Approved: 3-2-00
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Sandy Praeger at 10:00 a.m. on February 21, 2000 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Norman Furse, Revisor of Statutes
Lisa Montgomery, Revisor of Statutes
Hank Avila, Legislative Research Department
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Marlee Bertholf, Executive Director, Kansas Retail Council, KCCI
Bob Williams, Executive Director, Kansas Pharmacists Association
Larry Froelich, Executive Director, Kansas State Board of Pharmacy

Others attending: See attached list

Hearing on SB 598 - Ratio of pharmacists to pharmacy technicians

Marlee Bertholf, Executive Director, Kansas Retail Council, KCCI, testified before the Committee in support of **SB 598** which would permit the Board of Pharmacy to set, through rules and regulations, the ratio of pharmacy technicians to pharmacists working in an establishment. The bill would also require the Board of Pharmacy to register pharmacy technicians and the responsible pharmacists to provide sufficient information to identify the technician who is registering. Ms. Bertholf noted that they did not include in the bill an amount to be paid by the technician for their registration, and would support an amendment to add language that allows a reasonable fee to be charged. She also noted she would supply information to the Committee relating to what states allow the Board of Pharmacy to set ratios.(Attachment 1) The Chair noted that the fiscal note of the bill showed the expense of an additional FTE position to administer the registration process if the Board of Pharmacy chose to hire an additional person.

Bob Williams, Executive Director, Kansas Pharmacists Association, expressed his support for the **SB 598**. He noted that the bill would not only allow the State Board of Pharmacy to know how many pharmacy technicians are currently employed in Kansas, but where they are employed as well. (Attachment 2)

The Chair called the Committee's attention to a report distributed to the Committee entitled, "To Err Is Human - Building a Safer Health System" by the Committee on Quality of Health Care in America, Institute of Medicine. (Attachment 3)

Larry Froelich, Executive Director, Kansas State Board of Pharmacy, addressed the Committee and expressed his support for the concept of **SB 598** but suggested additional language needed to be added to the bill that would address the registration schedule and fee to be charged. Additional office staff for registering pharmacy technicians and authority to discipline anyone not registered were also addressed in his written testimony. (Attachment 4)

The Chair requested the proponents of the bill work together and staff to draw a balloon of **SB 598** showing the proposed amendments before the bill is worked by the Committee.

There were no opponents to **SB 598**.

Action on SB 527 - Denial of licenses for persons in healing arts who have been convicted of a felony 2/3 majority of board determine otherwise.

Staff briefed the Committee on a balloon of the bill showing amendments proposed by the Board of Healing Arts. (Attachment 5) Chip Wheelan, Kansas Association of Osteopathic Medicine, also expressed his support for the amendments.

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S, Statehouse, at 10:00 a.m. on February 21, 2000.

After Committee discussion on the proposed amendments which also included inserting "in writing" on page 3, line 16 of the bill, after the word "inform", relating to failure of the licensee informing patients in writing suffering from abnormality of the breast tissue, Senator Langworthy made a motion to adopt the amendments shown in the balloon of the bill as well as inserting "in writing" on page 3, line 16, seconded by Senator Becker. The motion carried.

Senator Salmans made a motion the Committee recommend **SB 527 as amended** favorably for passage, seconded by Senator Langworthy. The motion carried.

Action on SB 557 - Regulation and licensing of crematories

Staff briefed the Committee on a balloon of **SB 557** showing proposed amendments from the State Board of Mortuary Arts and the Kansas Funeral Directors and Embalmers Association. (Attachment 6)

Senator Becker made a motion to adopt the balloon of the bill showing the proposed amendments, and the Committee recommend **SB 557 as amended** favorably for passage, seconded by Senator Hardenburger. The motion carried.

Adjournment

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

The next meeting is scheduled for February22, 2000.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-21-00

NAME	REPRESENTING
Keith R Landis	Christian Science Committee on Publication for Kansas
Larry Froelich	Board of Pharmacy
Larry Buening	Bd of Healing Arts
Mark Stafford	BOHA
Kevin Barone	Hein [illegible] Chtd.
Pam Scott	Ks Funeral Directors Assn
Mack Smith	Ks St Bd of Mortuary Arts
Carolyn Middendorf	Ks St Ns Assn
[illegible] Ellison	
Betty Ellison	
Caitlin Ellison	
Marlee [illegible]	KCCI
Bud Grant	KCCI
Karen Ann Lower	KAHP

LEGISLATIVE TESTIMONY

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SB 598

February 21, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Public Health and Welfare Committee

by

Marlee Bertholf
Executive Director, Kansas Retail Council

Madam Chair and members of the Committee:

My name is Marlee Bertholf and I am here on behalf of the Kansas Federation of Chain Pharmacies and the Kansas Retail Council, which are affiliates of the Kansas Chamber of Commerce and Industry (KCCI). Thank you for the opportunity to express our members support of SB 598.

This proposal significantly changes the current law in two ways. First, it moves from the Kansas Legislature to the Kansas State Board of Pharmacy the ability to regulate the pharmacy/technician ratio. Second, this proposal codifies the registration process for pharmacy technicians. It gives the Board of Pharmacy the ability to develop rules and regulations to govern tech registration.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work (organization's members who make up its various committees. Thes principles of the organization and translate into views such as those

Senate Public Health & Welfare
Date: 2-21-00
Attachment No. 1

Moving the tech ratio to the Board of Pharmacy would make your jobs easier. Whenever issue arises concerning the pharmacy/tech ratio, those proposing it would not have to come to you, but instead would go to the Board of Pharmacy. The Board of Pharmacy deals with pharmacist and technician issues everyday. This is an issue that they are well versed in and we feel comfortable they are able to handle.

The codification of tech registration gives the Board of Pharmacy the ability to track the pharmacy technicians in the State of Kansas. They will have the ability to obtain identifying information on the pharmacy tech. This is an idea whose time has come. This change will formalize the procedure and allow the Board of Pharmacy to maintain the list of names. Not included in SB 598 and brought to my attention by Larry Foelich, the Executive Director of the Board of Pharmacy, is an amount to be paid by the technician for their registration. We would support an amendment to add language that allows a reasonable fee to be charged.

Again, thank you for the opportunity to express our members support for SB 598. I will be happy to answer any questions.

THE KANSAS PHARMACISTS ASSOCIATION
1308 SW 10TH AVENUE
TOPEKA, KANSAS 66604-1299
PHONE (785) 232-0439
FAX (785) 232-3764

ROBERT R. (BOB) WILLIAMS, M.S., C.A.E.
EXECUTIVE DIRECTOR

TESTIMONY
SB 598
Senate Public Health and Welfare Committee
February 21, 2000

My name is Bob Williams. I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the Committee regarding SB 598.

Senate Bill 598 removes the pharmacist/technician ratio from statute and places it in rules and regulations. It also requires all pharmacy technicians to register with the State Board of Pharmacy. SB 598 does not change the current pharmacist/technician ratio.

The KPhA Board of Trustees has discussed this issue at great length. The pharmacy profession is rapidly changing. It is KPhA's position that placing the pharmacist/technician ratio in regulation will allow the State Board of Pharmacy to more quickly respond to these changes. The State Board of Pharmacy currently determines the training requirements for pharmacy technicians by rule and regulation. It follows that the State Board of Pharmacy also be permitted to determine the pharmacist/technician ratio by regulation as well.

A registration of pharmacy technicians is simply a policy whose time has come. Currently, it is very difficult for the State Board of Pharmacy to determine how many pharmacy technicians are currently employed in Kansas. For training, educational, and legal reasons, it is important for the State Board of Pharmacy to know not only how many pharmacy technicians are currently employed in Kansas, but where they are employed as well.

We encourage the Committee to support SB 598.

Thank you.

Senate Public Health & Welfare
Date: 2-21-00
Attachment No. 2

ADVANCE COPY

To Err Is Human

Building a Safer Health System

Linda T. Kohn, Janet M. Corrigan, and
Molla S. Donaldson, *Editors*

Committee on Quality of Health Care in America

INSTITUTE OF MEDICINE

NATIONAL ACADEMY PRESS
Washington, D.C.

Senate Public Health & Welfare
Date: 2-21-00
Attachment No. 3

Foreword

This report is the first in a series of reports to be produced by the Quality of Health Care in America project. The Quality of Health Care in America project was initiated by the Institute of Medicine in June 1998 with the charge of developing a strategy that will result in a *threshold improvement* in quality over the next ten years.

Under the direction of Chairman William C. Richardson, the Quality of Health Care in America Committee is directed to:

- Review and synthesize findings in the literature pertaining to the quality of care provided in the health care system;
- Develop a communications strategy for raising the awareness of the general public and key stakeholders of quality of care concerns and opportunities for improvement;
- Articulate a policy framework that will provide positive incentives to improve quality and foster accountability;
- Identify characteristics and factors that enable or encourage providers, health care organizations, health plans and communities to continuously improve the quality of care; and
- Develop a research agenda in areas of continued uncertainty.

This first report on patient safety addresses a serious issue affecting the quality of health care. Future reports in this series will address other quality-related issues and cover areas such as re-designing the health care delivery system for the 21st Century, aligning financial incentives to reward quality care and the critical role of information technology as a tool for measuring and understanding quality. Additional reports will be produced throughout the coming year.

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Executive Summary

The knowledgeable health reporter for the Boston Globe, Betsy Lehman, died from an overdose during chemotherapy. Willie King had the wrong leg amputated. Ben Kolb was eight years old when he died during "minor" surgery due to a drug mix-up.[1]

These horrific cases that make the headlines are just the tip of the iceberg. Two large studies, one conducted in Colorado and Utah and the other in New York, found that adverse events occurred in 2.9 and 3.7 percent of hospitalizations, respectively.[2] In Colorado and Utah hospitals, 8.8 percent of adverse events led to death, as compared with 13.6 percent in New York hospitals. In both of these studies, over half of these adverse events resulted from medical errors and could have been prevented.

When extrapolated to the over 33.6 million admissions to U.S. hospitals in 1997, the results of the study in Colorado and Utah imply that at least 44,000 Americans die each year as a result of medical errors.[3] The results of the New York Study suggest the number may be as high as 98,000.[4] Even when using the lower estimate, deaths due to medical errors exceed the number attributable to the 8th leading cause of death.[5] More people die in a given year as a result of medical errors than from motor vehicle accidents (43,458), breast cancer (42,297), or AIDS (16,516).[6]

Total national costs (lost income, lost household production, disability and health care costs) of preventable adverse events (medical errors resulting in injury) are estimated to be between $17 billion and $29 billion, of which health care costs represent over one-half.[7]

In terms of lives lost, patient safety is as important an issue as worker safety. Every year, over 6,000 Americans die from workplace injuries.[8] Medication errors alone, occurring either in or out of the hospital, are estimated to account for over 7,000 deaths annually.[9]

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tients, and serves as an impediment to efforts to improve safety. Even within hospitals and large medical groups, there are rigidly-defined areas of specialization and influence. For example, when patients see multiple providers in different settings, none of whom have access to complete information, it is easier for something to go wrong than when care is better coordinated. At the same time, the provision of care to patients by a collection of loosely affiliated organizations and providers makes it difficult to implement improved clinical information systems capable of providing timely access to complete patient information. Unsafe care is one of the prices we pay for not having organized systems of care with clear lines of accountability.

Lastly, the context in which health care is purchased further exacerbates these problems. Group purchasers have made few demands for improvements in safety.[12] Most third party payment systems provide little incentive for a health care organization to improve safety, nor do they recognize and reward safety or quality.

The goal of this report is to break this cycle of inaction. The status quo is not acceptable and cannot be tolerated any longer. Despite the cost pressures, liability constraints, resistance to change and other seemingly insurmountable barriers, it is simply not acceptable for patients to be harmed by the same health care system that is supposed to offer healing and comfort. "First do no harm" is an often quoted term from Hippocrates.[13] Everyone working in health care is familiar with the term. At a very minimum, the health system needs to offer that assurance and security to the public.

A comprehensive approach to improving patient safety is needed. This approach cannot focus on a single solution since there is no "magic bullet" that will solve this problem, and indeed, no single recommendation in this report should be considered as *the* answer. Rather, large, complex problems require thoughtful, multifaceted responses. The combined goal of the recommendations is for the external environment to create sufficient pressure to make errors costly to health care organizations and providers, so they are compelled to take action to improve safety. At the same time, there is a need to enhance knowledge and tools to improve safety and break down legal and cultural barriers that impede safety improvement. Given current knowledge about the magnitude of the problem, the committee believes it would be irresponsible to expect anything less than a 50 percent reduction in errors over five years.

In this report, safety is defined as freedom from accidental injury. This definition recognizes that this is the primary safety goal from the patient's perspective. Error is defined as the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim. According to noted expert James Reason, errors depend on two kinds of failures: either the correct action does not proceed as intended (an error of execution) or the original intended action is not correct, (an error of planning).[14] Errors can happen in all stages in the process of care, from diagnosis, to treatment, to preventive care.

Not all errors result in harm. Errors that do result in injury are sometimes called preventable adverse events. An adverse event is an injury resulting from a medical intervention, or in other words, it is not due to the underlying condition

agenda for reducing errors in health care and improving patient safety. Although it is a national agenda, many activities are aimed at prompting responses at the state and local levels and within health care organizations and professional groups.

The committee believes that although there is still much to learn about the types of errors committed in health care and why they occur, enough is known today to recognize that a serious concern exists for patients. Whether a person is sick or just trying to stay healthy, they should not have to worry about being harmed by the health system itself. This report is a call to action to make health care safer for patients.

The committee believes that a major force for improving patient safety is the intrinsic motivation of health care providers, shaped by professional ethics, norms and expectations. But the interaction between factors in the external environment and factors inside health care organizations can also prompt the changes needed to improve patient safety. Factors in the external environment include availability of knowledge and tools to improve safety, strong and visible professional leadership, legislative and regulatory initiatives, and actions of purchasers and consumers to demand safety improvements. Factors inside health care organizations include strong leadership for safety, an organizational culture that encourages recognition and learning from errors, and an effective patient safety program.

In developing its recommendations, the committee seeks to strike a balance between regulatory and market-based initiatives, and between the roles of professionals and organizations. No single action represents a complete answer, nor can any single group or sector offer a complete fix to the problem. However, different groups can, and should, make significant contributions to the solution. The committee recognizes that a number of groups are already working on improving patient safety, such as the National Patient Safety Foundation and the Anesthesia Patient Safety Foundation.

The recommendations contained in this report lay out a four-tiered approach:

- establishing a national focus to create leadership, research, tools and protocols to enhance the knowledge base about safety;
- identifying and learning from errors through the immediate and strong mandatory reporting efforts, as well as the encouragement of voluntary efforts, both with the aim of making sure the system continues to be made safer for patients;
- raising standards and expectations for improvements in safety through the actions of oversight organizations, group purchasers, and professional groups; and
- creating safety systems inside health care organizations through the implementation of safe practices at the delivery level. This level is the ultimate target of all the recommendations.

funding is modest relative to the resources devoted to other public health issues. The Center for Patient Safety should be created within the Agency for Health Care Policy and Research because the agency is already involved in a broad range of quality and safety issues, and has established the infrastructure and experience to fund research, educational and coordinating activities.

Identifying and Learning from Errors

Another critical component of a comprehensive strategy to improve patient safety is to create an environment that encourages organizations to identify errors, evaluate causes and take appropriate actions to improve performance in the future. External reporting systems represent one mechanism to enhance our understanding of errors and the underlying factors that contribute to them.

Reporting systems can be designed to meet two purposes. They can be designed as part of a public system for holding health care organizations accountable for performance. In this instance, reporting is often mandatory, usually focuses on specific cases that involve serious harm or death, may result in fines or penalties relative to the specific case, and information about the event may become known to the public. Such systems ensure a response to specific reports of serious injury, hold organizations and providers accountable for maintaining safety, respond to the public's right to know, and provide incentives to health care organizations to implement internal safety systems that reduce the likelihood of such events occurring. Currently, at least twenty states have mandatory adverse event reporting systems.

Voluntary, confidential reporting systems can also be part of an overall program for improving patient safety and can be designed to complement the mandatory reporting systems previously described. Voluntary reporting systems, which generally focus on a much broader set of errors and strive to detect system weaknesses before the occurrence of serious harm, can provide rich information to health care organizations in support of their quality improvement efforts

For either purpose, the goal of reporting systems is to analyze the information they gather and identify ways to prevent future errors from occurring. The goal is *not* data collection. Collecting reports and not doing anything with the information serves no useful purpose. Adequate resources and other support must be provided for analysis and response to critical issues.

RECOMMENDATION 5.1 A nationwide mandatory reporting system should be established that provides for the collection of standardized information by state governments about adverse events that result in death or serious harm. Reporting should initially be required of hospitals and eventually be required of other institutional and ambulatory care delivery settings. Congress should

their distinct purposes, such systems should be operated and maintained separately. A nationwide mandatory reporting system should be established by building upon the current patchwork of state systems and by standardizing the types of adverse events and information to be reported. The newly established Forum for Health Care Quality Measurement and Reporting, a public/private partnership, should be charged with the establishment of such standards. Voluntary reporting systems should also be promoted and the participation of health care organizations in them should be encouraged by accrediting bodies.

RECOMMENDATION 6.1 Congress should pass legislation to extend peer review protections to data related to patient safety and quality improvement that are collected and analyzed by health care organizations for internal use or shared with others solely for purposes of improving safety and quality.

The committee believes that information about the most serious adverse events which result in harm to patients and which are subsequently found to result from errors should not be protected from public disclosure. However, the committee also recognizes that for events not falling under this category, fears about the legal discoverability of information may undercut motivations to detect and analyze errors to improve safety. Unless such data are assured protection, information about errors will continue to be hidden and errors will be repeated. A more conducive environment is needed to encourage health care professionals and organizations to identify, analyze, and report errors without threat of litigation and without compromising patients' legal rights.

Setting Performance Standards and Expectations for Safety

Setting and enforcing explicit standards for safety through regulatory and related mechanisms, such as licensing, certification, and accreditation, can define minimum performance levels for health care organizations and professionals. Additionally, the process of developing and adopting standards helps to form expectations for safety among providers and consumers. However, standards and expectations are not only set through regulations. The actions of purchasers and consumers affect the behaviors of health care organizations, and the values and norms set by health professions influence standards of practice, training and education for providers. Standards for patient safety can be applied to health care professionals, the organizations in which they work, and the tools (drugs and devices) they use to care for patients.

RECOMMENDATION 7.1 Performance standards and expectations for health care organizations should focus greater attention on patient safety.

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(3) recognize patient safety considerations in practice guidelines and in standards related to the introduction and diffusion of new technologies, therapies and drugs;

(4) work with the Center for Patient Safety to develop community-based, collaborative initiatives for error reporting and analysis and implementation of patient safety improvements; and

(5) collaborate with other professional societies and disciplines in a national summit on the professional's role in patient safety.

Although unsafe practitioners are believed to be few in number, the rapid identification of such practitioners and corrective action are important to a comprehensive safety program. Responsibilities for documenting continuing skills are dispersed among licensing boards, specialty boards and professional groups, and health care organizations with little communication or coordination. In their ongoing assessments, existing licensing, certification and accreditation processes for health professionals should place greater attention on safety and performance skills.

Additionally, professional societies and groups should become active leaders in encouraging and demanding improvements in patient safety. Setting standards, convening and communicating with members about safety, incorporating attention to patient safety into training programs and collaborating across disciplines are all mechanisms that will contribute to creating a culture of safety.

RECOMMENDATION 7.3 The Food and Drug Administration (FDA) should increase attention to the safe use of drugs in both pre- and post-marketing processes through the following actions:

- **develop and enforce standards for the design of drug packaging and labeling that will maximize safety in use;**
- **require pharmaceutical companies to test (using FDA-approved methods) proposed drug names to identify and remedy potential sound-alike and look-alike confusion with existing drug names; and**
- **work with physicians, pharmacists, consumers, and others to establish appropriate responses to problems identified through post-marketing surveillance, especially for concerns that are perceived to require immediate response to protect the safety of patients.**

The FDA's role is to regulate manufacturers for the safety and effectiveness of their drugs and devices. However, even approved products can present safety problems in practice. For example, different drugs with similar sounding names can create confusion for both patients and providers. Attention to the safety of products in actual use should be increased during approval processes and in

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tient safety have developed and published recommendations for safe medication practices, especially for hospitals. Although some of these recommendations have been implemented, none have been universally adopted and some are not yet implemented in a majority of hospitals. Safe medication practices should be implemented in all hospitals and health care organizations in which they are appropriate.

SUMMARY

This report lays out a comprehensive strategy for addressing a serious problem in health care to which we are all vulnerable. By laying out a concise list of recommendations, the committee does not underestimate the many barriers that must be overcome to accomplish this agenda. Significant changes are required to improve awareness of the problem by the public and health professionals, to align payment systems and the liability system so they encourage safety improvements, to develop training and education programs that emphasize the importance of safety and for chief executive officers and trustees of health care organizations to create a culture of safety and demonstrate it in their daily decisions.

Although no single activity can offer the solution, the combination of activities proposed offers a roadmap toward a safer health system. The proposed program should be evaluated after five years to assess progress in making the health system safer. With adequate leadership, attention and resources, improvements can be made. It may be part of human nature to err, but it is also part of human nature to create solutions, find better alternatives and meet the challenges ahead.

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2. Brennan, Troyen A.; Leape, Lucian L.; Laird, Nan M., et al. Incidence of adverse events and negligence in hospitalized patients: Results of the Harvard Medical Practice Study I. N Engl J Med. 324:370–376, 1991. See also; Leape, Lucian L.; Brennan, Troyen A.; Laird, Nan M., et al. The Nature of Adverse Events in Hospitalized Patients: Results of the Harvard Medical Practice Study II. N Engl J Med. 324(6):377–384, 1991. See also;. Thomas, Eric J.; Studdert, David M.; Burstin, Helen R., et al. Incidence and Types of Adverse Events and Negligent Care in Utah and Colorado. Med Care forthcoming Spring 2000.

3. American Hospital Association. Hospital Statistics. Chicago, Il. 1999. See also; Thomas, Eric J.; Studdert, David M.; Burstin, Helen R., et al. Incidence and Types of Adverse Events and Negligent Care in Utah and Colorado. Med Care forthcoming Spring 2000. see also; Thomas, Eric J.; Studdert, David M.; Newhouse, Joseph P.; et al. Costs of Medical Injuries in Utah and Colorado. Inquiry 36:255-264, 1999

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STATE OF KANSAS

EXECUTIVE DIRECTOR
LARRY FROELICH

BILL GRAVES
GOVERNOR

2000 KANSAS LEGISLATIVE SESSION
SENATE BILL No. 598
Senate Committee on Public Health and Welfare

Senator Sandy Praeger, Chairperson
Committee Members

I am Larry Froelich, Secretary for the Kansas Board of Pharmacy. Thank you for allowing me to testify on **SB 598** on behalf the Board of Pharmacy. I appear before the committee to show support in concept and offer any background information on the two changes to the Pharmacy Practice Act that appears in Senate Bill 598.

The changes involved are:

- Changing the determination of the pharmacy technician ratio from Statute to Regulation
- Registration of pharmacy technicians

The Kansas Federation of Chain Pharmacies approached the Board of Pharmacy at the January meeting regarding these two changes, a subgroup of the Kansas Chamber of Commerce and Industry. The Board agreed to support these two changes, however additional language regarding these changes that were discussed are not in the current proposal.

I sent forms to all the pharmacies in Kansas to list the names of the pharmacy technicians at each location, their social security number (as an identifier), their address, and whether they worked full or part-time. These forms were included in the renewal application with each pharmacy renewal. This was a way for us to determine the number of pharmacy technicians. Currently, we have close to 2,500 technician's names.

Senate Public Health & Welfare
Date: 2-21-00
Attachment No. 4

While the response was overwhelmingly positive, several pharmacies and pharmacy technicians would not allow the release of their social security numbers to the Board of Pharmacy. We were unable to determine what other number would be available to safeguard against the possibility of a pharmacy technician changing to another location, changing their name, address, and other variable information. An additional suggestion discussed, would be the requirement that fingerprints be provided along with their Employee Identification number. Current language within the bill does not address these problems.

The paperwork involved in registering this many more individuals with the office will require an expense of an additional office person. Although this would require a minimal data entry person, no charge to these individuals is being assessed. There is no fee amount mentioned within the current language, or whether this registration is an annual, biennial or what length of time for registration.

One other point is that there is also no mention of the Board's authority to discipline anyone not registered, those that give false information to register, or those that commit acts that should require some sort of restriction on their registration.

The Board of Pharmacy respectfully requests the Committee consider these changes before there is favorable passage of Senate Bill 598. Thank you for allowing me to present the Board's position. I will be glad to answer any questions from the Committee.

Session of 2000

Bd. of HA

Senate Public Health & Welfare
Date: 2-21-00
Attachment No. 5

SENATE BILL No. 527

By Committee on Judiciary

1-31

9 AN ACT concerning healing arts; relating to licensure of persons con-
10 victed of a felony; amending K.S.A. 1999 Supp. 65-2836 and repealing
11 the existing section.
12
13 *Be it enacted by the Legislature of the State of Kansas:*
14 Section 1. K.S.A. 1999 Supp. 65-2836 is hereby amended to read as
15 follows: 65-2836. A licensee's license may be revoked, suspended or lim-
16 ited, or the licensee may be publicly or privately censured, or an appli-
17 cation for a license or for reinstatement of a license may be denied upon
18 a finding of the existence of any of the following grounds:
19 (a) The licensee has committed fraud or misrepresentation in apply-
20 ing for or securing an original, renewal or reinstated license.
21 (b) The licensee has committed an act of unprofessional or dishon-
22 orable conduct or professional incompetency.
23 (c) The licensee has been convicted of a felony or class A misde-
24 meanor, whether or not related to the practice of the healing arts. *In the*
25 *case of a person who has been convicted of a felony who applies for an*
26 *original~~, renewal or reinstated license, an~~ application for a license shall*
27 *be denied unless a 2/3 majority of the board members present and voting*
28 *on such application determine by clear and convincing evidence that such*
29 *person will not pose a threat to the public in such person's capacity as a*
30 *licensee and that such person has been sufficiently rehabilitated to war-*
31 *rant the public trust.*
32 (d) The licensee has used fraudulent or false advertisements.
33 (e) The licensee is addicted to or has distributed intoxicating liquors
34 or drugs for any other than lawful purposes.
35 (f) The licensee has willfully or repeatedly violated this act, the phar-
36 macy act of the state of Kansas or the uniform controlled substances act,
37 or any rules and regulations adopted pursuant thereto, or any rules and

ADD: The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000 unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

ADD: and

DELETE:

ADD: or to reinstate a canceled license, the

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38 regulations of the secretary of health and environment which are relevant
39 to the practice of the healing arts.
40 (g) The licensee has unlawfully invaded the field of practice of any
41 branch of the healing arts in which the licensee is not licensed to practice.
42 (h) The licensee has engaged in the practice of the healing arts under
43 a false or assumed name, or the impersonation of another practitioner.

1 The provisions of this subsection relating to an assumed name shall not
2 apply to licensees practicing under a professional corporation or other
3 legal entity duly authorized to provide such professional services in the
4 state of Kansas.
5 (i) The licensee has the inability to practice ~~the branch of~~ the healing
6 arts ~~for which the licensee is licensed~~ with reasonable skill and safety to
7 patients by reason of illness, ~~alcoholism, excessive~~ use of drugs, controlled
8 substances~~, chemical or any other type of material or as a result of any~~
9 ~~mental or physical condition~~. In determining whether or not such inability
10 exists, the board, upon reasonable suspicion of such inability, shall have
11 authority to compel a licensee to submit to mental or physical examination
12 or drug screen, or any combination thereof, by such persons as the board
13 may designate. To determine whether reasonable suspicion of such ina-
14 bility exists, the investigative information shall be presented to the board
15 as a whole, to a review committee of professional peers of the licensee
16 established pursuant to K.S.A. 65-2840c and amendments thereto or to
17 a committee consisting of the officers of the board elected pursuant to
18 K.S.A. 65-2818 and amendments thereto and the executive director ap-
19 pointed pursuant to K.S.A. 65-2878 and amendments thereto ~~and the~~
20 determination shall be made by a majority vote of the entity which re-
21 viewed the investigative information. Information submitted to the board
22 as a whole or a review committee of peers or a committee of the officers
23 and executive director of the board and all reports, findings and other
24 records shall be confidential and not subject to discovery by or release to
25 any person or entity. The licensee shall submit to the board a release of
26 information authorizing the board to obtain a report of such examination

DELETE: (line 5)
DELETE: (line 6)
ADD: alcohol, or (line 7)
ADD: or condition (line 8)
DELETE: (line 9)

ADD: either in the course of an investigation or a disciplinary Proceeding (line 13)

DELETE: (line 19)
ADD: or to a presiding officer authorized pursuant to K.S.A. 75-514 and amendments thereto. The (line 20)

27 or drug screen, or both. A person affected by this subsection shall be
28 offered, at reasonable intervals, an opportunity to demonstrate that such
29 person can resume the competent practice of the healing arts with rea-
30 sonable skill and safety to patients. For the purpose of this subsection,
31 every person licensed to practice the healing arts and who shall accept
32 the privilege to practice the healing arts in this state by so practicing or
33 by the making and filing of an annual renewal to practice the healing arts
34 in this state shall be deemed to have consented to submit to a mental or
35 physical examination or a drug screen, or any combination thereof, when
36 directed in writing by the board and further to have waived all objections
37 to the admissibility of the testimony, drug screen or examination report
38 of the person conducting such examination or drug screen, or both, at
39 any proceeding or hearing before the board on the ground that such
40 testimony or examination or drug screen report constitutes a privileged
41 communication. In any proceeding by the board pursuant to the provi-
42 sions of this subsection, the record of such board proceedings involving
43 the mental and physical examination or drug screen, or any combination

1 thereof, shall not be used in any other administrative or judicial
2 proceeding.
3 (j) The licensee has had a license to practice the healing arts revoked,
4 suspended or limited, has been censured or has had other disciplinary
5 action taken, or an application for a license denied, by the proper licensing
6 authority of another state, territory, District of Columbia, or other coun-
7 try, a certified copy of the record of the action of the other jurisdiction
8 being conclusive evidence thereof.
9 (k) The licensee has violated any lawful rule and regulation promul-
10 gated by the board or violated any lawful order or directive of the board
11 previously entered by the board.
12 (l) The licensee has failed to report or reveal the knowledge required
13 to be reported or revealed under K.S.A. 65-28,122 and amendments
14 thereto.
15 (m) The licensee, if licensed to practice medicine and surgery, has

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7 breast tissue for which surgery is a recommended form of treatment, of
18 alternative methods of treatment ~~specified in the standardized summary~~
19 ~~supplied by the board. The standardized summary shall be given to each~~
20 ~~patient specified herein as soon as practicable and medically indicated~~
21 ~~following diagnosis, and this shall constitute compliance with the require-~~
22 ~~ments of this subsection. The board shall develop and distribute to per-~~
23 ~~sons licensed to practice medicine and surgery a standardized summary~~
24 ~~of the alternative methods of treatment known to the board at the time~~
25 ~~of distribution of the standardized summary, including surgical, radiolog-~~
26 ~~ical or chemotherapeutic treatments or combinations of treatments and~~
27 ~~the risks associated with each of these methods. Nothing in this subsection~~
28 ~~shall be construed or operate to empower or authorize the board to re-~~
29 ~~strict in any manner the right of a person licensed to practice medicine~~
30 ~~and surgery to recommend a method of treatment or to restrict in any~~
31 ~~manner a patient's right to select a method of treatment. The standard-~~
32 ~~ized summary shall not be construed as a recommendation by the board~~
33 ~~of any method of treatment. The preceding sentence or words having the~~
34 ~~same meaning shall be printed as a part of the standardized summary.~~
35 ~~The provisions of this subsection shall not be effective until the stan-~~
36 ~~dardized written summary provided for in this subsection is developed~~
37 ~~and printed and made available by the board to persons licensed by the~~
38 ~~board to practice medicine and surgery~~.
39 (n) The licensee has cheated on or attempted to subvert the validity
40 of the examination for a license.
41 (o) The licensee has been found to be mentally ill, disabled, not guilty
42 by reason of insanity, not guilty because the licensee suffers from a mental
43 disease or defect or incompetent to stand trial by a court of competent

DELETE:

ADD: recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances

1 jurisdiction.
2 (p) The licensee has prescribed, sold, administered, distributed or
3 given a controlled substance to any person for other than medically ac-
4 cepted or lawful purposes.
5 (q) The licensee has violated a federal law or regulation relating to

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this

12 section.
3 (y) The licensee has failed to maintain a policy of professional liability

1 insurance as required by K.S.A. 40-3402 or 40-3403a and amendments
2 thereto.
3 (z) The licensee has failed to pay the annual premium surcharge as
4 required by K.S.A. 40-3404 and amendments thereto.
5 (aa) The licensee has knowingly submitted any misleading, deceptive,
6 untrue or fraudulent representation on a claim form, bill or statement.
7 (bb) The licensee as the responsible physician for a physician's assis-
8 tant has failed to adequately direct and supervise the physician's assistant
9 in accordance with K.S.A. 65-2896 to 65-2897a, inclusive, and amend-
10 ments thereto, or rules and regulations adopted under such statutes.
11 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406
12 as established by any of the following:
13 (A) A copy of the record of criminal conviction or plea of guilty for a
14 felony in violation of K.S.A. 21-3406 and amendments thereto.
15 (B) A copy of the record of a judgment of contempt of court for
16 violating an injunction issued under K.S.A. 1999 Supp. 60-4404 and
17 amendments thereto.
18 (C) A copy of the record of a judgment assessing damages under
19 K.S.A. 1999 Supp. 60-4405 and amendments thereto.

ADD: New Sec. 2. K.S.A. 1999 Supp. 65-2811 is hereby amended to read as follows: 65-2811. (a) The board may issue a temporary permit to practice the appropriate branch of the healing arts to any person who has made proper application for a license by endorsement, has the required qualifications for such license and has paid the prescribed fees, and such permit, when issued, shall authorize the person receiving the permit to practice within the limits of the permit until the license is issued or denied by the board, but no more than one such temporary permit shall be issued to any one person without the approval of 2/3 of the members of the board.

(b) The board may issue a postgraduate permit to practice the appropriate branch of the healing arts to any person who is engaged in a full time, approved postgraduate training program; has made proper application for such postgraduate permit upon forms approved by the board; meets all qualifications of licensure, except the examinations required under K.S.A. 65-2873 and amendments thereto and postgraduate training, as re-required by this act; has paid the prescribed fees established by the board for such postgraduate permit; has passed such examinations in the basic and clinical sciences approved under rules and regulations adopted by the board; and, if the person is a graduate of a foreign medical school, has passed an examination given by the educational commission for foreign medical graduates.

(c) The postgraduate permit issued under subsection (b)~~, when issued, shall be valid for a period not to exceed 36 months and~~ shall authorize the person receiving the permit to practice the appropriate branch of the healing arts in the postgraduate training program while continuously so engaged but shall not authorize the person receiving the permit to engage in the private practice of the . . . .

20 Sec. ~~2~~ 3. K.S.A. 1999 Supp. 65-2836 ~~is~~ hereby repealed.
21 Sec. ~~3~~ 4. This act shall take effect and be in force from and after its
22 publication in the statute book.

ADD: 65-2811 and
ADD: are

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Session of 2000

SENATE BILL No. 527

AN ACT concerning healing arts; actions against licensees; temporary permits; amending K.S.A. 1999 Supp. 65-2811 and 65-2836, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1999 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. ***The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000 unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.*** *In the case of a person who has been convicted of a felony* ***and*** *who applies for an original*~~*, renewal or reinstated license an*~~ ***or to reinstate a canceled license, the*** *application shall be denied unless 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.*

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee has the inability to practice ~~**the branch of**~~ the healing arts ~~**for which the licensee is licensed**~~ with reasonable skill and safety to patients by reason of ***physical or mental*** illness ***or condition***, ~~**alcoholism, excessive**~~ ***or*** use of ***alcohol,*** drugs, ***or*** controlled substances~~;~~

~~**chemical or any other type of material or as a result of any mental or physical condition**~~. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate***, either in the course of an investigation or a disciplinary proceeding***. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c and amendments thereto*,* ~~or~~ to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818 and amendments thereto and the executive director appointed pursuant to K.S.A. 65-2878 and amendments thereto, ***or to a presiding officer authorized pursuant to K.S.A. 77-514 and amendments thereto***. ~~**and the**~~ ***The*** determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of an annual renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122 and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment ~~**specified in the standardized summary supplied by the board. The standardized summary shall be given to each patient specified herein as soon as practicable and medically indicated following diagnosis, and this shall constitute compliance with the requirements of this subsection.**~~

3

~~**The board shall develop and distribute to persons licensed to practice medicine and surgery a standardized summary of the alternative methods of treatment known to the board at the time of distribution of the standardized summary, including surgical, radiological or chemotherapeutic treatments or combinations of treatments and the risks associated with each of these methods. Nothing in this subsection shall be construed or operate to empower or authorize the board to restrict in any manner the right of a person licensed to practice medicine and surgery to recommend a method of treatment or to restrict in any manner a patient's right to select a method of treatment. The standardized summary shall not be construed as a recommendation by the board of any method of treatment. The preceding sentence or words having the same meaning shall be printed as a part of the standardized summary. The provisions of this subsection shall not be effective until the standardized written summary provided for in this subsection is developed and printed and made available by the board to persons licensed by the board to practice medicine and surgery**~~ ***recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.***

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto.

(z) The licensee has failed to pay the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the responsible physician for a physician's assistant has failed to adequately direct and supervise the physician's assistant in accordance with K.S.A. 65-2896 to 65-2897a, inclusive, and amendments thereto, or rules and regulations adopted under such statutes.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406 as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 1998 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 1998 Supp. 60-4405 and amendments thereto.

Sec. 2 K.S.A. 65-2811 is hereby amended to read as follows: 65-2811. (a) The board may issue a temporary permit to practice the appropriate branch of the healing arts to any person who has made proper application for a license by endorsement, has the required qualifications for such license and has paid the prescribed fees, and such permit, when issued, shall authorize the person receiving the permit to practice within the limits of the permit until the license is issued or denied by the board, but no more than one such temporary permit shall be issued to any one person without the approval of 2/3 of the members of the board.

(b) The board may issue a postgraduate permit to practice the appropriate branch of the healing arts to any person who is engaged in a full time, approved postgraduate training program; has made proper application for such postgraduate permit upon forms approved by the board; meets all qualifications of licensure, except the examinations required under K.S.A. 65-2873 and amendments thereto and postgraduate training, as required by this act; has paid the prescribed fees established by the board for such postgraduate permit; has passed such examinations in the basic and clinical sciences approved under rules and regulations adopted by the board; and, if the person is a graduate of a foreign medical school, has passed an examination given by the educational commission for foreign medical graduates.

(c) The postgraduate permit issued under subsection (b)~~, when issued, shall be valid for a period not to exceed 36 months and~~ **shall authorize the person receiving the permit to**

practice the appropriate branch of the healing arts in the postgraduate training program while continuously so engaged but shall not authorize the person receiving the permit to engage in the private practice of the healing arts.

(d) A postgraduate permit issued under subsection (b) shall be canceled if:

(1) The holder thereof ceases to be engaged in the postgraduate training program; or

(2) the holder thereof has engaged in the practice of the healing arts outside of the postgraduate training program.

Sec. ~~2~~ *3*. K.S.A. 1999 Supp. ***65-2811 and*** 65-2836 ~~is~~ ***are*** hereby repealed.

Sec. ~~3~~ ***4***. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 557

By Committee on Public Health and Welfare

2-2

Senate Public Health & Welfare
Date: 2-21-00
Attachment No. 6

Proposed Amendments

9 AN ACT relating to the Kansas state board of mortuary arts; regulating
10 crematories; amending K.S.A. 65-1723 and 65-1732 and K.S.A. 1999
11 Supp. 65-1727 and repealing the existing sections.
12
13 *Be it enacted by the Legislature of the State of Kansas:*
14 New Section 1. (a) Any person doing business, or any cemetery, fu-
15 neral establishment or branch establishment, corporation, partnership,
16 joint venture, voluntary organization or any other entity if licensed under
17 the authority of this act may erect, maintain and conduct a crematory and
18 provide the necessary appliances and facilities for the cremation of human
19 remains in accordance with the provisions of this act.

[Each crematory shall be under the personal supervision of a licensed funeral director or embalmer except such provision shall not apply to any cemetery owned crematory in existence on or before July 1, 2000.]

20 (b) A crematory authority shall be subject to all local, state and federal
21 health and environment protection requirements and shall obtain all nec-
22 essary licenses from the state board of mortuary arts.
23 (c) A crematory may be constructed on or adjacent to any cemetery,
24 in or adjacent to any funeral establishment or branch establishment or at
25 any other location consistent with local zoning regulations or state laws.
26 (d) All applications for licensure as a crematory authority shall be on
27 forms furnished and prescribed by the state board of mortuary arts.
28 (e) Applications for crematory authorities in existence prior to the
29 effective date of this act shall be provided to the state board of mortuary
30 arts with the following information:
31 (1) The full name and address, both residence and business, of the
32 applicant, if the applicant is an individual, the full name and address of
33 every member and the business, if the applicant is a partnership, the full
34 name and address of every member of the board of directors and the
35 business, if the applicant is an association, and the name and address of
36 every officer and director[if the applicant is a corporation];
37 (2) the address and location of the crematory;
38 (3) evidence confirming the date the cremation authority was
39 established;
40 (4) a description of the type of structure and equipment being used
41 in the operation of the crematory;
42 (5) copies of all current licenses and permits required for a crematory
43 to operate; ~~and~~

1 [(6)] any further information that the state board of mortuary arts rea-
2 sonably may require.
3 (f) Applications for new crematory authorities shall be submitted in
4 writing on forms provided by the state board of mortuary arts and shall
5 contain the following:
6 (1) The full name and address, both residence and business, of the
7 applicant, if the applicant is an individual, the full name and address of
8 every member and the business, if the applicant is a partnership, the full
9 name and address of every member of the board of directors and the
10 business, if the applicant is an association, and the name and address of
11 every officer and director;
12 (2) The address and location of the crematory;
13 (3) a description of the type of structure and equipment to be used
14 in the operation of the crematory;
15 (4) copies of all applications for and any licenses or permits issued
16 for a crematory to operate; [and]
17 [(5)] any further information that the state board of mortuary arts rea-
18 sonably may require.
19 (g) Each crematory authority shall submit a biennial renewal appli-
20 cation and report with the state board of mortuary arts, accompanied with
21 a fee fixed by the state board of mortuary arts under K.S.A. [1999 Supp.]
22 65-1727 and amendments thereto and shall be due and paid to the state
23 board of mortuary arts on or before the expiration date of such license.
24 The disposition of all funds collected under the provision of this act shall
25 be in accordance with the provisions of K.S.A. 65-1718 and amendments
26 thereto.
27 (h) Each crematory authority license shall expire every two years on
28 a date established by the state board of mortuary arts by duly adopted
29 rules and regulations.
30 (i) It is unlawful for any person who does not hold a crematory au-
31 thority license to operate, offer to operate, advertise or represent oneself
32 as operating a crematory.
33 New Sec. 2. Except as otherwise provided in this section, a crema-
34 tory authority shall not cremate human remains until it has received:
35 (1) A cremation authorization form signed by an authorizing agent.
36 The cremation authorization form shall be provided by the crematory
37 authority and shall contain, at a minimum, the following information:
38 (A) The identity of the human remains and the time and date of
39 death;
40 (B) the name of the funeral director or assistant funeral director and
41 the funeral establishment or branch establishment or the authorizing au-
42 thority if self motivated, that obtained the cremation authorization;
43 (C) notification as to whether the death occurred from a disease de-

(6) the name and license number of the funeral home director or embalmer in charge of the crematory; and

(7)

, if the applicant is a corporation

(5) the name and license number of the funeral director or embalmer in charge of the crematory; and

(6)

6-8

clared by the department of health and environment to be infectious, contagious, communicable or dangerous to the public health;

(D) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;

(E) authorization for the crematory authority to cremate the human remains;

(F) a representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;

(G) the name of the person authorized to receive the cremated remains from the crematory authority; and

(H) the signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form;

(2) a completed and executed coroner's permit to cremate, as provided in K.S.A. ~~1999 Supp.~~ 65-2426a and amendments thereto, indicating that the human remains are to be cremated.

New Sec. 3. (a) No body shall be cremated with a pacemaker or other potentially hazardous implant in place. The authorizing agent for the cremation of the human remains shall be responsible for informing the licensed funeral director, assistant funeral director or embalmer about a pacemaker or other potentially hazardous implant. The authorizing agent shall be ultimately responsible for ensuring that any pacemakers or hazardous implants are removed prior to cremation. Bodies with pacemakers or hazardous implants in the custody of a crematory authority shall have pacemakers or hazardous implants removed by an embalmer at a funeral establishment or branch establishment with an embalming preparation room unless the removal is to take place at a medical facility by the appropriate medical personnel.

(b) A crematory authority shall hold human remains, prior to their cremation, according to the following provisions of this subsection:

(1) Whenever a crematory authority is unable to cremate the human remains immediately upon taking custody thereof the crematory authority shall place the human remains in a refrigeration facility at 40 degrees fahrenheit or less, unless the human remains have been embalmed or store the human remains which shall be placed in a cremation container at a funeral establishment or branch establishment that is inspected by the state board of mortuary arts; and

(2) a crematory authority shall not be required to accept for holding a cremation container from which there is any evidence of leakage of body fluids from the human remains therein.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation,

1 being cremated or being removed from the cremation chamber.
2 (d) The unauthorized simultaneous cremation of human remains of
3 more than one adult person within the same cremation chamber is not
4 allowed or usually possible but it will never be performed even if possible
5 unless the crematory authority shall have received specific written au-
6 thorization to do so from all authorizing agents for the human remains to
7 be so cremated. The simultaneous cremation of the human remains of
8 one adult and one or more children will not be performed unless the
9 crematory authority shall have received specific written authorization to
10 do so from all authorizing agents for the human remains to be so cre-
11 mated. A written authorization shall exempt the crematory authority from
12 all liability for commingling of the product during the cremation process.
13 (e) Immediately prior to being placed within the cremation chamber
14 the identification of the human remains as indicated on the cremation
15 container shall be verified by the crematory authority and the identifi-
16 cation shall be removed from the cremation container and placed near
17 the cremation chamber control panel where it shall remain in place until
18 the cremation process is complete.
19 (f) Upon completion of the cremation and in so far as is possible all
20 of the recoverable residue of the cremation process shall be removed
21 from the cremation chamber. Insofar as possible all residual of the cre-
22 mation process shall then be separate from anything other than bone
23 fragments and then be processed so as to reduce them to an unidentifiable
24 particle. Anything other than the particles shall be removed from the
25 cremated residuals as far as possible and shall be disposed of by the
26 crematory authority.
27 (g) Cremated remains shall be packed according to the following pro-
28 visions of this subsection:
29 (1) The cremated remains with proper identification shall be placed
30 in a temporary container or urn. The temporary container or urn contents
31 shall be packed in clean packing materials and not be contaminated with
32 any other object unless specific written authorization has been received
33 from the authorizing agent or as provided in subsection (2) of this part;
34 (2) if the cremated remains will not fit within the dimensions of a
35 temporary container or urn, the remainder of the cremated remains shall
36 be returned to the authorizing agent or its representative in a separate
37 container attached together with the first container or urn with both being
38 marked as being together;
39 (3) when a temporary container is used to return the cremated re-
40 mains that container shall be placed in a suitable box and all box seams
41 taped closed to increase the security and integrity of that container. The
42 outside of the container shall be clearly identified with the name of the
43 cremation authority and an indication the container is a temporary con-

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1 tainer; and
2 (4) if the cremated remains are to be shipped the temporary con-
3 tainer or designated receptacle ordered by the authorizing agent shall be
4 packed securely in a suitable and sturdy container which is not fragile and
5 is sealed properly. Cremated remains shall be shipped only by a method
6 which has an internal tracing system available and which provides a re-
7 ceipt signed by the person accepting delivery.
8 New Sec. 4. (a) Any person signing a cremation authorization form
9 as an authorizing agent shall be deemed to warrant the truthfulness of
10 any facts set forth in the cremation authorization form including the iden-
11 tity of the deceased whose remains are sought to be cremated and that
12 person's authority to order such cremation. Any person signing a cre-
13 mation authorization form as an authorizing agent shall be personally and
14 individually liable for all damage occasioned thereby and all damage oc-
15 casioned thereby and resulting therefrom. A crematory authority and a
16 funeral director may rely upon the representations of the authorizing
17 agent in the cremation authorization form.
18 (b) A funeral director or assistant funeral director shall have the au-
19 thority to arrange the cremation of human remains upon the receipt of a
20 cremation authorization form signed by an authorizing agent. A crematory
21 authority shall have authority to cremate human remains upon the receipt
22 of a cremation authorization form signed by an authorizing agent. There
23 shall be no liability for a funeral director, assistant funeral director or
24 crematory authority that pursuant to such authorization arranges a cre-
25 mation, cremates human remains pursuant to such authorization or that
26 releases or disposes of the cremated remains pursuant to such
27 authorization.
28 (c) A funeral director or assistant funeral director that refuses to ar-
29 range a cremation and a crematory authority that refuses to accept a body
30 or to perform a cremation shall not be liable for refusing to accept a body
31 or to perform a cremation until they receive a court order or other suitable
32 confirmation that a dispute has been settled if:
33 (1) They are aware of any dispute concerning the cremation of human
34 remains; or
35 (2) they have a reasonable basis for questioning any of the represen-
36 tations made by the authorizing agent; or
37 (3) for any other lawful reason.
38 New Sec. 5. If an authorizing agent informs the funeral director or
39 assistant funeral director and the cremation authority on the cremation
40 authorization form of the presence of a pacemaker in the human remains
41 then the funeral director or assistant funeral director also shall be re-
42 sponsible for ensuring that all necessary steps have been taken to remove
43 the pacemaker before delivering the human remains to the crematory.

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1 Should the funeral director or assistant funeral director who delivers the
2 human remains to the crematory fail to ensure that the pacemaker has
3 been removed from the human remains pursuant to subsection (b) of
4 section 3 and amendments thereto, prior to delivery and should the hu-
5 man remains be cremated with the pacemaker, then the funeral director
6 or assistant funeral director who delivered the human remains to the
7 crematory shall also be liable for all resulting damages along with the
8 authorizing agent.
9 New Sec. 6. (a) The state board of mortuary arts may adopt, prom-
10 ulgate, amend and repeal such reasonable regulations as may be consis-
11 tent with this act governing the cremation of human beings. Such regu-
12 lations specifically shall include the conditions under which human
13 remains of persons dying from an infectious, contagious, communicable
14 or dangerous disease can be transported from any portion of the state to
15 a crematory for the purpose of cremation and minimal standards of san-
16 itation, required equipment and fire protection for all crematories which
17 the state board of mortuary arts may deem necessary for the protection
18 of the public.

rules and

19 (b) A crematory authority may enact reasonable rules and regulations
20 not inconsistent with this act for the management and operation of a
21 crematory, the types of cremation containers it will accept, authorization
22 forms required, witnesses to a cremation and similar provisions. Nothing
23 in this provision shall prevent a crematory authority from enacting rules
24 and regulations which are more stringent than the provision contained in
25 this act.
26 (c) Denial, suspension or revocation of license or censure of a li-
27 censee shall be based on the following violations of this act as follows:
28 (1) Maintenance or operation of a building or structure within the
29 state of Kansas as a crematory in violation of the provisions of this act or
30 the rules and regulations of the state board of mortuary arts adopted
31 pursuant thereto is hereby declared to be a public nuisance and may be
32 abated as such as provided by law;
33 (2) holding oneself out to the public as a crematory authority without
34 being licensed under this act or performing a cremation without a cre-
35 mation authorization form signed by an authorizing agent is hereby de-
36 clared to be a class A nonperson misdemeanor;
37 (3) signing a cremation authorization form with the actual knowledge
38 that the form contains false or incorrect information is hereby declared
39 to be a class A nonperson misdemeanor; or
40 (4) a violation of any other provision of this act is hereby declared to
41 be a class A nonperson misdemeanor.
42 New Sec. 7. (a) This act shall be construed and interpreted as a com-
43 prehensive cremation statute and the provisions of this act shall take prec-

1 edence over any existing laws that govern dead human bodies and human
2 remains that do not specifically address cremation.
3 (b) A crematory authority shall be permitted to employ a licensed
4 funeral director for the purpose of arranging cremations with the general
5 public, transporting human remains to the crematory and processing all
6 necessary paperwork. No aspect of this provision shall be construed to
7 require a licensed funeral director to perform any functions not otherwise
8 required by law to be performed by a licensed funeral director.
9 Sec. 8. K.S.A. 65-1723 is hereby amended to read as follows: 65-
10 1723. The state board of mortuary arts shall have the power to adopt and
11 enforce all necessary rules and regulations not inconsistent with this act
12 for examining and licensing funeral directors and assistant funeral direc-
13 tors, issuing licenses by reciprocity, establishing ethical standards and
14 practices and regulating the general practice of funeral directing *and cre-*
15 *mation*. The board shall have the power to inspect funeral establishments,
16 including branch establishments *and crematories*, and to require that fu-
17 neral establishments, including branch establishments *and crematories*,
18 be maintained, operated and kept in a clean and sanitary condition in
19 accordance with the provisions of this act, rules and regulations of the
20 board and the applicable rules and regulations of the secretary of health
21 and environment. If a person applies for a funeral director's license for
22 the purpose of opening a new funeral establishment or branch establish-
23 ment, or for the purpose of operating a funeral establishment ~~or~~, branch
24 establishment *or crematory* which has not been heretofore inspected and
25 approved by the board, or if a licensed funeral director makes structural
26 alterations or additions to an existing funeral establishment ~~or~~, branch
27 establishment *or crematory*, the board shall have the right to withhold
28 the issuance or renewal of any license until any such funeral establishment
29 ~~or~~, branch establishment *or crematory* has been inspected and approved
30 by the board or its representatives. All references herein to "board" shall
31 refer to the state board of mortuary arts of the state of Kansas unless
32 otherwise clearly indicated. The board is hereby authorized and empow-
33 ered to do all things necessary and proper in the administration of all the
34 provisions of this act. Members of the state board of mortuary arts shall
35 be allowed the same fees and expenses as are allowed for administering
36 the embalmers' license law.
37 Sec. 9. K.S.A. 65-1732 is hereby amended to read as follows: 65-
38 1732. With respect to the cremation of dead bodies, as such term is
39 defined in subsection ~~(4)~~ *(5)* of K.S.A. ~~1999 Supp.~~ 65-2401 and amend-
40 ments thereto, if after a period of ~~120~~ *90* days from the time of cremation
41 the cremated remains have not been claimed, the funeral establishment
42 may dispose of the cremated remains: (a) If the funeral establishment has
43 sent by certified mail, return receipt requested, at least 30 days prior to

the end of such period of time to the last known address of the ~~responsible person who directed and provided for the method of final disposition of the dead human remains~~ *authorizing agent* a notice that such remains will be disposed of in accordance with the provisions of this section unless claimed prior to the end of the ~~one-hundred-twenty-day~~ *90-day* period of time; ~~and~~ (b) if the remains have not been claimed prior to the end of such period of time. Such disposal shall include *burial by* placing the remains in a *church or* cemetery scatter garden or pond, or *or placing them in a* church columbarium or otherwise disposing of the remains as provided by rule and regulation of the board of mortuary arts*; and (c) this disposition may include the commingling of the cremated remains with other cremated remains and thus the cremated remains would not be recoverable.*

Sec. 10. K.S.A. 1999 Supp. 65-1727 is hereby amended to read as follows: 65-1727. (a) On or before October 15 of each year, the state board of mortuary arts shall determine the amount of funds that will be required during the next ensuing two years to properly administer the laws which the board is directed to enforce and administer under the provisions of article 17 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof and supplemental thereto, and by rules and regulations shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

Embalmers examination fee, not more than	$~~200~~ *300*
Embalmers reciprocity application fee, not more than	~~300~~ *400*
Funeral directors examination fee, not more than	~~200~~ *300*
Funeral directors reciprocity application fee, not more than	~~300~~ *400*
Embalmers/funeral directors reciprocity application fee, not more than	*400*
Assistant funeral directors application fee, not more than	~~100~~ *200*
Embalmers license and renewal fee, not more than	~~150~~ *250*
Funeral directors license and renewal fee, not more than	~~250~~ *350*
Assistant funeral directors license and renewal fee, not more than	~~200~~ *300*
Apprentice embalmers registration fee, not more than	~~100~~ *150*
Funeral establishment license fee, not more than	~~500~~ *800*
Branch establishment license fee, not more than	~~500~~ *800*
Crematory license fee, not more than	*800*
Funeral establishment/crematory license fee, not more than	*1,000*
Branch establishment/crematory license fee, not more than	*1,000*
Duplicate licenses	20
Rulebooks	20
Continuing education program sponsor applications	25
Continuing education program licensee applications	25

At least 30 days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee

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1 therefor.
2 (b) The fees established by the board under this section immediately
3 prior to the effective date of this act shall continue in effect until such
4 fees are fixed by the board by rules and regulations as provided in this
5 section.
6 (c) Fees paid to the board are not refundable.
7 New Sec. 11. (a) The ~~individual~~ [funeral director or embalmer] in charge of a crematory, as defined
8 by section 12 and amendments thereto, located or doing business within
9 the state shall apply for and obtain a crematory license, as appropriate,
10 from the state board of mortuary arts for each location within the state
11 of such crematory.
12 (b) An application for a new license is required if the crematory
13 changes ownership, name or location.
14 (c) The crematory license fee shall be fixed by the state board of
15 mortuary arts under K.S.A. ~~1999 Supp.~~ 65-1727 and amendments thereto,
16 and shall be due and paid to the state board of mortuary arts on or before
17 the expiration date of such license. The disposition of all funds collected
18 under the provision of this act shall be in accordance with the provisions
19 of K.S.A. 65-1718 and amendments thereto.
20 (d) Each crematory license shall expire every two years on a date
21 established by the state board of mortuary arts by duly adopted rules and
22 regulations.
23 (e) It is unlawful for any person who does not hold a crematory li-
24 cense to operate, offer to operate, advertise or represent oneself as op-
25 erating a crematory.
26 (f) The Kansas university medical center shall be exempt from this
27 statute for the purpose of cremating remains donated for dissecting, dem-
28 onstrating or teaching purposes.
29 New Sec. 12. (a) A "crematory," as the term is used herein, is a
30 business premises that houses the cremation chamber where dead human
31 bodies are cremated. A crematory shall be maintained at a fixed and
32 specific street address. The cremation chamber shall be clearly identified
33 by signs on all entrance doors, shall be separate from any merchandise
34 display room, chapel or visitation rooms and shall not be a part of any
35 living quarters.
36 New Sec. 13. The state board of mortuary arts shall adopt rules and
37 regulations for the administration of this act.
38 New Sec. 14. It shall be unlawful for any officer or agent of any
39 crematory required to pay the cremation license fee authorized by the
40 provision of this act to fail, neglect or refuse to pay such fee. Any officer
41 or agent of such crematory who fails, neglects or refuses to pay such fee
42 shall be guilty of a class B misdemeanor.
43 New Sec. 15. (a) The following persons in order of priority stated

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1 may order any lawful manner of final disposition of a decedent's remains,
2 including burial, cremation, entombment or anatomical donation:
3 (1) The agent for health care decisions established by a durable power
4 of attorney for health care decisions pursuant to K.S.A. 58-625, *et seq.*,
5 and amendments thereto, if ~~any~~ such power of attorney conveys to the
6 agent the authority to make decisions concerning disposition of the de-
7 ceased's body;
8 (2) the spouse of the decedent; or
9 (3) the decedent's surviving adult children. If there is more than one
10 adult child, any adult child who confirms in writing ~~that~~ all other adult
11 children ~~do not object~~ may ~~serve as the authorizing agent~~ unless the
12 crematory authority receives written objection to the ~~cremation~~ from an-
13 other adult child;
14 (4) the decedent's surviving parents;
15 (5) the persons in the next degree of kinship under the laws of de-
16 scent and distribution to inherit the estate of the deceased. If there is
17 more than one person of the same degree any person of that degree may
18 direct the manner of disposition;
19 (6) a guardian of the person of the decedent at the time of such
20 person's death;
21 (7) the personal representative of the deceased; or
22 (8) ~~in accordance with K.S.A. 1999 Supp. 22a-215 and amendments~~
23 ~~thereto~~ in the case of indigents or any other ~~individual~~ whose final dis-
24 position is the responsibility of the state or county.
25 (b) A funeral director, funeral establishment or crematory shall not
26 be subject to criminal prosecution or civil liability for carrying out the
27 otherwise lawful instructions of ~~the decedent or~~ the person or persons
28 under subsection (a) if the funeral director reasonably believes such per-
29 son is entitled to control final disposition.
30 Sec. 16. K.S.A. 65-1723 and 65-1732 and K.S.A. 1999 Supp. 65-1727
31 are hereby repealed.
32 Sec. 17. This act shall take effect and be in force from and after
33 January 1, 2001, and its publication in the statute book.

[the notification of

[direct the manner of disposition

[funeral establishment or

[manner of disposition

[individuals

[, the public official charged with arranging the final dispostion pursuant to K.S.A. 22a-215, and amendments thereto