

Approved: 4/23/98
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Vice Chairperson Mike Farmer at 2:00 p.m. on April 1, 1998 in Room 514-S of the Capitol.

All members were present except: Representative Phil Kline - Excused

Committee staff present: Alan Conroy, Stuart Little, Mark Burenheide, Susan Kannarr, Legislative Research Department;
Jim Wilson, Mike Corrigan, Norman Furse, Revisor of Statutes Office;
Helen Abramson, Administrative Aide; Linda Swain, Appropriations Secretary

Conferees appearing before the committee:

Others attending: See attached list

Vice Chair Farmer announced the committee would begin to work **HB 2996**. He noted Gary Mitchell, Secretary of Kansas Department of Health and Environment, has requested an amendment on this bill.

Representative Neufeld noted Secretary Mitchell's proposal would amend Section 1 (b) by deleting "*or shall have a doctorate in a professional medical field, epidemiology or public health;*"; and in section 3 add the words "or expertise" to read "shall have training *or expertise* in disease outbreak investigation."

A motion was made by Representative Neufeld, seconded by Representative Feuerborn to adopt the Secretary's proposal. A discussion followed.

A motion was made by Representative Helgerson to table **HB 2996**. The motion carried.

The next order of business was to work on **HB 2989** - concerning adult care homes.

Representative Neufeld spoke in favor of the bill with an amendment proposed by the Sterling House which makes changes on page 4, section (f) by striking out "*for less than 6 individuals*", and adding "*but not less than 10% of the total bed count*".

A motion was made by Representative Neufeld, seconded by Representative Pottorff to amend as the Sterling House proposal suggests. A discussion followed. The motion carried.

A motion was made by Representative Neufeld, seconded by Representative Pottorff to pass the bill as amended. A discussion followed. The motion carried.

Vice Chair Farmer announced an amendment which would be a gut and go of **SB 545**. The bill was put together by Representative Carmody in his work in the conference committee last year on **SB 234**, which concerned partial birth/third trimester abortion. The new bill includes items Representative Carmody put together in discussions with various House members.

Norman Furse, Revisor of Statutes Office, led the committee through the proposed bill (Attachment 1). An extensive discussion followed.

A motion was made by Representative Landwehr, seconded by Representative O'Connor to amend **SB 545** by replacing it with the proposed bill. The motion carried.

A motion was made by Representative Farmer, seconded by Representative O'Connor to pass the bill as amended. The motion carried.

A motion was made by Representative Spangler, seconded by Representative Toplikar to approve the minutes for March 17, 1998.

The meeting adjourned at 2:45 p.m.

545
643

Proposed Committee Amendment to SB No. 643

(As Amended by Senate Committee of the Whole)

Be amended:

On page 1, by striking all in lines 41 through 43;

By striking all of pages 2 through 16 and inserting in lieu thereof the following:

"Section 1. K.S.A. 1997 Supp. 65-6703 is hereby amended to read as follows: 65-6703. (a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not legally or financially associated affiliated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) ~~the fetus is affected by a severe or life-threatening deformity or abnormality~~ a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the fetus by applying the factors usually applied by a physician engaged in obstetrical, perinatal or neonatal practice under the same or similar circumstances. If the physician determines the gestational age is less than 20 weeks, the physician shall document as part of the medical records of the woman the basis for the determination.

(2) If the physician determines the gestational age of the fetus is 20 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the unborn child is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician engaged in obstetrical, perinatal or neonatal practice under the same or similar conditions. In making this determination of viability, the physician shall perform or

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cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age, weight and lung maturity of the unborn child and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of a fetus is 20 or more weeks, determines that the fetus is not viable and performs an abortion on the mother, the physician shall report such determinations and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician shall report such determinations and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of a fetus is 20 or more weeks, determines that the fetus is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the

pregnant woman in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection (b) for not less than three years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection (b) for not less than five years.

(c) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

(d) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(e) As used in this section, "viable" means that stage of fetal development when, in the judgment of the physician based upon the particular facts of the case before the physician and in light of the most advanced medical technology and information available to the physician, there is a reasonable likelihood of sustained survival of the unborn child outside the body of the mother, with or without artificial support.

(f) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

~~(b) Violation of this section is a class A person misdemeanor.~~

(g) Upon conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

New Sec. 2. (a) No person shall perform or induce a partial birth abortion unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine that the abortion is necessary to preserve the life of the pregnant woman.

(b) As used in this section, partial birth abortion means an abortion in which the fetus is partially delivered vaginally and then intentionally killed before completing the delivery.

(c) If a physician determines in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman and performs an abortion on the woman, the physician shall report such determination and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician shall report the reasons for such determination in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto. The physician shall retain a copy of the written reports required under this subsection for not less than five years.

(d) A woman upon whom an abortion is performed shall not be

prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

(e) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(f) Upon a first conviction of a violation of this section, a person shall be guilty of a class A person misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, person felony.

Sec. 3. K.S.A. 1997 Supp. 65-6712 is hereby amended to read as follows: 65-6712. Any physician who intentionally, knowingly or recklessly fails to provide informed consent pursuant to the woman's-right-to-know act, whether or not an abortion is actually performed on the woman, is guilty of unprofessional conduct as defined in K.S.A. 65-2837 and amendments thereto.

Sec. 4. K.S.A. 1997 Supp. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under K.S.A. 65-6703 and amendments thereto if applicable to the pregnancy terminated, information required to be reported under

section 2 and amendments thereto if applicable to the pregnancy terminated and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated.

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section. Information obtained by the secretary under this section may be used only for statistical purposes, except that no information may be released which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

Sec. 5. K.S.A. 1997 Supp. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836, and amendments

thereto, and in this section:

(a) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

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

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

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

(2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.

(3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.

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

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

(6) Willful betrayal of confidential information.

(7) Advertising professional superiority or the performance of professional services in a superior manner.

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

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

results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.

(10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.

(11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.

(12) Conduct likely to deceive, defraud or harm the public.

(13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.

(14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.

(15) Allowing another person or organization to use the licensee's license to practice the healing arts.

(16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.

(17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.

(18) Obtaining any fee by fraud, deceit or misrepresentation.

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through

the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering, distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic

steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(29) Referring a patient to a health care entity for services if the licensee has a significant investment interest in the health care entity, unless the licensee informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.

(30) Violating K.S.A. 65-6703 and amendments thereto or section 2 and amendments thereto.

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

(e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.

(f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.

(g) "Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principle practice.

(h) "Significant investment interest" means ownership of at

least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of at least 10% of the shares of stock of the corporation which owns or leases the health care entity.

Sec. 6. K.S.A. 1997 Supp. 65-445, 65-2837, 65-6703 and 65-6712 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.";

In the title, in line 12, by striking all after "ACT"; by striking all in lines 13 through 37; in line 38, by striking all before the period and inserting: "concerning abortions; amending K.S.A. 1997 Supp. 65-445, 65-2837, 65-6703 and 65-6712 and repealing the existing sections";