepts. These changes are necessary to enable the public health system to handle the challenge of controlling infectious diseases at a time of resurgence of new, emerging and old, reemerging infections.

The Department respectfully requests the Committee act favorably on Senate Bill 211.

Testimony presented by: Gianfranco Pezzino, M.D.
State Epidemiologist
Office of Epidemiologic Services
Date: February 18, 1997



Memorandum

Donald A. Wilson
President

TO: Senate Public Health and Welfare Committee

FROM: Kansas Hospital Association

RE: Senate Bill 211

DATE: February 18, 1997

The Kansas Hospital Association appreciates the opportunity to comment regarding the provision of Senate Bill 211. This bill would amend the infectious disease reporting statutes to include other health care providers and administrators of hospitals and adult care homes as those who must make necessary reports.

Current law requires physicians, social workers, teachers, and school administrators to make such reports. The Kansas Department of Health and Environment then establishes the specific types of diseases to be reported. These administrative regulations list over 40 diseases, ranging from cholera to Lyme disease.

Senate Bill 211 would hopefully make this reporting process more effective by expanding the scope of the statutory reporting requirements. By adding other health care providers, labs, and facility administrators, the Department should have more complete information.

One concern we initially had with this proposal was the possibility of creating a more burdensome process with numerous duplicate reports coming out of one facility. As drafted, however, the bill allows the facility administrator to designate one individual to make such reports. It also directs KDHE to establish a mechanism to consolidate reporting for hospitals and adult care homes. We think these provisions will help make the law effective and efficient.

Thank you for your consideration of our comments.

TLB:cdc

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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 SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

Testimony of Lawrence T. Buening, Jr., Executive Director
in support of 1997 Senate Bill No. 221
February 18, 1997

Thank you for the opportunity to appear before this committee on behalf of the Kansas State Board of Healing Arts and speak in support of Senate Bill No. 221. The amendments to the peer review and risk management statutes were requested by the board. Concerns have been expressed that weaknesses in the confidentiality provisions of these statutes create a reluctance on the part of health care provider groups to release confidential documents to the board. This bill is the product of the combined efforts of board staff and a representative for the Kansas Medical Society.

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. This clarifies that 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.

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.

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.

At the February 15, 1997 meeting, the State Board of Healing Arts voted to request an addition to Senate Bill No. 221. A copy of the requested addition is attached to my testimony. The Board appoints peer review committees to assist in carrying out the provisions of the healing arts act. Members of these committees are often asked to review mountains of patient records. In the past, the Board paid committee members for this type of review in the same way that it paid other consultants. Concern was raised that there was not authority to pay the committee members. The Board requests statutory authority to use its discretion and to pay review committee members for their time spent in reviewing records to assist our investigations.

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

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1 act shall be designated a peer review committee or officer pursuant to
2 K.S.A. 65-4915 and amendments thereto.

3 *(e) A licensing agency conducting a disciplinary proceeding in which
4 admission of any report or record under this section is proposed shall
5 hold the hearing in closed session when any such report or record is
6 disclosed. The licensing agency shall make all portions of the agency rec-
7 ord in which such report or record is disclosed subject to a protective
8 order prohibiting further disclosure of such report or record. No person
9 in attendance at any disciplinary proceeding shall be required to testify,
10 nor shall the testimony of such person be admitted into evidence, in any
11 other civil, criminal or administrative action, regarding the existence or
12 contents of a report or record under this section which is disclosed in a
13 disciplinary proceeding.*

14 Sec. 3. K.S.A. 65-4925 and K.S.A. 1996 Supp. 65-4915 are hereby
15 repealed. K.S.A. 65-2840c,

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the Kansas register.-

4

5

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.

JAMES D. EDWARDS, D.C., F.I.C.C.

DOCTOR OF CHIROPRACTIC

2708 WEST 12TH AVENUE
EMPORIA, KANSAS 66801
TELEPHONE (316) 342-3188
FAX (316) 342-5208

**Testimony of Dr. James D. Edwards
Member of the Kansas State Board of Healing Arts
Senate Committee on Public Health and Welfare
February 18, 1997**

I appear before you to speak in favor of S.B. 221, but in opposition to the amendment which would allow increased compensation to members of Healing Arts Board review committees. Although I am a member of the Kansas State Board of Healing Arts, it is important to note that I do not represent them today.

Mr. Larry Buening has already given testimony that represents the official majority position of the board. As our Executive Director, that's all that he could say on the matter. However, as Paul Harvey would say, I am here to make sure you have "the rest of the story."

Review committee doctors assist the board in determining whether disciplinary action is needed against a doctor who has been charged with wrong doing. The review committee doctors are not members of the board but are appointed and approved for those positions by the Board of Healing Arts.

In last Saturday's Healing Arts Board meeting, I introduced a motion that would compensate review committee doctors at the same rate as members of the Healing Arts Board. (\$35 for meetings)

The motion was defeated on 7 to 7 vote when the president of the board voted to make a tie. That 7 to 7 vote illustrates how equally divided the board is on this issue and is why I wanted this committee to hear the minority position.

Until last year, review committee doctors were compensated for reviewing files at home at the rate of \$70.00 per hour. When that activity came to my attention, the board agreed to halt the payments until the Attorney General's office could give the board direction about the legality of those payments.

On August 29, 1996, the Healing Arts Board received word from the Attorney General's office which stated that the payments were illegal. The informal advisory concluded,

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"These statutes do not authorize compensation to committee members for time spent reviewing files outside of a meeting. The healing arts act authorizes the board to hire and compensate persons who may perform the same function, K.S.A. 65-2878 a. However, the committee members as state officers are subject to the governmental ethics law which prohibits additional compensation for the performance of an official duty."

I am disappointed that the Healing Arts Board would just not accept the Attorney General's advice and stop making the \$70.00 per hour payments. I am also disappointed that the board would introduce this amendment which in effect places review committee doctors outside the governmental ethics law.

But most of all, I am disappointed that the board would take a position which is so contradictory to the strict instructions Governor Graves gave to his administration, agency heads, and members of boards and commissions on December 11, 1996.

Governor Graves insisted on frugality and stated, "I want that philosophy in state government: it's something I'm very serious about. I want to set a tone and direction for this administration." The Governor also added, "I want to stop the growing cynicism about public officials..."

When I read those comments, it made me even more determined to insure that these payments were stopped. This amendment wastes money and at the very least is in severe conflict with the goals the Governor outlined for state boards.

I am fully aware that testifying against this amendment will not endear me to those that have been receiving the \$70.00 per hour payments or those that wish for the payments to continue. To some degree, I feel like the student who stood in front of the Chinese tank a few years ago.

However, there is an important principle here. My colleagues and I serve on the Kansas State Board of Healing Arts for the same reason you serve in the legislature....as a public service. And believe me, I am honored to serve.

Review committee doctors should be no different. They should be honored to serve, they should not be exempted from the governmental ethics law and above all, they should not be paid \$70.00 an hour for their "public service."

I am ashamed this amendment was presented and I urge the committee to reject it. I will be happy to answer any questions at the appropriate time.



KANSAS MEDICAL SOCIETY

February 18, 1997

TO: Senate Public Health and Welfare 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 based on 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.

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There is a related issue we would like to bring to your attention. Even though the current peer review law protects documents generated by the peer review committee, it does not protect reports and records given to or obtained by the committee from another source. This is a gap in protection that we believe was unintended, and should be corrected. What good does it do to protect the report generated by the peer review committee if the underlying reports and records are not also protected? We have attached a balloon that includes an amendment on page 3, line 4, which is designed to correct this deficiency in the statute. The proposed amendment adds the phrase "submitted to or generated by" after the word "records."

We believe the changes included in SB 221, plus the amendment described above, are consistent with the intent of the peer review law. In addition, similar language already exists in the risk management law at K.S.A. 65-4925 (a)(4), which is found on page 4, line 24 of the bill. This amendment would make the laws consistent.

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

15 (c) Subsection (b) shall not apply to proceedings in which a health
16 care provider contests the revocation, denial, restriction or termination
17 of staff privileges or the license, registration, certification or other au-
18 thorization to practice of the health care provider. *A licensing agency*
19 *conducting a disciplinary proceeding in which admission of any report*
20 *or record under this section is proposed shall hold the hearing in closed*
21 *session when any such report or record is disclosed. The licensing agency*
22 *shall make all portions of the agency record in which such report or record*
23 *is disclosed subject to a protective order prohibiting further disclosure of*
24 *such report or record. Such report or record shall not be subject to dis-*
25 *covery, subpoena or other means of legal compulsion for their release to*
26 *any person or entity. No person in attendance at any disciplinary pro-*
27 *ceeding shall be required to testify, nor shall the testimony of such person*
28 *be admitted into evidence, in any other civil, criminal or administrative*
29 *action, regarding the existence or contents of a report or record under*
30 *this section which is disclosed in a disciplinary proceeding.*

31 (d) Nothing in this section shall limit the authority, which may oth-
32 erwise be provided by law, of the commissioner of insurance, the state
33 board of healing arts or other health care provider licensing or disciplinary
34 boards of this state to require a peer review committee or officer to report
35 to it any disciplinary action or recommendation of such committee or
36 officer; to transfer to it records of such committee's or officer's proceed-
37 ings or actions to restrict or revoke the license, registration, certification
38 or other authorization to practice of a health care provider; or to terminate
39 the liability of the fund for all claims against a specific health care provider
40 for damages for death or personal injury pursuant to subsection (i) of
41 K.S.A. 40-3403 and amendments thereto. Reports and records so fur-
42 nished shall not be subject to discovery, subpoena or other means of legal
43 compulsion for their release to any person or entity and shall not be

submitted to or generated by



Donald A. Wilson
President

To: Senate Public Health and Welfare Committee
From: Kansas Hospital Association
Tom Bell, Senior Vice President/Legal Counsel
Re: SB 221
Date: 2-18-97

The Kansas Hospital Association appreciates the opportunity to express **support** for the provisions of Senate Bill 221. This statute amends current peer review and risk management statutes to clarify several confidentiality concerns.

The policy of the Kansas Legislature regarding peer review and risk management documents is well settled--confidentiality of these materials is necessary to promote full and frank discussion among physicians and other health care providers concerning the quality of care provided in a given situation. Constructive criticism is much more likely to occur under these circumstances, whether the forum is a hospital peer review committee or a disciplinary hearing of the Board of Healing Arts. Senate Bill 221 is consistent with this long-standing legislative policy. We urge the committee's favorable consideration.

Thank you for your consideration of our comments.