

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 19, 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:

William J. Pauzaskie, Kansas Trial Lawyers Association
Jerry Slaughter, Executive Director, Kansas Medical Society
Joseph P. Conroy, Kansas Association of Nurse Anesthetists
Mark W. Stafford, General Counsel, Kansas Board of Healing Arts
Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts
Patsy L. Johnson, Executive Administrator, Kansas State Board of Nursing
Tuck Duncan, Medevac Medical Services, Inc.

Others attending: See attached list

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

William J. Pauzaskie, representing the Kansas Trial Lawyers Association, spoke in opposition to SB 221 and noted that language in the bill on page 3, lines 26 through 30 -- "No person in attendance at any disciplinary proceedings shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any other civil, criminal, or administrative action, regarding the existence or contents of a report or record under this section which is disclosed in a disciplinary proceeding."-- is not consistent with the limited purpose of peer review to allow doctors to learn from their mistakes or seek help without peer retribution. Mr. Pauzaskie noted that he had met briefly and exchanged proposed amendments to the bill with representatives of the Kansas Medical Society and State Board of Healing Arts. He also suggested the bill be tabled for further discussion and review. (Attachment 1)

Jerry Slaughter, KMS, expressed his support again of SB 221 and submitted a balloon of the bill with proposed amendments relating to a closed session of the peer review process. Mr. Slaughter noted that nothing in the bill or the act itself prevents a plaintiff's attorney or an injured patient from getting all the relevant records and testimony in prosecuting their case. (Attachment 2)

Written testimony in support of SB 221 was received from Harold Riehm, Kansas Association of Osteopathic Medicine. (Attachment 3)

During Committee discussion it was suggested additional background information be given to the Committee relating to the peer review process and how other states handle this issue.

Hearing on SB 220 - Supervision and direction of personnel by healing arts licensees

Jerry Slaughter, KMS, testified in support of SB 220 which would establish requirements for professionals licensed by the Board of Healing Arts who supervise or direct others involved with the healing arts. Mr. Slaughter pointed out that the bill originated out of a KMS task force of physicians representing a wide spectrum of specialties and geographic areas which studied at length the whole area of physician responsibility for the acts of personnel whom they supervise or direct. It was also noted that after discussions with representatives of the nurse anesthetists, KMS offered an amendment to address those concerns relating to language which describes the nature of interactions with physicians as shown in the attached balloon of the bill. (Attachment 4)

Joseph P. Conroy, Kansas Association of Nurse Anesthetists, expressed his support for SB 220 with the amendments offered by the Kansas Medical Society, however he did express concern with the rules and regulations that may be developed in the future under Section 1 (d) of the bill. (See attachment 5)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S
Statehouse, at 10:00 a.m. on February 19, 1997.

Mark W. Stafford, General Counsel, Kansas Board of Healing Arts, spoke in support of **SB 220** as noted in his written testimony. (Attachment 6) During Committee discussion the Chair suggested the Committee may want to clarify the language proposed to be stricken in the bill which would address those concerns expressed by the Kansas Association of Nurse Anesthetists.

Patsy L. Johnson, Executive Administrator, Kansas State Board of Nursing, stated that the Board of Nursing supports **SB 220** for providing some directions especially for physicians delegating to unlicensed individuals. The Board believes there are real safety issues in utilizing unlicensed persons rather than licensed nurses. Because physicians' assistants are excluded under their own practice provisions, the Board requests that all those licensed, certified, or authorized under nursing provision, be excluded as well. (Attachment 7)

Tuck Duncan, Medevac Medical Services, expressed concern with **SB 220** relating to regular review of patient records, review of protocol, and regulations affecting the interaction between a paramedic and a physician.

Adjournment

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

The next meeting is scheduled for February 20, 1997.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-19-97

NAME	REPRESENTING
David DeBorhan	AG
Michael A. Russell	AG
Rita Nyl	HCSF
Cinda Byrne	KSWA
Pat Johnson	Fd of Nsg
LORETTA MITCHELLMAN	KARA
Doug Smith	KAPA
Susan M. Baker	Hein + Wein
Amy Campbell	R. Rice Law Office
KATH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATIONS FOR KANSAS
Brian Ferguson	Kansas Health Institute
Lon Saath	KDAE
Bill PAUZASTKIE	KTLA
Charles Besser	Kansas Health Institute
Terri Roberts	Kansas State Nurses Assn.
David Hanzlick	KS Dental Ass'n
Melodee Armfield DDS	KS Dental Assn
Harry Humphreys	KTLA
LUTARD WATSON MD	DOD



WILLIAM J. PAUZAUSKIE

Attorneys at Law

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Outside Topeka: 1-800-903-8901

February 18, 1997

Dear Senator Prager and
Members of the Committee on
Public Health and Welfare

The comments of the Kansas Trial Lawyers concerning Senate Bill 221 are as follows:

1) *The language at pg. 3, lines 26 through 30, of Sub. Section C, which includes "No person in attendance at any disciplinary proceedings shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any other civil, criminal, or administrative action, regarding the existence or contents of a report or record under this section which is disclosed in a disciplinary proceeding." In our opinion is not consistent with the limited purpose of peer review to allow doctors to learn from their mistakes, or seek help without peer retribution.*

Secondly, the language appears to place peer review above all other civil, criminal, or administrative proceedings, which I don't believe is consistent with what the legislature intended the limited scope of peer review privilege to contain.

Thirdly, the language will hinder justice, in the sense that persons who have testified in front of peer review committees will have their hands tied from telling the truth, unless they are sued as a defendant. The language might very well breed litigation because when a lawyer is faced with a brain-damaged patient, and the injured person doesn't know what went on in the operating room, and the injured person does not know whether or not it was a mechanical malfunction of a machine, or human error of the anesthetist or the surgeon or the nurse, the lawyer who is zealously pursuing his clients rights might have to file a claim against all persons present. At the present, reasonable investigations take place prior to the litigation being filed. However, the

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*Prager/Members of the Committee
on Health and Welfare
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language of Senate Bill 221 might very well preclude reasonable investigations from taking place and foster litigation.

Finally, the language appears to allow persons to be able to lie, without fear of retribution.

For those common sense reasons, we fear that the proposed language is far beyond the purpose of peer review and turns the original idea of peer review on its head. If the original idea was a forum for the doctors to learn from their mistakes, and to receive help without fear of retribution, peer review can now become the graveyard for all errors. The physician may have all the damaging evidence submitted to the peer review committee, and then no person in attendance will be allowed to testify in the civil, criminal, or administrative action.

Sincerely,

A handwritten signature in black ink, appearing to read "WJP Pauzauskie". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William J. Pauzauskie

WJP:rk

2nd



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ADDENDUM TO 2/18/97 KTLA TESTIMONY

February 19, 1997

*Dear Senator Prager and
Committee Members of the
Board of Health & Welfare*

RE: *Senate Bill 221*

Since yesterday we had briefly met and shared our concerns with Representatives of the Kansas Medical Society and State Board of Healing Arts. Suggested changes have been exchanged.

KTLA suggested:

That the § c language be deleted, or amended to:

Peer review reports are privileged absent an in camera review by a presiding judge upon a showing of manifest injustice by the moving party.

Upon reflection, KTLA suggests the § c language be tabled for further discussion and review. The broad sweeping language might be unconstitutional, and does not seem to balance the consumer's scant rights for peer review discovery with the public policy of the legislature, which encourages peer review.

Cordially,

William J. Pauzauskie

WJP:rk

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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

a closed session held as a part of a

KMS

KANSAS MEDICAL SOCIETY

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

Jerry Slaughter
 Executive Director

Senate Public Health and Welfare
 Date: 2-19-97
 Attachment No. 2

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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.

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

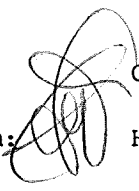

_____ a closed session held as a part of a

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 17, 1997

To:  Chairperson Praeger and Members, Senate Public Health Committee
From:  Harold Riehm, Executive Director, KAOM
Subject: Testimony in Support of S.B. 221

Thank you for this opportunity to appear in support of S.B. 121.

KAOM has been a participant in the information sessions that led to S.B. 121. We feel it clarifies and enhances the concept of confidentiality of peer review records and proceedings.

We particularly want to urge support for the amendment proposed by the Board of Healing Arts regarding compensation for members of the Board's respective Review Committees. Persons who serve on these Committees are providing a valuable service to their respective professions, to the Board, and to the public. They do so with considerable anonymity. They are, so to speak, in the trenches of providing service with none of the perks of recognition that characterize membership on the Board of Healing Arts itself.

Prior to the AG opinion questioning the payment of Review Board members, we think they were fairly compensated. To remove compensation for work performed outside of the Board office facilities (essential homework, if you please) is to deny them justified compensation for valuable services rendered.

If we are to attract and keep competent interested persons to conduct these valuable review services, we think compensation in the order contemplated is justified, reasonable--even essential. We urge adoption of the balloon amendment.

NOT ESSENTIAL BUT NICE CATEGORY

On Page 1, Line 30 (A), insertion of the word "professional" before the word "association". OR on Page 2, Line 5 (G), insertion of the words "or association:" following "society" and before "of health care providers".

Senate Public Health & Welfare
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Attachment No. 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 18, 1997

To: Chairperson Praeger and Members, Senate Public Health Committee

From: Harold Riehm, Executive Director, KAOM

Subject: REITERATION OF WRITTEN TESTIMONY OF YESTERDAY, AND WRITTEN SUPPORT

FOR S.B. 220 AND S.B. 244 (REITERATION OF TESTIMONY ON S.B. 221)

Thank you for this opportunity to present our views on S.B. 221, S.B. 220 and S.B. 244.

On Tuesday, we were prepared to testify in support of S.B. 221. You have our written testimony handout.

S.B. 221 makes some important changes in the peer review process that we think benefits the public as well as making it more likely for health care providers to step forward on incidents and events that should be the subject of peer review.

Its guarantees of confidentiality at the level of consideration by a licensing agency accomplishes these twin objectives of protecting the public and guarantees confidentiality.

We also want to urge your favorable consideration of the amendment offered by the Board of Healing Arts to permit compensation of those who serve on Board Review Committees. This is a time consuming responsibility requiring many hours of "homework" before consideration in formal meetings (which pays \$35.00 per meeting). While one conferee suggests Review Committee members should do it as a volunteer contribution to the State and their profession, we disagree. If we are to assure competent, careful consideration of records, etc. prefatory to decisions on peer review, it is proper and reasonable to compensate such persons making the review. We are confused by the AG references to the "ethics committee". To clarify any such confusion, we respectfully urge you to adopt the amendment and permit compensation of those who provide valuable services to the Board, the State and the Kansas public.

SUPPORT FOR S.B. 220 The Kansas Medical Society kindly invited a representative of KAOM to participate in meetings that produced the contents of changes appearing in S.B. 220. We support this Bill as clarifying and strengthening the level of supervision provided.

SUPPORT FOR S.B. 244 We support passage of S.B. 244. Though the maximum limits for some fees are raised substantially, discretion remains with the Board in determining the actual fee levels and the opportunity exists for further input by KAOM and other parties at the Legislative R&R consideration level.

NOT ESSENTIAL BUT NICE CATEGORY - MINI AMENDMENT TO S.B. 221. On Page 1, Line 30 of S.B. 221, propose an amendment of adding the word "professional" before the word "association". This makes reference to "association" the same as reference to "society" on Page 2, Line 5.

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KANSAS MEDICAL SOCIETY

February 19, 1997

TO: Senate Public Health & Welfare Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: SB 220; relating to supervision and direction of certain personnel

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 220, which was introduced at our request. The bill originated out of a KMS task force of physicians representing a wide spectrum of specialties and geographic areas which studied at length the whole area of physician responsibility for the acts of personnel whom they supervise or direct.

The task force concluded that regulation by the Healing Arts Board was hampered by insufficient or unclear statutory authority in this area. Consequently, we are proposing this bill which gives the Board the clear authority to regulate the manner in which physicians direct, supervise or delegate acts to other personnel. Depending on the particular situation, a physician accepts varying levels of responsibility and liability for the acts of those he or she supervises or directs. Problems which result because of inadequate direction or supervision are the responsibility of the physician, not the individual being directed or supervised. Some of those individuals have separate practice acts and well defined scopes of practice. However, some are unregulated or unlicensed and their skills and preparation can vary substantially. The bill is intended to establish minimum requirements for the physician's role in such relationships, as well as giving the Board the authority to adopt rules and regulations governing this area.

For example, on page 1, subsection (1) requires that the licensee supervising such personnel actually be practicing in Kansas, something current law doesn't require. Additionally, subsection (4) provides that the licensee supervise only within his or her normal and customary specialty, practice or competence. This is not only common sense, but it protects patients from licensees whose motivation may not be entirely defensible. Subsection (6) requires that a "responsible licensee" provide for a qualified substitute when he or she is absent. Again, common sense requirements, but absent in current law.

You will notice that subsection © beginning at the bottom of page 1 refers to the law which governs physician assistants. This law is quite specific about the responsibilities of physicians insofar as it relates to physician assistants, and we felt it was appropriate to have that statute govern such relationships. Additionally, after discussions with representatives of the nurse anesthetists, we are offering an amendment to address concerns they have raised. Basically, neither they nor we want this bill to complicate the unique practice arrangement which

Senate Public Health & Welfare Committee

SB 220

February 19, 1997

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is governed by K.S.A. 65-1158. The balloon is attached to our testimony. In the case of physician assistants and nurse anesthetists, each group has specific statutory language which describes the nature of their interactions with physicians, which tend to have a more explicit linkage legally than other personnel.

Finally, the change on page 4, lines 21-24, adds a new element to the list of items constituting unprofessional conduct. A licensee's failure to adequately direct or supervise other personnel would be grounds for discipline by the Board.

This bill shouldn't pose a threat to any group of health care providers. It simply says that when physicians or other licensees of the Board of Healing Arts supervise or direct others, those physicians should do so in a manner that is safe and appropriate for patients. We urge your support for SB 220. Thank you for considering our comments.

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SENATE BILL No. 220

By Committee on Public Health and Welfare

2-6

9 AN ACT concerning the Kansas healing arts act; relating to the supervi-
10 sion and direction of certain personnel by persons licensed to practice
11 the healing arts; amending K.S.A. 1996 Supp. 65-2837 and repealing
12 the existing section.

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

15 New Section 1. (a) Every responsible licensee who directs, super-
16 vises, orders, refers, accepts responsibility for, enters into practice pro-
17 tocols with, or who delegates acts which constitute the practice of the
18 healing arts to other persons shall:

19 (1) Be actively engaged in the practice of the healing arts in Kansas;

20 (2) review and keep current any required practice protocols between
21 the responsible licensee and such persons, as may be determined by the
22 board;

23 (3) direct, supervise, order, refer, enter into a practice protocol with,
24 or delegate to such persons only those acts and functions which the re-
25 sponsible licensee knows or has reason to believe such person is com-
26 petent and authorized by law to perform;

27 (4) direct, supervise, order, refer, enter into a practice protocol with,
28 or delegate to other persons only those acts and functions which are
29 within the normal and customary specialty, competence and lawful prac-
30 tice of the responsible licensee;

31 ~~(5) regularly review any required patient records of patients treated~~
32 ~~by such persons and document such review in the patient record, as may~~
33 ~~be determined by the board,~~

(delete)

34 (6) provide for a qualified, substitute licensee who accepts responsi-
35 bility for the direction, supervision, delegation and practice protocols with
36 such persons when the responsible licensee is temporarily absent.

37 (b) "Responsible licensee" means a person licensed by the state board
38 of healing arts to practice medicine and surgery or chiropractic who has
39 accepted responsibility for the actions of persons who perform acts pur-
40 suant to practice protocols with, or at the order of, or referral, direction,
41 supervision or delegation from such responsible licensee.

42 (c) Notwithstanding the provisions of this section, K.S.A. 65-2896 to
43 65-2897b, inclusive, and amendments thereto, shall govern the direction

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1 and supervision of physicians' assistants by persons licensed by the state
2 board of healing arts to practice medicine and surgery.

3 ~~(d) The board may adopt rules and regulations governing the direc-~~
4 ~~tion, supervision, order, referral, use of practice protocols and the dele-~~
5 ~~gation of acts which constitute the practice of the healing arts by respon-~~
6 ~~sible licensees to other persons. Such rules and regulations shall establish~~
7 ~~such conditions and limitations as the board determines to be necessary~~
8 ~~to protect the public health and safety.~~

9 ~~(e) This section shall be part of and supplemental to the Kansas heal-~~
10 ~~ing arts act.~~

11 Sec. 2. K.S.A. 1996 Supp. 65-2837 is hereby amended to read as
12 follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto,
13 and in this section:

14 (a) "Professional incompetency" means:

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

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

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

23 (b) "Unprofessional conduct" means:

24 (1) Solicitation of professional patronage through the use of fraudu-
25 lent or false advertisements, or profiting by the acts of those representing
26 themselves to be agents of the licensee.

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

29 (3) Assisting in the care or treatment of a patient without the consent
30 of the patient, the attending physician or the patient's legal representa-
31 tives.

32 (4) The use of any letters, words, or terms, as an affix, on stationery,
33 in advertisements, or otherwise indicating that such person is entitled to
34 practice a branch of the healing arts for which such person is not licensed.

35 (5) Performing, procuring or aiding and abetting in the performance
36 or procurement of a criminal abortion.

37 (6) Willful betrayal of confidential information.

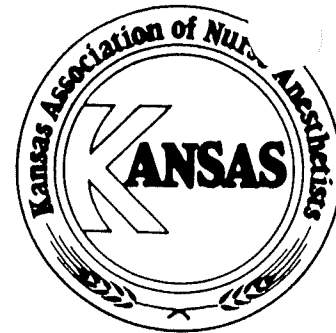
38 (7) Advertising professional superiority or the performance of pro-
39 fessional services in a superior manner.

40 (8) Advertising to guarantee any professional service or to perform
41 any operation painlessly.

42 (9) Participating in any action as a staff member of a medical care
43 facility which is designed to exclude or which results in the exclusion of

(d) Nothing in subsection (a)(4) shall be construed to prohibit a person licensed to practice medicine and surgery from ordering, authorizing or directing anesthesia care by a registered nurse anesthetist pursuant to K.S.A. 1996 Supp. 65-1158.

KANSAS ASSOCIATION OF NURSE ANESTHETISTS



February 19, 1997

Senator Sandy Praeger
Chairperson, Senate Public Health and Welfare Committee
State Capitol Building
Topeka, Kansas 66612

My Name is Joseph P. Conroy and I am a Certified Registered Nurse Anesthetist from Emporia, Kansas, representing the Kansas Association of Nurse Anesthetists.

I am here to speak in support of S.B. 220, concerning licensees who direct, supervise, order, refer, use practice protocols or delegate to other persons.

In the original bill, our organization had conflicts with (a), (4), and with (a), (5), but the Kansas Medical Society has been able to propose amendments that addressed our concerns and the concerns of the surgeons and physicians with whom we work.

Our Association is still unsure of the impact of Section 1, (d), where the Board of Healing Arts shall establish such conditions and limitations as the board determines to be necessary to govern the direction, supervision, order, etc. Because this language is very broad, we have some concerns as to the rules and regulations that may be developed in the future under this section, but we are not opposed to it at this time.

The Kansas Association of Nurse Anesthetists is happy to have been able to work with the Kansas Medical Society on solving the issues that may have occurred because of (a), (4) and (4), particularly in rural Kansas and the small hospitals in those areas. We appreciate their quick response to our concerns and hope to be able to continue to have a good relationship in the future.

We would also like to thank Senator Praeger and the Committee for their time and patience.

Sincerely,

Joseph P. Conroy

Joseph P. Conroy C.R.N.A., R.R.N.P.
2614 Apple Drive
Emporia, Kansas 66801
316-342-0856

Senate Public Health & Welfare
Date: 2-19-97
Attachment No. 5

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 Mark W. Stafford, General Counsel
in support of 1997 Senate Bill No. 220

February 19, 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. 220. We believe that the bill is an important tool for ensuring quality health care in Kansas.

Senate Bill No. 220 allows the Board to establish rules for practitioners when tasks constituting medicine or chiropractic are delegated to persons who are not licensed by the Board of Healing Arts. The authority to delegate these acts is essential in the world of modern health care. However, those practitioners who delegate professional services must be mindful that their duty and responsibility does not end with the delegation.

The proposed statute follows the general format which applies to supervision of physician assistants. Attached is a copy of K.A.R. 100-60-10 which establishes the minimum standard for supervision of tasks delegated to physician assistants. As with the physician assistant statutes, this section does not discourage appropriate delegation, nor does it require immediate or physical presence of the responsible licensee. Key elements include communication, review and documentation.

Senate Bill No. 220 focuses upon the actions of the licensee who delegates the task, and does not seek to regulate other professions. Practitioners of the healing arts may not perform professional services for which they are not competent. Just as water may not rise above its source, a licensee should not be allowed to delegate tasks which that licensee is neither authorized nor competent to perform. Supervision of delegated tasks should not be overly burdensome, but it should not so superficial that it becomes a mere pretense. The proposed statute is an appropriate balance of freedoms and duties which attend the privilege to practice the healing arts.

Once again, thank you for the opportunity to appear before you.

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

Senate Public Health & Welfare
Date: 2-19-97
Attachment No. 6

(d) a statement that the responsible physician will always be available for communication with the physician's assistant within 30 minutes during the performance of patient service by the physician's assistant;

(e) attachments, including a completed drug transmission protocol form provided by the board which specifies categories of drugs, medicines and pharmaceuticals for which the physician's assistant is prohibited from supplying or transmitting;

(f) those practice locations, including hospitals, at which the physician's assistant will routinely perform acts which constitute the practice of medicine and surgery;

(g) the signature of a designated physician who shall routinely provide direction and supervision to the physician's assistant in the temporary absence of the responsible physician and an indication of the procedures to be followed to notify the designated physician upon such temporary absence;

(h) an acknowledgment that failure to adequately direct and supervise the physician's assistant in accordance with K.S.A. 65-2896 to K.S.A. 65-2897a, inclusive, and amendments thereto, or rules and regulations adopted under such statutes by the board, would constitute grounds for revocation, suspension, limitation or censure of the responsible physician's license to practice medicine and surgery in the state of Kansas; and

(i) a statement that a current copy of the form shall be maintained at the usual practice locations of the responsible physician and that any changes or amendments thereto will be provided to the board within 10 days. (Authorized by and implementing K.S.A. 1991 Supp. 65-2896a; effective May 1, 1988; amended Feb. 15, 1993.)

100-60-10. Supervision and direction; adequacy. Each licensee who serves as the responsible or designated physician for a physician's assistant shall adequately direct and supervise the physician's assistant. Direction and supervision of the physician's assistant shall be considered to be adequate if the responsible physician:

(a) Establishes a method for the initial and continuing periodic evaluation of the professional competency of the physician's assistant. Periodic evaluations shall be performed at least annually, and the responsible physician shall document and retain the evaluations and make them available to the board upon request;

(b) at least annually, reviews any drug transmission protocol and determines if any amendments, modifications, restrictions or terminations are required. Any changes shall be conveyed to the physician's assistant and set forth in all copies of the protocol required to be maintained and provided pursuant to K.A.R. 100-60-9;

(c) actively engages in the practice of medicine and surgery in this state;

(d) insures that the physician's assistant has a current registration issued by the board;

(e) reports to the board any knowledge of disciplinary hearings, formal hearings, public or private censure or other disciplinary action taken against the physician's assistant by any state's licensure or registration authority or any professional association;

(f) reports to the board any litigation, threatened litigation or claim alleging professional incompetency or professional negligence on the part of the physician's assistant;

(g) at least bi-weekly, reviews the patient records of patients treated by the physician's assistant and documents such review in the patient record;

(h) reviews patient charts and documents in the patient record within 48 hours of treatment provided by the physician's assistant when the treatment provided in an emergency situation exceeded the authority granted to the physician's assistant by the responsible physician request form required by K.A.R. 100-60-9;

(i) provides for a designated physician to provide supervision and direction on each occasion when the responsible physician is absent temporarily, is unable to be immediately contacted by telecommunication or is otherwise unavailable at a time the physician's assistant could reasonably be expected to provide professional services; and

(j) delegates to the physician's assistant only those acts which constitute the practice of medicine and surgery which the responsible physician believes or has reason to believe can be competently performed by the physician's assistant based upon the physician's assistant's background, training, capabilities, skill and experience. (Authorized by and implementing K.S.A. 1991 Supp. 65-2896e and 65-2897a; effective May 1, 1988; amended Feb. 15, 1993.)

100-60-11. Responsibilities of physician's assistants. A physician's assistant shall appropriately communicate with the responsible or

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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 18, 1997

Re: SB 220

Thank you for allowing me to testify on SB 220 for the Board of Nursing.

The Board of Nursing receives many telephone calls with regard to physicians delegating to unlicensed persons. These individuals may be the physician's secretary or medical assistant in the office or the operating room technician or emergency medical technician in the hospital. In many of these cases, we believe the physician has little or no knowledge of the competency of the unlicensed person. We also investigate cases of unlicensed nursing practice. Even though the physician may not know the nurse is unlicensed, we will get a call saying the physician was delegating. As delegation is further addressed in rules and regulations, the Board offers as a suggestion the language in K.S.A. 1995 Supp. 65-1165. See Attachment A. The statute deals with how to delegate.

The physician's assistant is excluded under the provisions of new Section 1. The statutes governing the registration and functions of the physician's assistant are cited. In addition to the physician's assistant, the Board of Nursing offers a balloon to exclude registered professional and practical nurses, licensed mental health technicians, advanced registered nurse practitioners,

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and registered nurse anesthetists from new Section 1. See new (d) in Balloon 1. The scope of practice for the physician's assistant as defined in K.S.A. 65-2896e is similar to that of those licensees under the Nurse Practice Act. See Attachment B. If physician responsibility is implied in the statutes of the physician's assistant, so is that responsibility implied in the Nurse Practice Act.

In conclusion, the Board of Nursing supports SB 220 for providing some directions especially for physicians delegating to unlicensed individuals. The Board believes there are real safety issues in utilizing unlicensed persons rather than licensed nurses. Because physicians' assistants are excluded under their own practice provisions, the Board requests that all those licensed, certified, or authorized under nursing provisions be excluded as well.

The Board of Nursing asks that you act favorably upon SB 220 with the amendment that has been proposed.

Thank you.

1 and supervision of physicians' assistants by persons licensed by the state
2 board of healing arts to practice medicine and surgery.

3 (d) The board may adopt rules and regulations governing the direc-
4 tion, supervision, order, referral, use of practice protocols and the dele-
5 gation of acts which constitute the practice of the healing arts by respon-
6 sible licensees to other persons. Such rules and regulations shall establish
7 such conditions and limitations as the board determines to be necessary
8 to protect the public health and safety.

9 (e) This section shall be part of and supplemental to the Kansas heal-
10 ing arts act.

11 Sec. 2. K.S.A. 1996 Supp. 65-2837 is hereby amended to read as
12 follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto,
13 and in this section:

14 (a) "Professional incompetency" means:

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

18 (2) Repeated instances involving failure to adhere to the applica-
19 ble standard of care to a degree which constitutes ordinary negligence, as
20 determined by the board.

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

23 (b) "Unprofessional conduct" means:

24 (1) Solicitation of professional patronage through the use of fraudu-
25 lent or false advertisements, or profiting by the acts of those representing
26 themselves to be agents of the licensee.

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

29 (3) Assisting in the care or treatment of a patient without the consent
30 of the patient, the attending physician or the patient's legal representa-
31 tives.

32 (4) The use of any letters, words, or terms, as an affix, on stationery,
33 in advertisements, or otherwise indicating that such person is entitled to
34 practice a branch of the healing arts for which such person is not licensed.

35 (5) Performing, procuring or aiding and abetting in the performance
36 or procurement of a criminal abortion.

37 (6) Willful betrayal of confidential information.

38 (7) Advertising professional superiority or the performance of pro-
39 fessional services in a superior manner.

40 (8) Advertising to guarantee any professional service or to perform
41 any operation painlessly.

42 (9) Participating in any action as a staff member of a medical care
43 facility which is designed to exclude or which results in the exclusion of

(new d)

Notwithstanding the provisions of this section, K.S.A. 65-1113, 65-4202, 65-1130, and 65-1158, and amendments thereto, shall govern the direction of registered professional nurses, licensed practical nurses, licensed mental health technicians, advanced registered nurse practitioners, and registered nurse anesthetists by persons licensed by the state board of healing arts to practice medicine and surgery.

ATTACHMENT A

65-1165. (a) All nursing procedures, including but not limited to administration of medication, delegated by a licensed nurse to a designated unlicensed person shall be supervised. The degree of supervision required shall be determined by the licensed nurse after an assessment of appropriate factors which may include:

- (1) The health status and mental and physical stability of the individual receiving the nursing care;
- (2) the complexity of the procedure to be delegated;
- (3) the training and competency of the unlicensed person to whom the procedure is to be delegated; and
- (4) the proximity and availability of the licensed nurse to the designated unlicensed person when the selected nursing procedure will be performed.

(b) As used in this section, "supervision" has the meaning ascribed to such term under subsection (a) of K.S.A. 65-1136 and amendments thereto.

(c) This section shall be part of and supplemental to the Kansas nurse practice act.

History: L. 1995, ch. 97; July 1.

65-1136. (a)

(4) "Supervision" means provision of guidance by a qualified nurse for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity.

ATTACHMENT B

65-2896e. Same, performance under direction and supervision of physician; rules and regulations relating thereto; prescribing drugs prohibited; identification to patients and others; acts or procedures performed in practice of optometry; rules and regulations governing transmitting prescription orders. (a) A person whose name has been entered on the register of physicians' assistants may **perform, only under the direction and supervision of a physician, acts which constitute the practice of medicine and surgery** to the extent and in the manner authorized by the physician responsible for the physician's assistant and only to the extent such acts are consistent with rules and regulations adopted by the board which relate to acts performed by a physician's assistant under the responsible physician's direction and supervision. A physician's assistant may not prescribe drugs by **may transmit a prescription order for drugs pursuant to a written protocol as authorized by the responsible physician.**

65-1113. Definitions. When used in this act and the act of which this section is amendatory:

(a) "Board" means the board of nursing.

(b) "Diagnosis" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen and shall be construed as distinct from a medical diagnosis.

(c) "Treatment" means the selection and performance of those therapeutic measures essential to effective execution and management of the nursing regimen, and any prescribed medical regimen.

(d) Practice of Nursing. (1) The practice of professional nursing as performed by a registered professional nurse for compensation or gratuitously, except as permitted by K.S.A. 65-1124 and amendments thereto, means the process in which substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to: the care, diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; administration, supervision or teaching of the process as defined in this section; and **the execution of the medical regimen as prescribed by a person licensed to practice medicine and surgery or a person licensed to practice dentistry.** (2) The practice of nursing as a licensed practical nurse means the performance for compensation or gratuitously, except as permitted by K.S.A. 65-1124 and any amendments thereto, of tasks and responsibilities defined in part (1) of this subsection (d) which tasks and responsibilities are based on acceptable educational preparation within the framework of supportive and restorative care under **the direction of a registered professional nurse, a person licensed to practice medicine and surgery or a**

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person licensed to practice dentistry.

(e) A "professional nurse" means a person who is licensed to practice professional nursing as defined in part (1) of subsection (d) of this section.

(f) A "practical nurse" means a person who is licensed to practice practical nursing as defined in part (2) of subsection (d) of this section.

(g) "Advanced registered nurse practitioner" or "ARNP" means a professional nurse who holds a certificate of qualification from the board to function as a professional nurse in an expanded role, and this expanded role shall be defined by rules and regulations adopted by the board in accordance with K.S.A. 65-1130.

History: L. 1949, ch. 331, § 1; L. 1963, ch. 314, § 1; L. 1975 ch. 316, § 1; 1978, ch. 240, § 1; L. 1980, ch. 186, § 1, L. 1983, ch. 206, § 6; April 28.

65-4202. Definitions. As used in this act: (a) "Board" means the state board of nursing.

(b) The "practice of mental health technology" means the performance, **under the direction of a physician licensed to practice medicine and surgery** or registered professional nurse, of services in caring for and treatment of the mentally ill, emotionally disturbed, or mentally retarded for compensation or personal profit, which services:

(1) Involve responsible nursing and therapeutic procedures for mentally ill or mentally retarded patients requiring interpersonal and technical skills in the observations and recognition of symptoms and reactions of such patients, the accurate recording of such symptoms and reactions and the carrying out of treatments and medications as prescribed by a licensed physician; and

(2) require an application of techniques and procedures that involve understanding of cause and effect and the safeguarding of life and health of the patient and others and

(3) require the performance of duties that are necessary to facilitate rehabilitation of the patient or are necessary in the physical, therapeutic and psychiatric care of the patient and require close work with persons licensed to practice medicine and surgery, psychiatrists, psychologists, rehabilitation therapists, social workers, registered nurses, and other professional personnel.

(c) A "licensed mental health technician" means a person who lawfully practices mental health technology as defined in this act.

(d) An "approved course in mental health technology" means a program of training and study including a basic curriculum which shall be prescribed and approved by the board in accordance with the standards prescribed herein, the successful completion of which shall be required before licensure as a mental health technician, except as hereinafter provided.

History: L. 1973, ch. 308, § 2; L. 1988, ch. 259, § 1; May 12, 1992, April 30.

ATTACHMENT B

65-1130. Advanced registered nurse practitioner; standards and requirements for obtaining certificate of qualification; rules and regulations to be adopted; categories, education, training, qualifications and expanded role; limitations and restrictions; prescribing drugs prohibited; transmission of prescription orders authorized, when "responsible physician" defined. (a) No professional nurse shall announce or represent to the public that such person is an advanced registered nurse practitioner unless such professional nurse has complied with requirements established by the board and holds a valid certificate of qualification as an advanced registered nurse practitioner in accordance with the provisions of this section.

(b) The board shall establish standards and requirements for any professional nurse who desires to obtain a certificate of qualification as an advanced registered nurse practitioner. Such standards and requirements shall include, but not be limited to, standards and requirements relating to the education and training of advanced registered nurse practitioners. The board may require that some, but not all, types of advanced registered nurse practitioners hold an academic degree beyond the minimum educational requirement for qualifying for a license to practice as a professional nurse. The board may give such examinations and secure such assistance as it deems necessary to determine the qualifications of applicants.

(c) The board shall adopt rules and regulations applicable to advanced registered nurse practitioners which:

(1) Establish categories of advanced registered nurse practitioners which are consistent with nursing practice specialties recognized by the nursing profession.

(2) Establish education, training and qualifications necessary for certification for each category of advanced registered nurse practitioner established by the board at a level adequate to assure the competent performance by advanced registered nurse practitioners of functions and procedures which advanced registered nurse practitioners are authorized to perform.

(3) Define the expanded role of advanced registered nurse practitioners and establish limitations and restrictions of such expanded role. The board shall adopt a definition of expanded role under this subsection (c)(3) which is consistent with the education, training and qualifications required to obtain a certificate of qualification as an advanced registered nurse practitioner, which protects the public from persons performing functions and procedures as advanced registered nurse practitioners for which they lack adequate education, training and qualifications and which authorizes advanced registered nurse practitioners to perform acts generally recognized by the profession of nursing as capable of being performed, in a manner consistent with the public health and safety, by persons with post basic education in nursing. In defining such expanded role the board shall consider: (A) The training and education required for a certificate of qualification as an advanced registered nurse practitioner; (B) the type of nursing practice and preparation in specialized practitioner skills involved in each category of advanced registered nurse practitioner established by the board; (C) the scope of practice of nursing specialties and limitations thereon prescribed by national organizations which certify nursing specialties; and (D) acts recognized by the

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nursing profession as appropriate to be performed by persons with post basic education and training in nursing.

(d) An advanced registered nurse practitioner may not prescribe drugs but **may transmit prescription orders pursuant to a written protocol as authorized by a responsible physician**. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced registered nurse practitioner is authorized to transmit prescription orders and shall specify all drugs which may be transmitted by the advanced registered nurse practitioner. In no case shall the scope of authority of the advanced registered nurse practitioner exceed the normal and customary practice of the responsible physician. An advanced registered nurse practitioner certified in the category of registered nurse anesthetist while functioning as a registered nurse anesthetist under K.S.A. 1988 Supp. 65-1151 to 65-1164, including, and amendments thereto, shall be subject to the provisions of K.S.A. 1988 Supp. 65-1151 and 65-1164, inclusive and amendments thereto, with respect to medications and anesthetic agents and shall not be subject to the provisions of this subsection. For the purposes of this subsection, "responsible physician" means a person licensed to practice medicine and surgery who has accepted responsibility for the protocol and the actions of the advanced registered nurse practitioner involving the transmitting of prescription orders.

History: L. 1983, ch. 206, § 2; L. 1989, ch. 192, § 1; May 18.

65-1158. Scope of Practice. (a) Upon the order of a physician or dentist requesting anesthesia or analgesia care, each registered nurse anesthetist shall:

- (1) Conduct a pre - and post - anesthesia visit and assessment with appropriate documentation;
 - (2) develop a general plan of anesthesia care with the physician or dentist;
 - (3) be authorized to select the method for administration of anesthesia or analgesia;
 - (4) be authorized to select appropriate medications and anesthetic agents;
 - (5) induce and maintain anesthesia or analgesia at the required levels;
 - (6) support life functions during the peri-operative period;
 - (7) recognize and take appropriate action with respect to patient responses during anesthesia;
 - (8) provide professional observation and management of the patient's emergence from anesthesia; and
 - (9) participate in the life support of the patient;
- (b) Each registered nurse anesthetist may participate in periodic and joint evaluation of services rendered, including, but not limited to, chart reviews, case reviews, patient evaluation and outcome of case statistics.
- (c) A registered nurse anesthetist shall perform duties and functions in an interdependent role as a member of with a physician or dentist directed health care team.

History: L. 1986, ch. 183, § 8; L. 1988, ch. 242, § 4; L. 1996, ch. 179 § 5; July 1.