

Approved: 2-10-98
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 3, 1998 in Room 526-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Larry Buening, Executive Director, Kansas Board of Healing Arts
Pam Scott, Kansas Funeral Directors

Others attending: See attached list

Hearing on SB 548 - Disciplinary counsel for Board of Healing Arts

Larry Buening, Executive Director, Kansas Board of Healing Arts, submitted written testimony in support of **SB 548** which would allow the disciplinary counsel, or disciplinary counsel's designee, to handle all disciplinary matters within the jurisdiction of the board. It was pointed out that the disciplinary counsel could appear during any administrative proceeding and, if an appeal was taken, to also appear in those proceedings. Mr. Buening noted that the Kansas Medical Society suggested two amendments to the bill, and the Board of Healing Arts has agreed to one amendment which would add new language on page one, line 34, by inserting, "involving disciplinary matters against an individual who is licensed, registered or otherwise regulated by the board." Another amendment offered by Mr. Buening would change the effective date to publication in the statute book as noted in his written testimony. (Attachment 1) Committee discussion related to representation on the Board, and whether the disciplinary counsel's designee has to be an attorney. The Chair noted that the hearing on **SB 548** would be held open until the amendments offered could be reviewed.

Hearing on SB 506 - Funeral merchandise agreements, contracts and plans, irrevocable provisions

Pam Scott, Kansas Funeral Directors, testified in support of **SB 506** which would amend current law regarding pre-arranged funeral agreements. Ms. Scott noted that the bill would allow a consumer to place \$3,500 for funeral services plus sufficient funds to cover the retail price of a casket, urn, and an outside burial container in an irrevocable pre-arranged funeral account. Ms. Scott noted that the bill would clarify that these irrevocable funds may be applied to the purchase price of a casket, urn or vault. Pre-arranged funeral accounts are often established when a person is preparing to go on some form of public assistance such as an elderly individual attempting to obtain nursing home benefits through Medicaid. To do so they must meet certain financial eligibility requirements. SRS, when determining eligibility for assistance, currently excludes from resources \$3,000 of irrevocable burial funds plus additional funds for burial space. She pointed out that the bill would also be consistent with the laws in a majority of other states if consumers apply for public assistance in the new state as noted in her written testimony. (See Attachment 2) Committee discussion related to revocable and irrevocable accounts, and a concern was expressed regarding new language on page 1, line 29 of the bill relating to the first \$3,500 of funds that would be made irrevocable "as to the retail price of a casket, urn and outside burial container" could result in a burial, of which there is no cap, not exempt or allowed by SRS. It was suggested that SRS respond to this concern, and the hearing on **SB 506** will remain open until such response can be obtained from SRS.

Adjournment

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

The next meeting is scheduled for February 4, 1998.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-3-98

NAME	REPRESENTING
Rick Guthrie	Health Midwest
Pan Scott	Ks. Funeral Directors Assn
Mark Smith	Ks St Bd of Mortuary Arts
Susan Anderson	Heim + Weir
Terese Splenauer	KFDA
Callie Lee Denton	KS Assoc of Health Plans
Doug Smith	KAPA
Amy Campbell	KSOS
Tom Dechay	McGill's Assn

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



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MEMORANDUM

TO: Senate Committee on Public Health and Welfare

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: February 3, 1998

RE: SENATE BILL NO. 548

Thank you for both setting Senate Bill No. 548 for hearing today and for allowing me to appear before you in support of this bill.

K.S.A. 65-2840a was first enacted in 1984 through the passage of Senate Bill No. 507. That was a multiple section bill that addressed quality of health care. New Section 8 (attached as exhibit 1) required the appointment of a disciplinary counsel. The Board appointed me as its first disciplinary counsel and I started work in September, 1984. New Section 9 of the bill, included in the statute books as K.S.A. 65-2840b specifically required the disciplinary counsel to present disciplinary matters to a review committee. New Section 11 also imposed the obligation on the disciplinary counsel to file the disciplinary action and prepare and prosecute complaints that went to a hearing. Both K.S.A. 65-2840b and 65-2840d were repealed the very next year. Minor amendments were made to K.S.A. 65-2840a in 1986 and it has remained unchanged since.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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HAROLD J. SAUDER, D.P.M., INDEPENDENCE
EMILY TAYLOR, LAWRENCE

Senate Public Health and Welfare
Date: 2-3-98
Attachment No. 1

Over the years, amendments to K.S.A. 65-2840a were included in a number of bills proposed by the Board. However, these proposals contained other amendments to the Healing Arts Act and, for various reasons, these prior bills were not passed. Therefore, this year we asked for the introduction of Senate Bill No. 548 to deal only with amendments to K.S.A. 65-2840a.

The current language of K.S.A. 65-2840a has always caused some difficulties with administration. As written, the disciplinary counsel cannot "otherwise be an attorney for the board" but power is limited to investigating matters involving violations by licensees under the Healing Arts Act. As you are aware, the Healing Arts Act deals with licensure and regulation of 3 professions - MD's, DO's and DC's. Physicians' assistants are within the Healing Arts Act, but they are not licensees. Seven other professions are regulated by the Board under separate statutes not within the Healing Arts Act. Also, individuals applying for an initial license or registration or a renewal of such are not "licensees". Finally, if a matter is appealed to the district courts, the disciplinary counsel, being prohibited from otherwise being an attorney for the Board cannot appear on the Board's behalf.

The proposed changes are intended to allow the disciplinary counsel, or disciplinary counsel's designee, to handle all disciplinary matters within the jurisdiction of the Board. Further, the disciplinary counsel could appear during any administrative proceeding and, if an appeal was taken, to also appear in those proceedings.

Existing language in lines 23 through 33 is deleted. The language in lines 23-28 dealing with subpoenas was adequately addressed when the Legislature enacted K.S.A. 65-2839a in 1986. The language in lines 28-30 about disciplinary counsel employing staff is inconsistent with other provisions of law. K.S.A. 65-2878 gives to the Board the authority to employ staff. Appropriation bills grant overall FTE and expenditure limitations to the Board itself. Finally, the rule and regulation authority granted in K.S.A. 65-2865 provides adequate provisions without the additional authority granted in lines 30-33.

X I have talked with the Kansas Medical Society about the bill. KMS suggested two amendments and we have agreed to one of these. This amendment and a change to the effective date are offered in the balloon attached as exhibit 2. The amendment not included in the balloon nor yet agreed to deals with the language in line 19 and

who, other than the disciplinary counsel, may investigate and appear on behalf of the Board. We will work with KMS and, hopefully, have compromise language available when you debate this bill in committee.

Again, thank you for the opportunity to appear before you. I urge your favorable consideration of Senate Bill No. 548 for passage. Passage of these amendments will provide the Board and its disciplinary counsel with greater freedom and flexibility in the handling of disciplinary matters.

peer review committees shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. This privilege may be claimed by the legal entity creating the peer review committee, or by the commissioner of insurance for any records or proceedings of the board of governors.

(d) Subsection (c) of this section shall not apply to proceedings in which a health care provider contests the revocation, denial, restriction or termination of staff privileges or the license, registration, certification or other authorization to practice of the health care provider.

(e) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the commissioner of insurance, the state board of healing arts or other health care provider licensing or disciplinary boards of this state to require a peer review committee to report to it any disciplinary action or recommendation of such committee, or to transfer to it records of such committee's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a health care provider or to terminate the liability of the fund for all claims against a specific health care provider for damages for death or personal injury pursuant to subsection (g) of K.S.A. 40-3403 and amendments thereto. Prior to the filing of an action initiating a formal disciplinary proceeding against a health care provider by the state board of healing arts or other health care provider licensing or disciplinary boards of this state, reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion and their release to any persons or entity will not be admissible in evidence in any judicial or administrative proceeding. After such an action is filed, the reports and records dealing with the licensee and related to the action shall be deemed public records.

New Sec. 8. The state board of healing arts shall appoint a disciplinary counsel, who shall not otherwise be an attorney for the board, with duties as set out in this act. The disciplinary counsel shall be an attorney admitted to practice law in the state of Kansas. The disciplinary counsel shall have the power and the duty to investigate or cause to be investigated all matters involving professional incompetency, unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto. In the performance of these duties, the disciplinary counsel may apply to any court having

65-2840a

power to issue subpoenas for an order to require by subpoena the attendance of any person or by subpoena *duces tecum* the production of any records for the purpose of the production of any information pertinent to an investigation. Subject to approval by the state board of healing arts, the disciplinary counsel shall employ clerical and other staff necessary to carry out the duties of the disciplinary counsel. The state board of healing arts may adopt rules and regulations necessary to allow the disciplinary counsel to properly perform the functions of such position under this act.

65-2840b

New Sec. 9. On the conclusion of an investigation, unless the disciplinary counsel determines the complaint to be unfounded, the disciplinary counsel shall present matters involving alleged professional incompetency or unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto, to a review committee appointed pursuant to section 10. The disciplinary counsel shall recommend to the review committee informal admonition of the practitioner concerned or prosecution of formal charges at a hearing. If informal admonition is recommended by the review committee the same shall be forwarded to the state board of healing arts by the disciplinary counsel and the informal admonition shall be performed by the board without further proceedings. The review committee shall have the power to subpoena witnesses and information for appearance and presentation before the committee. Disposition of the matter shall be made by a majority vote of the review committee unless the committee directs further investigation. A complaint shall not be referred for hearing unless the review committee finds by majority vote that there is probable cause to believe there has been conduct which, pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto may result in revocation, suspension or limitation of a license. The members of the review committee shall not participate as a witness or otherwise in any hearing regarding the matter. No person who presented any matter to the review committee shall be a hearing officer or otherwise advise the state board of healing arts in any hearing on that matter.



65-2840c

New Sec. 10. Review committees shall be established and appointed by the state board of healing arts for each branch of the healing arts as necessary to implement the provisions of this act. Each review committee shall be composed of three members. Two members and their designated alternates shall serve for a period of two years, all of whom shall be members of the same

EXHIBIT

1

branch of the healing arts as the person whose conduct is being reviewed. 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 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 such committees shall be paid compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

65-2842
New Sec. 11. If the review committee recommends the matter be referred for hearing, the disciplinary counsel shall institute formal proceedings by filing an action as set forth in K.S.A. 65-2841 and amendments thereto. Prior to the time the action is filed, all information in the possession of the disciplinary counsel or review committee regarding the matter shall be confidential and not subject to subpoena. The disciplinary counsel shall prepare and prosecute all complaints that proceed to hearing before the state board of healing arts. The disciplinary counsel may represent the board whenever a licensee appeals a decision of the board pursuant to K.S.A. 65-2848 and amendments thereto, unless the disciplinary counsel also appeals some aspect of the decision, in which case the board shall appoint special counsel to represent the board in the appeal. All witnesses at such hearing shall be sworn and all proceedings and testimony shall be reported, either by stenographic means or electronic recording.

Sec. 12. K.S.A. 65-2838 is hereby amended to read as follows: 65-2838. The board shall have jurisdiction of the proceedings to revoke, suspend or limit the license of any licensee practicing under this act. The ~~petition~~ action for the revocation, suspension or limitation of a license may be filed: (a) ~~By the attorney general in all cases;~~ (b) ~~by the county or district attorney of the county in which the licensee resides or has practiced;~~ or (c) ~~by a regularly employed attorney of the board by the disciplinary counsel.~~ ~~Said petition~~ The action shall be filed in the office of the secretary of the board.

Either before or after formal charges have been filed, the board

and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may revoke, suspend or limit the license of the licensee entering into such stipulation.

The board may temporarily suspend or temporarily limit the license of any licensee, without notice or hearing, if the board determines that there is cause to believe that grounds exist under K.S.A. 65-2836 and amendments thereto, for the revocation, suspension or limitation of the license of a licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the board shall institute proceedings for a hearing and, notwithstanding any provision of the Kansas healing arts act to the contrary, such hearing shall be held no later than ~~fifteen~~ (15) 15 days from the date of such temporary suspension or temporary limitation of the license.

A continuance of the hearing shall be granted by the secretary of the board upon the written request of the licensee, and such a continuance shall not exceed ~~thirty~~ (30) 30 days. A temporary suspension or temporary limitation order by the board shall take effect when served in person upon the licensee.

In no case shall a temporary suspension or temporary limitation of a license under this section be in effect for a period of time in excess of ~~ninety~~ (90) 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the board has revoked, suspended or limited the license of the licensee after notice and hearing as otherwise provided in the Kansas healing arts act.

Sec. 13. K.S.A. 65-2841 is hereby amended to read as follows: 65-2841. The following rules shall govern the form of the ~~petition~~ action in such cases: (a) The board shall be named as plaintiff and the licensee as defendant. (b) The charges against the licensee shall be stated with reasonable definiteness. (c) Amendments may be made as in ordinary actions in the district court. (d) All allegations shall be deemed denied, but the licensee may plead in response to the ~~petition~~ if he action if the licensee so desires.

Sec. 14. K.S.A. 1983 Supp. 65-2842 is hereby amended to read as follows: 65-2842. (a) Upon the ~~presentation of the petition~~ to filing of an action with the secretary of the board, the

SENATE BILL No. 548

By Committee on Public Health and Welfare

1-29

9 AN ACT concerning the Kansas healing arts act; disciplinary counsel;
10 amending K.S.A. 65-2840a and repealing the existing section.

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

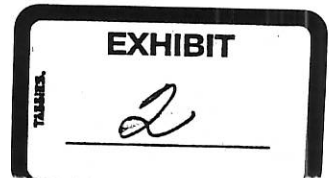
13 Section 1. K.S.A. 65-2840a is hereby amended to read as follows: 65-
14 2840a. The ~~state board of healing arts~~ shall appoint a disciplinary counsel,
15 ~~who shall not otherwise be an attorney for the board,~~ with the duties set
16 out in this act *and as may be specified by the board.* The disciplinary
17 counsel shall be an attorney admitted to practice law in the state of Kan-
18 sas. The disciplinary counsel ~~shall have the power and the duty to, or the~~
19 ~~designee of the disciplinary counsel, may investigate or cause to be in-~~
20 ~~vestigated and appear on behalf of the board in all disciplinary matters~~
21 ~~involving professional incompetency, unprofessional conduct or any other~~
22 ~~matter which may result in disciplinary action against a licensee pursuant~~
23 ~~to K.S.A. 65-2836 through 65-2844, and amendments thereto. In the per-~~
24 ~~formance of these duties, the disciplinary counsel may apply to any court~~
25 ~~having power to issue subpoenas for an order to require by subpoena the~~
26 ~~attendance of any person or by subpoena duces tecum the production of~~
27 ~~any records for the purpose of the production of any information perti-~~
28 ~~nent to an investigation. Subject to approval by the state board of healing~~
29 ~~arts, the disciplinary counsel shall employ clerical and other staff neces-~~
30 ~~sary to carry out the duties of the disciplinary counsel. The state board~~
31 ~~of healing arts may adopt rules and regulations necessary to allow the~~
32 ~~disciplinary counsel to properly perform the functions of such position~~
33 ~~under this act within the jurisdiction of the board and in any administra-~~
34 ~~tive or judicial proceeding.~~

35 Sec. 2. K.S.A. 65-2840a is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the Kansas register.

involving disciplinary matters against an individual
who is licensed, registered or otherwise regulated
by the board

statute book



1-6



KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

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Date: February 3, 1998
To: Senate Public Health and Welfare Committee
From: Pam Scott, Executive Director
Kansas Funeral Directors and Embalmers Association
Re: Senate Bill No. 506

Madam Chair and members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA). I appear before you in support of Senate Bill No. 506 which would increase the dollar amount of funds that can be placed in an irrevocable pre-arranged funeral agreement, contract or plan.

Kansas law currently provides, in K.S.A. 160303(c), that pre-arranged funeral agreements, contracts and plans may only be made irrevocable as to the first \$3000 of funds set aside. Therefore, funds set aside for a funeral in excess of \$3000 must be placed in a revocable funeral agreement. With the average price of an adult funeral exceeding \$4000, this happens frequently. In such cases a funeral home must execute two pre-arranged funeral contracts with a consumer, both a revocable and an irrevocable contract. This creates much confusion among consumers prearranging and prefinancing their funeral services. This is especially true of the elderly who are often spending down assets to become eligible for nursing home coverage through Medicaid. They do not understand why two contracts are necessary especially when revoking such a contract would jeopardize their eligibility for Medicaid. The necessity of two contracts also creates excessive paperwork for the funeral home. Two pre-arranged funeral agreements have to be written and then reported to the State Board of Mortuary Arts.

The KFDA would like to see K.S.A. 16-303(c) amended to allow a consumer to place \$3500 for funeral services plus sufficient funds to cover the retail price of a casket, urn, and outside burial container in an irrevocable pre-arranged funeral account.

"1897-1997"

Senate Public Health & Welfare
Date: 2-3-98
Attachment No. 2

I would like to stress that this amendment does not require that the funds be placed into an irrevocable account. It only allows the consumer to choose the irrevocable funding mechanism.

Pre-arranged funeral accounts are often established when a person is preparing to go on some form of public assistance. A common example is an elderly individual attempting to obtain nursing home benefits through Medicaid. To do so they must meet certain financial eligibility requirements. The Department of Social and Rehabilitation Services (SRS), when determining eligibility for assistance, currently excludes from resources \$3000 of irrevocable burial funds plus additional funds for burial space. Burial space is defined to include a casket, urn, outside burial container, a burial plot, opening and closing and grave marker. The only change this amendment would have on these current eligibility requirements would be to increase from \$3000 to \$3500 the amount that can be set aside as burial funds. This amount has not been changed since at least 1991. In many cases, especially if a body has to be transported back to Kansas from another state, the \$3000 is insufficient to cover the expenses.

I have discussed these proposed amendments with the Department of Social and Rehabilitation Services and they have indicated they have no objections to these changes.

At least 30 states have statutes or regulations that treat irrevocable pre-arranged funeral accounts as totally exempt assets when determining eligibility for Medicaid. These states include Missouri, Oklahoma, Colorado, and Iowa. By making our law more consistent with the laws of these other states, we will also remedy a problem which arises when a person pre-arranges their funeral in Kansas, where they wish to be buried, but then move to another state, perhaps to be closer to family. Currently, if they apply for public assistance in the new state, and that state requires all funds be irrevocable, that person may not be eligible for assistance in that state due to the revocable nature of some of the burial funds in Kansas. This amendment should make our law more consistent with the laws of the majority of states.

I would like to thank you for the opportunity to appear before you today and request your support of Senate Bill No. 506. I would be happy to address any questions you may have.