

## MINUTES OF THE SENATE WAYS &amp; MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on March 6, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD  
 Rae Anne Davis, KS Legislative Research Department  
 Debra Hollon, KS Legislative Research Department  
 Norman Furse, Revisor of Statutes  
 Michael Corrigan, Asst. Revisor of Statutes  
 Judy Bromich, Administrative Assistant to the Chairman  
 Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Dr. Bill Wolff, Associate Director, Legislative Research Department

Others attending: See attached list

Senator Jordan, as Chairman of the Fee Boards Subcommittee, stated that this is the "off" year so not all budgets were reviewed. Copies of the FY 2001 subcommittee reports on the following fee boards were distributed and reviewed by Senator Jordan: **State Bank Commissioner, Behavioral Sciences Regulatory Board, Board of Cosmetology, Kansas Dental Board, Board of Mortuary Arts, Board of Nursing, Board of Pharmacy, and the Board of Veterinary Examiners** (Attachment 1).

Senator Jordan told members that the Division of Consumer and Mortgage Lending had been consolidated under the Bank Commissioner and the subcommittee recommended 2 FTE positions and salaries and wages from the agency's fee fund to address audit concerns.

There was some discussion about the expenditure of Kansas Savings Incentive Program Fund monies in the fee agencies. Members questioned why agencies did not reduce fees if their balances were so large.

In answer to a question regarding the disciplinary procedure reviewed by the Board of Nursing subcommittee, it was noted that the problem appears to be one of numbers rather than procedure.

Senator Salisbury moved, Senator Jordan seconded, that the subcommittee report be amended to include language to identify within all the fee agencies those which have created a savings incentive fund and the balances in each so that the Legislature can review the policy. The motion to amend carried on a voice vote.

It was moved by Senator Feleciano and seconded by Senator Jordan that the FY 2001 subcommittee reports as amended be adopted. The motion carried on a voice vote.

Senator Morris moved, Senator Salmans seconded that the minutes of the February 29 and March 1 meetings be approved. The motion carried on a voice vote.

### **HB 2660: Claims against the State**

Dr. Bill Wolff, Associate Director of the Kansas Legislative Research Department, reviewed the recommendations for payment of claims by the Joint Committee on Special Claims Against the State as amended by the House Committee.

In answer to a question, Dr. Wolff stated that the \$40,002.84 on line 31, page 4 of the bill was submitted

## CONTINUATION SHEET

### SENATE WAYS & MEANS COMMITTEE MINUTES

by a highway construction company for all fuel non-highway use which would normally have been submitted during the year.

In answer to Senator Morris' question about Sec. 9, Dr. Wolff stated that the statute cited directs the state to reimburse the watershed district for part of the benefits that extend beyond the district and are paid for by local tax dollars. He added that the reimbursement is subject to appropriations and the Legislature has not made this recommendation over the last couple of years.

Committee members discussed at length Sec. 12.(a), the original Joint Committee recommendation and the House Committee's amendment regarding the claim of Dr. Stan Naramore. Dr. Wolff reviewed the statutory purpose of the Health Care Stabilization Fund. The Chairman asked that the Committee consider two questions in making a recommendation regarding the Naramore claim:

- Do you wish to pay?
- If so, how much and from what funding source?

The Chairman noted that he had received letters from the Assistant Attorney General (Attachment 2) and the Executive Director of the Health Care Stabilization Fund (Attachment 3). He stated that members may have received other letters; copies of those that were brought to Committee or mailed to individual members of the Committee are included herein as Attachments 4, 5, 6, 7, & 8.

Members asked questions of Mr. Jerry Slaughter, lobbyist for the Kansas Medical Society, who indicated that it was the position of the Medical Society that payment should not be made from the Health Care Stabilization Fee Fund (Attachment 4).

Mr. John Bork, Assistant Attorney General, asked members to point to a time when his office was wrong in the pursuit of this case. He stated that if the state decides to pay this claim, it should be because the Office of the Attorney General was wrong. Senator Salisbury noted that she had, until this point, focused on the final disposition of this case rather than the state's obligation. In response to Senator Lawrence, Mr. Bork stated that the initial complaint was from the Hospital administrator to the Board of Healing Arts (Attachment 2).

Lawrence Buening, Executive Director of the Kansas Board of Healing Arts, stated that the Board of Healing Arts was not involved in the prosecution or incarceration of Dr. Naramore. In answer to a question, he stated that he believed the Cheyenne County Attorney contacted either the Board or the Attorney General, but the Board's records were not clear on that issue (Attachment 5).

Mr. Ron Hein of Hein and Weir, Chartered, Attorneys-At-Law, reviewed some of the points at which he, as a representative of Dr. Naramore, believed that the Attorney General's Office should have been aware that Dr. Naramore was not guilty. He stated that the basis for this claim was that the Attorney General had not allowed the Board of Healing Arts to operate as it should have. He told the Committee that he could find no evidence to support the Attorney General's statement that the investigation began with a referral from the Board of Healing Arts (Attachment 6).

The Chairman asked that members have proposed amendments ready for the March 7 meeting at which time the Committee would vote on **HB 2660**. He adjourned the meeting at 12:10 p.m.

## SENATE WAYS & MEANS COMMITTEE GUEST LIST

DATE: March 6, 2000

NAME	REPRESENTING
Bill Brady	Ks Gov't Consulting
Nack Smith	Ks Bd of Mortuary Arts
<del>Edy SAUWATER</del>	<del>Ks MEDICAL SOCIETY</del>
Chrys Collins	Ks Medical Society
Kevin Glendening	OSBC
Franklin Nelson	OSBC
Wesley Howell	OSBC
Diane Glyn	KSBW
Mary Bilebaez	KS BN
Maria Schromp	BSRB
Phyllis Gilmore	BSRB
Lion Amundson	KDOC
Chip Wheeler	Osteopathic Assn.
STAN NARAMORE	DR. NARAMORE
Toban Hatchins	Dr Naramore
Julie Heon	Dr. Naramore
LARRY FROELICH	BOARD of PHARMACY
ARON RIEHL	Ks O-STEED. ASSN
Julie Thomas	DOB
Pam Flock	Stephanie Schmidt





## SUBCOMMITTEE REPORT

**Agency:** Biennial Budget Agencies      **Bill No.** 639      **Bill Sec.** Various  
**Analyst:** Various      **Analysis Pg. No.** 1634      **Budget Page No.** 505

	Revised Agency Est. FY 2000	Gov. Rec. FY 2000	Senate Subcommittee Adjustments	Revised Agency Est. FY 2001	Gov. Rec. FY 2001	Senate Subcommittee Adjustments
<b>Financial Institutions</b>						
<b>Regulatory Agencies</b>						
Bank Commissioner, State*	\$ 4,232,730	\$ 4,211,142	0	\$ 4,469,287	\$ 4,278,537	156,759
Consumer Credit Commissioner*	--	--	--	--	--	--
Credit Unions, State Dept. of	743,367	743,367	0	763,272	763,272	0
Securities Commissioner	1,923,834	1,923,834	0	1,963,405	1,963,405	0
<b>TOTAL</b>	<b>\$ 6,899,931</b>	<b>\$ 6,878,343</b>	<b>0</b>	<b>\$ 7,195,964</b>	<b>\$ 7,005,214</b>	<b>156,759</b>

**Occupational and  
Professional Licensing  
Boards**

Abstracters Board of Examiners	\$ 19,579	\$ 19,579	0	\$ 19,867	\$ 19,867	0
Accountancy, Board of	177,646	177,646	0	184,836	184,836	0
Barbering, Board of	122,049	122,049	0	119,012	119,012	0
Behavioral Sciences Regulatory	465,451	430,504	0	439,121	424,641	0
Cosmetology, Board of	707,269	693,879	0	745,827	697,772	13,000
Dental, Kansas Board	306,527	306,327	0	298,179	298,179	0
Healing Arts, Board of	1,991,315	1,991,315	0	1,911,329	1,911,329	0
Hearing Aid Examiners, Board	17,910	17,910	0	20,573	20,573	0
Mortuary Arts, Board of	189,702	189,702	0	196,899	196,899	0
Nursing, Board of	1,060,225	1,060,225	0	1,088,194	1,088,194	0
Optometry Examiners, Board of	72,705	72,705	0	74,510	74,510	0
Pharmacy, State Board of	513,968	513,968	0	525,228	525,228	0
Real Estate Appraisal Board	193,445	193,445	0	197,953	197,953	0
Real Estate Commission	655,926	655,926	0	733,690	733,690	0
Technical Professions, Board of	489,101	489,101	0	518,462	518,462	0
Veterinary Examiners, Board of	225,660	225,660	0	229,065	229,065	0
<b>TOTAL</b>	<b>\$ 7,208,478</b>	<b>\$ 7,159,941</b>	<b>0</b>	<b>\$ 7,302,745</b>	<b>\$ 7,240,210</b>	<b>13,000</b>

**Total Expenditures**      \$ 14,108,409      \$ 14,038,284      0      \$ 14,498,709      \$ 14,245,424      169,759

FTE Positions      223.0      222.0      0.0      227.0      223.0      2.0

\* Consumer Credit Commissioner merged into the Bank Commission at the end of FY 1999.

Senate Ways and Means Committee

Date *March 6, 2000*

Attachment #

*1*

## Agency Estimate/Governor's Recommendation

### All Agencies

Although funding for these agencies has already been authorized by the Legislature for FY 2000 and 2001, the law allows agencies to request adjustments to the approved expenditure limitations. Only agencies requesting adjustments to their previously approved budgets for FY 2000 and 2001 are discussed below. All adjustments made by the Governor which appear in the table above but are not discussed in the paragraphs below are due to health insurance rates, unclassified merit increases, classified step movement, longevity payments, and retirement reductions.

### Financial Institutions Regulatory Agencies

#### Bank Commissioner, State

*FY 2001.* The agency requests 2.0 FTE positions, a secretary and a financial examiner, and additional expenditure authority of \$108,624 to fund these positions. The agency also requests \$27,437 for expenditures related to the newly merged consumer credit regulation function. The Governor does not recommend these items. For salaries and wages, the Governor recommends a reduction of \$61,425 for shrinkage and recalculating fringe benefits.

### Senate Subcommittee Recommendation

The Subcommittee concurs with the recommendation of the Governor with the following comments and exceptions:

1. Add 2.0 FTE positions and \$108,624 from the agency's fee fund for salaries and wages. The Subcommittee finds that these positions are necessary for the operation of the new Division of Consumer and Mortgage Lending. The Subcommittee notes that one of these positions will replace an employee already transferred to the Division of Consumer and Mortgage Lending from another Division.
2. Add \$27,437 from the agency's fee fund for other operating expenditures necessary for the operation of the new Division of Consumer and Mortgage Lending. Several items of expenditure were not adequately funded prior to consolidation of the Consumer Credit Commissioner.

3. Add \$20,698 from the agency's fee fund to eliminate shrinkage for the Division of Consumer and Mortgage Lending. The Subcommittee notes that eliminating this shrinkage is necessary for the agency to aggressively address the backlog of audits of consumer lenders.
4. The Subcommittee concurs with an estimate by the Bank Commissioner staff that nine financial examiners would be necessary to audit consumer lenders once every two years. The Subcommittee endorses that objective and notes that with the new financial examiner approved in item (1) above and with the filling of one position currently vacant, the Division will have six financial examiners and should be able to begin the process of establishing an audit cycle. The Subcommittee wishes to flag this staffing as deserving of special attention in future budget cycles.
5. The agency reported difficulty in retaining financial examiners on its staff. The Subcommittee notes the resulting high turnover and related recruitment and training costs and suggests that the agency requests a classification study of the financial examiner positions. In arriving at this conclusion, the Subcommittee recalled similar reports from other agencies that employ financial examiners.

## **Occupational and Professional Licensing Boards**

### **Behavioral Sciences Regulatory Board**

*FY 2001.* The agency request is \$39,765 (10 percent) more than the amount approved by the 1999 Legislature. The increase reflects the addition of 1.0 FTE position. The Governor recommends \$424,641 for FY 2001, \$14,480 (3.3 percent) less than the agency request. The Governor concurs with the enhancement request for \$25,105 to fund the 1.0 FTE Secretary I position, but does not recommend the enhancement of \$14,480 for other operating expenditures.

### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the Governor's recommendation with the following comments and observations:

1. The Subcommittee recommends the agency use KSIP money to supply the requested \$6,215 for bonuses in FY 2001.
2. The Subcommittee recommends authority for the agency to spend no more than \$500 for official hospitality.

3. The Subcommittee notes that the agency has made great progress in its Y2K compliance, going from an F to a C rating with the help of Don Heiman and DISC.
4. The Subcommittee notes that the agency carries an unusually high fee fund balance - 119 percent of expenditures under the Governor's recommendation. The high fee balance is justified by the nationwide trend in the health care industry for disciplined health care workers to fight any disciplinary action because of the threat to their livelihood. Even if a disciplinary claim is settled without a hearing between the health care worker and the regulatory board, managed care companies consider the worker disciplined and no longer eligible to provide services. The threat to the worker's livelihood drives them to pursue litigation against the regulatory board that can often be costly and time consuming. Regulatory boards nationwide have begun to maintain high fee fund balances to prepare for this type of litigation. The agency is anticipating 2-3 legal actions in the near future.
5. The Subcommittee requests the agency review its fee structure and report back to the Subcommittee by omnibus.
6. The Subcommittee notes the agency progress on licensure applications and resolution of complaints.

### Complaints by Fiscal Year

<u>Fiscal Year</u>	<u>Total Number of Complaints Received</u>	<u>Complaints Pending Investigation from Fiscal Year</u>	<u>Number of Cases with Current Activity</u>	<u>Number of Closed Cases</u>
1997	27	0	0	27
1998	24	10	5	12 (2 pending hearing)
1999	36	31	3	5
2000	46	28	11	17 (1 review by AG pending)



## Fee Fund Analysis

Resource Estimate	Actual FY 1999	Agency Estimate FY 2000	Gov. Rec. FY 2000	Agency Request FY 2001	Gov. Rec. FY 2001
Beginning Balance	\$ 344,468	\$ 386,547	\$ 386,547	\$ 396,096	\$ 431,043
Net Receipts	415,709	475,000	475,000	499,000	499,000
Total Funds Available	\$ 760,177	\$ 861,547	\$ 861,547	\$ 895,096	\$ 930,043
Less: Expenditures	373,630	465,451	430,504	439,121	424,641
Ending Balance	\$ 386,547	\$ 396,096	\$ 431,043	\$ 455,975	\$ 505,402

### Cosmetology, Board of

*FY 2001.* The Board of Cosmetology requests an expenditure limitation increase of \$48,055 to fund 1.0 new FTE position (\$26,335 including benefits) for enforcement of cosmetology laws, rules, and regulations as well as computer equipment and office furniture for the new position (\$3,294). The remainder of the request (\$18,426) is to fund salary bonuses, professional development, and technology purchases and is to be funded through the Board's KSIP account. The Governor does not recommend this request.

### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the Governor's recommendation with the following adjustment:

1. Add \$13,000 to be funded through the agency's Kansas Savings Incentive Program Fund. A 1997 Post Audit Report cited deficiencies in the areas of facility inspection and regulatory enforcement. The KSIP expenditure would allow the agency to send its five inspectors for training (\$5,000) as well as purchase palm unit computers for each of those inspectors (\$3,000). The remaining \$5,000 would be used for salary bonuses for the entire staff of 12.0 FTE positions.

### Dental Board, Kansas

*FY 2001.* The agency's request is \$40,000 (15.5 percent) more than the amount approved by the 1999 Legislature. The increase is for an additional Dental Inspector contractual position of \$35,000, a continuation from the previous year's request, and \$5,000 for the new administrative director's salary. The Governor recommends this request.

### **Senate Subcommittee Recommendation**

The Senate Subcommittee concurs with the Governor's recommendation for FY 2001, with the following comment:

1. The Subcommittee notes that the fee fund ending balance for FY 2001 is \$187,576, which is 62.9 percent of total operating expenditures of \$298,179, as compared to the FY 2000 fee fund ending balance of \$133,755, which was 43.6 percent of total operating expenditures, and the FY 1999 balance of \$288,282, or 126.1 percent. The Subcommittee heard testimony from the agency that the fluctuation in the amounts of the fee fund ending balances from one year to the next are caused by dental hygienists renewing licences of \$100 one year and dentists renewing licenses of \$200 the next year.

### **Mortuary Arts, Board of**

*FY 2001.* The total operating budget for FY 2001 totals \$196,899. This is an increase of \$7,197 or 3.8 percent above FY 2000 amounts. The Governor recommends this request.

### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the Governor's recommendation.

### **Board of Nursing**

*FY 2001.* The agency estimate is no change from the amount approved by the 1999 Legislature. The Governor concurs with the agency request.

### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the Governor's recommendation with the following comments and observations:

1. The Subcommittee notes the disciplinary procedure for the agency is as follows:
  - a. Complaint is filed by anyone.
  - b. Investigated by the agency.

- c. The case goes to the investigative committee of three board members and the committee decides if the case should go to hearing or be referred directly to the impaired provider program.
  - d. If it goes to hearing - the file is transferred to the Assistant Attorney General and it is up to the Assistant Attorney General file a petition for the hearing. This is an administrative action.
  - e. If it is referred directly to the impaired provider program—Kansas Nurse Assistance Program (KNAP)—refers disciplined nurses out for counseling and education. KNAP monitors them with random drug screens and collects AA and NA attendance monthly and proof that the person is attending counseling. Nurses pay for drug screens and treatment.
  - f. During the treatment period the nurse is under probation.
2. The Senate Subcommittee notes the agency licensure process has improved as the new computer system has been implemented, decreasing processing time for licenses from 3 to 4 days to 1.
  3. The Senate Subcommittee notes the improvement in processing time for disciplinary cases reflected in the following table:

**Disciplinary Cases Pending By Calendar Year**

Year Case Originated	12/1997	12/1998	12/1999	2/2000
1991	0	1*	0	0
1992	0	0	0	0
1993	2*	0	0	0
1994	10*	4*	0	0
1995	42	20	0	0
1996	63	18	3*	1
1997	289	32	6	1
1998		262	24	20
1999			399	419
2000				30
<b>TOTAL</b>	<u>406</u>	<u>337</u>	<u>432</u>	<u>471</u>

\* Cases re-opened.

## Fee Fund Analysis

Resource Estimate	Agency Request FY 2001	Gov. Rec. FY 2001
Beginning Balance	\$ 614,758	\$ 614,758
Net Receipts	976,675	976,675
Total Funds Available	\$ 1,591,433	\$ 1,591,433
Less: Expenditures	1,087,944*	1,087,944*
Ending Balance	<u>\$ 503,489</u>	<u>\$ 503,489</u>
Ending Balance as Percentage of Expenditures	46.3%	46.3%

\* The \$250 balance of expenditure will be paid through the Educational Conference Fund.

### Pharmacy, Board of

*FY 2001.* The total operating budget for FY 2001 totals \$525,228. This is an increase of \$11,260 or 2.2 percent above FY 2000 amounts. The Governor recommends this request.

The Senate Subcommittee concurs with the Governor's recommendations with the following observations:

1. The Senate Subcommittee notes its concerns as to the policies and procedures relating to changes in job classes and pay grade assignments. During the 1999 Legislative Session, the Senate Subcommittee recommended Pharmacy Inspectors be moved from pay grade 30 to 33 and the appropriate funding was provided for the recommended upgrade in S.B. 325 (which was subsequently signed by the Governor). This upgrade, however, has not been completed by the Division of Personnel Services. According to K.S.A. 75-2938 and K.A.R. 1-5-4, the Director of Personnel Services (DPS) is responsible for assigning each position in the classified service, and consults with the heads of state agencies and the Director of the Budget in creating or modifying job classes. Each class change is then approved or modified by the Governor and takes effect when an Executive Order is signed. According to the Division of the Budget, the Director of DPS informed the Division of the Budget that the positions did not meet the qualifications for an update. Therefore, DPS would take no action and an Executive Order would not be requested.

While the Subcommittee recognizes the authority of DPS as it relates to position classifications, the Subcommittee is concerned that the intent of the Legislature be given due consideration in the process. The Subcommittee recommends an interim committee be appointed to review and address issues regarding creation or modification of position classifications and the appropriate role of the Legislature in that process.



### **Real Estate Commission**

*FY 2001.* The agency requests additional expenditure authority of \$32,464 for software and hardware enhancements. Total project costs of \$68,952 would be financed with \$5,555 of approved appropriations for computer enhancements, \$30,933 of KSIP, and the \$32,464 of new authority.

### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the recommendation of the Governor.

### **Veterinary Examiners, Board of**

*FY 2001.* The Board of Veterinary Examiners requests 1.0 new FTE Attorney position. The salary and related expenses for this position would be shared by the agency and the Animal Health Department. The attorney would work for the Animal Health Department for approximately 80 percent of the time and for the Board for 20 percent. While the Veterinary Board says that the cost would be absorbed within its current budget and does not request any additional money, it has failed to state how much its share of the attorney's cost would be. The Governor does not recommend this enhancement.

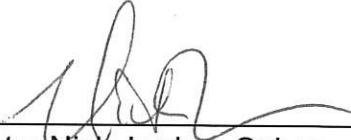
### **Senate Subcommittee Recommendation**

The Subcommittee concurs with the Governor's recommendation. The Subcommittee reminds the Ways and Means Committee that it has indirectly addressed the agency's enhancement request for a fraction of an FTE Attorney position. On February 9, 2000, the Ways and Means Committee adopted the subcommittee report for the Animal Health Department which stated, in part:

While the [Animal Health] Department made this request in concert with the Board of Veterinary Examiners; each agency asks for a fraction of one FTE position and plans to share the attorney position between the two offices. The Subcommittee recommends that the Animal Health Department be granted 1.0 FTE position and allow the Veterinary Board to contract with the Animal Health Department for legal services. To achieve this end, the Subcommittee recommends that the a new fund be created which will allow the Animal Health Department to receive money from the Board of Veterinary Examiners.

The Veterinary Board agrees with this recommended arrangement. According to the Board's testimony, it will cost approximately \$12,000 to contract with the Animal Health Department for legal services. This amount will be found within the agency's approved FY 2001 budget (\$229, 065).

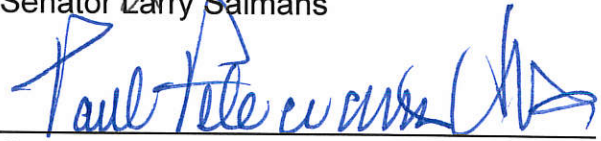
Finally, the Subcommittee notes the ending balances for the Veterinary Licensing Fee Fund for FYs 2000 and 2001 are \$406,494 and \$395,119, respectively. As a percentage of expenditures, the FY 2000 ending balance is 180.1 percent of expenditures, and the FY 2001 ending balance is 172.5 percent. While at first these figures may suggest a high fee fund, it should be noted that the agency receives most of its revenue in the months of May and June, causing a large ending balance to appear. Then, during the first ten months of the next fiscal year, the agency receives little or no revenue.



\_\_\_\_\_  
Senator Nick Jordan, Subcommittee Chair



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Senator Larry Salmans



\_\_\_\_\_  
Senator Paul Feleciano, Jr.

MAR 2 2000



State of Kansas

# Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

March 3, 2000

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

Senator David Kerr  
Capitol Building, 120-S  
Topeka, KS 66612

Dear Senator Kerr:

I am writing in regard to House Bill No. 2660 which is scheduled for consideration by the Ways and Means Committee on Monday, March 6, 2000. I urge you to delete section 12 from this bill when you pass it out of the committee.

Section 12 of HB 2660 authorizes a payment of \$250,000 to Dr. L. Stan Naramore, "for the prosecution and incarceration of the claimant." L. Stan Naramore was convicted of the Attempted First Degree Murder of Ruth Leach and the Second Degree Murder of Chris Wilt in the District Court of Cheyenne County, Kansas in February of 1996. In July of 1998 the Kansas Court of Appeals reversed the jury's decision, and with one judge dissenting held in a 2-1 decision that the evidence was insufficient to support the jury's verdict. The Joint Committee on Special Claims Against the State recommended that Dr. Naramore be paid \$250,000.

Inherent in the decision to pay Dr. Naramore any sum is the idea that the state has been guilty of malicious prosecution or overreaching. The award implies some punishment for the state for proceeding with an unwarranted criminal. If the State is guilty of wrongful prosecution, the proponents of the award to Dr. Naramore should be able to point to a time in the investigation and prosecution of the case when the state should have realized that it was wrong, and ceased the investigation or prosecution.

The investigation of Dr. Naramore began with a referral from the Board of Healing Arts. That referral contained two letters from Dr. Thomas J. Poulton, who was then Chairman of the Department of Anesthesiology at St. Francis Hospital and Medical Center in Topeka. In those letters Dr. Poulton addressed the case of Ruth Leach, an elderly woman who Dr. Naramore treated up to August 2, 1992. The other letter dealt with the treatment that Chris Wilt, an elderly diabetic, received at the hands of Dr. Naramore in August of 1992. Dr. Poulton opined that Dr. Naramore had overdosed Ruth Leach and was preparing to give her another shot of morphine that surely would

Senate Ways and Means Committee

Date *March 6, 2000*

Attachment # *2*

have proved fatal when prevented from doing so by her son. It was also Dr. Poulton's opinion that the death of Mr. Wilt was a homicide.

With the referral from the Board of Healing Arts and the opinions of Dr. Poulton, the Kansas Bureau of Investigation and the Attorney General's Office were duty bound to open an investigation. In the course of the investigation Mark Kendrick, Special Agent for the Kansas Bureau of Investigation, contacted numerous physicians. Dr. Merle Hodges, a medical consultant from Salina, evaluated Dr. Naramore's use of drugs in both cases, and found the medications very inappropriate and the handling of controlled substances highly suspicious. Dr. Chris Sperry, a forensic pathologist, examined the body of Chris Wilt after it had been exhumed. He found the cause of death to be asphyxia, caused by ceasing respiratory efforts after injections of the drug Norcuron, a paralyzing agent. Dr. Gerald Kirby, the Critical Care Director at the KU Medical Center, reviewed the evidence and found that there was no medical reason to give a second shot of Norcuron to Chris Wilt. He further found that the drugs given to Ruth Leach were probably an overdose and that had Dr. Naramore been permitted to give her the shot of Morphine and fentanyl that he had drawn up he would have killed her. Dr. Dennis Allen, of the Emergency Department at the KU Medical Center, told Mark Kendrick that the actions of Dr. Naramore with regard to Ruth Leach and Chris Wilt amounted to attempted murder and murder. Throughout an investigation that spanned almost two years, all the evidence that the state unearthed supported the filing of charges against the defendant.

In the course of discovery in the criminal case, all the reports and documents and tests were turned over to the defense. The doctor's attorneys, while maintaining his innocence, produced no evidence that countered what the state had amassed.

District Court Judge Jack Burr found probable cause at the preliminary hearing to hold the defendant for trial. Certainly at this point, with no evidence to suggest that the defendant was not guilty, the prosecutors were duty bound to continue with the case.

At Dr. Naramore's trial the state presented expert testimony that Ruth Leach had been over medicated, and that the syringe that Dr. Naramore filled with fentanyl and Morphine would certainly have killed her had her son not prevented Dr. Naramore from administering the shot. The state's experts also testified that administering a shot Norcuron to Chris Wilt, and then ceasing to breathe for him, amounted to intentional homicide. The defense presented a number of doctors on behalf of the defendant. Their testimony with regard to Ruth Leach however centered on whether the initial shots given to her amounted to an overdose; they did not address the syringe of fentanyl and Morphine that Dr. Naramore was prepared to give her. The main defense to the charge involving Chris Wilt was that he was already dead at the time the Norcuron was administered and therefore Dr. Naramore could not have killed him. The testimony of the defense experts did not necessarily contradict the state's position, and in some cases was helpful to the state's case. At the conclusion of the state's case and again at the end of the defendant's case the defense attorney's moved for a motion of acquittal. Judge Burr denied the motion, finding that the evidence presented, if believed by the jury, was sufficient to convict the defendant. Certainly at this point, the state could not have, within its duty, dismissed the case.

The three judge panel of the Court of Appeals disagreed among themselves as to the proper




disposition of the case. While the two judge majority did reverse the case, Chief Justice Brazil would have remanded the case to the District Court for retrial with specific instructions addressing the physicians duty and standard of care. There was no point throughout the proceedings, which occurred over a period of almost six years, when the Attorney General's Office and the prosecutors of this case could have in good conscience dismissed the actions against Dr. Naramore. There is simply no wrongdoing on the part of the state.

The giving of an award such as that contemplated to Dr. Naramore will have a chilling effect on prosecution. There are numerous checks on the power of the state within the criminal justice system. The state must show probable cause to obtain a warrant for a suspect's arrest. After an arrest of the suspect the state again must show probable cause to a magistrate judge in an adversarial proceeding where the defendant may cross examine the state's witnesses and present witnesses on behalf of the defendant. At trial the judge must be convinced that a reasonable trier of fact could find the defendant guilty before he will let the jury consider the case. Finally the jury must be unanimous in its decision that the defendant is guilty beyond a reasonable doubt. To award a claimant any amount for his prosecution and incarceration after the state has prevailed through the trial level, particularly where there is no indication of wrongdoing on the part of the state, will weaken investigation and prosecution of crimes.

I urge this committee to delete the provisions of section 12 prior to passing House Bill No. 2660 onto the floor of the Senate.

Sincerely,  
OFFICE OF THE ATTORNEY GENERAL  
CARLA J. STOVALL

  
John K. Bork  
Assistant Attorney General  
Criminal Litigation Division

JKB:rmr

KANSAS SENATE

cc: Robert Hayes

**DICK BOND**  
Senate President

Senate Chamber  
State Capitol  
Topeka, Kansas 66612-1511

9823 Nall  
Overland Park, Kansas 66207



**Chairman:**  
Interstate Cooperation  
Legislative Coordinating Council  
Organization, Calendar and Rules  
**Member:**  
Assessment and Taxation  
Judiciary  
Legislative Budget  
State Finance Council

Sue Krische, Chief of Staff  
785-296-2419  
FAX 785-296-6718

**OFFICE OF THE PRESIDENT**

**MEMO**

**To:** Members of Senate Ways & Means Committee  
**From:** Senate President Dick Bond  
**Date:** February 17, 2000  
**Subject:** HB 2660

I hope you have had an opportunity to read the letter from Bob Hayes, Executive Director of the Health Care Stabilization Fund, regarding the use of monies from those funds to pay for the claim made by Dr. Stan Naramore.

My concern is the precedent that we may be setting and the appropriateness of our actions, should we pay from this fund established for medical malpractice claims and provide compensation in a criminal (non-malpractice) matter. It is my opinion that we would be subject to a lawsuit by the Health Care Stabilization board that would, in all likelihood, be successful if we began the practice of taking funds contributed by providers for their medical malpractice coverage and using it to pay claims against the state for compensation for a criminal case that was determined by a court to be without merit.

I appreciate the budget is tight, but this precedent is dangerous and legally questionable.

Thank you for permitting me to share my view.

cc: Governor Bill Graves  
Attorney General Carla Stovall  
Speaker Robin Jennison  
Senator Tim Emert

RECEIVED  
FEB 22 2000  
HCSF



# Health Care Stabilization Fund

*Robert D. Hayes, Executive Director*  
300 S.W. 8<sup>th</sup> Avenue, Second Floor  
Topeka, Kansas 66603-3912

Compliance Section  
Claims Section  
Fax

785-291-3475  
785-291-3777  
785-291-3550

February 16, 2000

SENATOR DAVID KERR, CHAIRPERSON  
SENATE WAYS AND MEANS COMMITTEE  
STATE HOUSE, RM 120 SOUTH  
TOPEKA KS 66603

Re: House Bill No. 2660

Dear Senator Kerr:

On behalf of the Board of Governors of the Health Care Stabilization Fund, I respectfully request that the Health Care Stabilization Fund be removed from House Bill No. 2660 as a funding source for the claim made by Dr. L. Stan Naramore against the State of Kansas.

The Health Care Stabilization Fund was established in 1976 for the principle purpose of assuring the availability of excess professional liability coverage for Kansas health care providers as defined in K.S.A. 1999 Supp. 40-3401(f). The inclusion Health Care Stabilization Fund in House Bill 2660 as a source of payment of claims brought against the State of Kansas is not consistent with the purpose of the Health Care Stabilization Fund. There are three main reasons supporting this position:

First, the Health Care Stabilization Fund is statutorily responsible for professional liability losses and expenses as set forth in the Health Care Provider Insurance Availability Act (K.S.A. 1999 Supp. 40-3401 et seq.). That is, the Health Care Stabilization Fund pays for claims made against health care providers arising out of the rendering of or the failure to render professional services. The Health Care Stabilization Fund was not established to pay for claims made by health care providers against the State of Kansas based on criminal proceedings.

Second, the Health Care Stabilization Fund is funded by surcharge payments made by all participating health care providers. Moneys paid by doctors, hospitals and other health care providers for professional liability coverage should not be a funding source for claims made against the State.

Third, the Health Care Stabilization Fund had no involvement whatsoever with the circumstances and events which are the basis for Dr. Naramore's claim against the State of Kansas. Accordingly, we offer no opinions regarding the merits of Dr. Naramore's claim.

In conclusion, utilizing the Health Care Stabilization Fund for payment of any part of Dr. Naramore's claim would result in Kansas doctors, hospitals and other defined health care providers paying for something which has no connection with the purpose of the Health Care

Keith Hall  
Gaylon Lowery  
James Rider, D.O.

BOARD OF GOVERNORS  
*Mark Praeger, M.D., Chairperson*  
Gene Schmidt, Vice Chairperson  
Steve Preston, CRNA  
Rudy Haun, M.D.

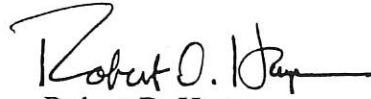
William J. Walls, M.D.  
Mark J. Hatesohl, D.C.  
Ross Shook, D.O.

3-3

Stabilization Fund, and with which the Health Care Stabilization Fund had absolutely no involvement.

Please contact my office if additional information or other supporting documentation is needed.

Sincerely,



Robert D. Hayes  
Executive Director

RDH:jh


Copy: Mark A. Praeger, M.D., Chairperson  
Board of Governors, Health Care Stabilization Fund  
Members of the Board of Governors  
Health Care Stabilization Fund





KANSAS MEDICAL SOCIETY

**To:** Senate Ways and Means Committee

**From:** Jerry Slaughter  
Executive Director 

**Date:** March 2, 2000

**Subject:** HB 2660; concerning special claim against the state by L. Stan Naramore, DO

The Kansas Medical Society appreciates the opportunity to submit the following comments in support of the special claim for damages by L. Stan Naramore, DO.

This matter is unique in that it has implications which reach beyond the lengthy legal tribulations of one individual physician who dealt with two difficult and unfortunate clinical situations in a small, rural community eight years ago. Our concerns from the beginning of this case have been in two areas. First was with the broader consequences of imposing criminal liability on physicians for actions related purely to their exercise of clinical judgment. Medical judgment is not an exact science; physicians often disagree about treatment decisions. Hindsight may show more optimal treatment choices, but that does not mean there was civil negligence, let alone criminal liability. Medical judgment cannot be exercised effectively when the threat of criminal liability looms over treatment decisions. This is particularly true in the care of terminally ill or critically injured patients, where death is inevitable and will occur no matter what clinical judgment is made by the physician. In setting aside the convictions, we believe the Court of Appeals recognized the dangerous precedent that would be set by this case, and the chilling effect it would have on patient care, particularly end of life care.

Of additional concern to us was our belief that the review process utilized by the Healing Arts Board in this case was seriously lacking, and that the case should never have been prosecuted as a criminal action. As it was, the breakdown in process resulted in 2½ years of incarceration, loss of license and livelihood, and finally, acquittal by the appellate court. Unfortunately, the special claim route is the only way to right a wrong in this case. We are aware that some are concerned that support of this claim could be seen as establishing a precedent that would lead to further claims in the future. However, because the facts of this case are so unique, we do not foresee such an outcome. Consequently, in our view compensation is warranted.

We, however, do not support the House action to assess a portion of the claim against the Health Care Stabilization Fund. Those funds represent professional liability premium payments by health care providers which are to be used to compensate injured claimants in medical malpractice actions. It is inappropriate to use HCSF monies to satisfy this special claim.

Thank you for considering our comments.

623 SW 10th Ave. • Topeka KS 66612-1627 • 913.235.2383 • 800.332.0156  
Western Kansas office • 108 E 12th St. • Hays KS 67601 • 913.625.8215 • 800.29

Senate Ways and Means Committee

Date *March 6, 2000*

Attachment # *4*

# KANSAS BOARD OF HEALING ARTS

**BILL GRAVES**  
Governor



235 S. Topeka Blvd.  
Topeka, KS 66603-3068  
(785) 296-7413  
FAX # (785) 296-0852  
(785) 368-7102

March 2, 2000

The Honorable Dave Kerr, Chairman  
Senate Committee on Ways and Means  
Room 120-S, Capitol Building  
Topeka, KS 66612-1504

Re: Section 12(b), H.B. No. 2660,  
as amended by House Committee

Dear Senator Kerr:

At its regular meeting held February 12, 2000, the Kansas State Board of Healing Arts reviewed H.B. No. 2660, as amended by House Committee. I am writing to you at the express direction of the Board to voice the unanimous opposition of the members present at the February 12 meeting to Section 12(b) of the bill. This section directs the Board to pay \$83,333.34 from the healing arts fee fund as compensation to Dr. L. Stan Naramore, D.O. on the claim he made arising from his criminal prosecution and incarceration. The Board strenuously objects to it paying any amount to Dr. Naramore from the healing arts fee fund for three reasons. First, the Board was not involved with the prosecution and incarceration of Dr. Naramore. Secondly, since payment of this money would be for a purpose other than that of defraying the expenses of regulating the 11 professions credentialed by the Board, the provisions of Section 12(b) may be unlawful. Further, at the time Dr. Naramore voluntarily surrendered his license to practice, he executed a release of all claims against the Board.

A review of the facts of the Board's involvement is necessary. On April 11, 1992, Dr. Naramore was granted a license by the Board to practice osteopathic medicine and surgery in the state of Kansas. A Report of Adverse Findings dated August 12, 1992 was filed with the Board as required by K.S.A. 65-4923(a)(2). That Report set forth two incidents occurring on August 2 and 5, 1992, in which a hospital committee found that Dr. Naramore had acted below the applicable standard of care and which actions had a reasonable probability of causing injury to the patients involved.

Senate Ways and Means Committee

Date *March 6, 2000*

Attachment # *5*

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR

MEMBERS OF THE BOARD  
DONALD B. BLETZ, M.D., PRESIDENT  
OVERLAND PARK  
ROBERT L. FRAYSER, D.O., VICE-PRESIDENT  
HOISINGTON

LARRY R. ANDERSON, M.D., WELLINGTON  
JAMES D. EDWARDS, D.C., EMPORIA  
HOWARD D. ELLIS, M.D., LEAWOOD  
JOHN P. GRAVINO, D.O., LAWRENCE  
SUE ICE, PUBLIC MEMBER, NEWTON  
JANA D. JONES, M.D., LEAVENWORTH  
LANCE E. MALMSTROM, D.C., TOPEKA

BETTY MCBRIDE, PUBLIC MEMBER, COLUMBUS  
HAROLD J. SAUDER, D.P.M., INDEPENDENCE  
EMILY TAYLOR, PUBLIC MEMBER, LAWRENCE  
HAI K. TRUONG, D.O., WICHITA  
ROGER D. WARREN, M.D., HANOVER  
RONALD J. ZOELLER, D.C., TOPEKA

The Board subsequently learned that the Cheyenne County Attorney had opened an investigation into the same incidents described in the Report of Adverse Findings. The Board opened its own administrative investigation file and an investigation was initiated. Beginning the middle of September 1992, the Kansas Bureau of Investigation also commenced an investigation. The medical records of Chris Willt were obtained during the course of the investigation and provided to a physician for review. On October 1, the consultant wrote to the Board's investigator and advised: "In summary, I would say that the death of Mr. Willt was a homicide as I understand the law relating to this area." Based upon this information, meetings were held during the second week of October 1992 with staff members from the Board, the Attorney General's office and the KBI. Following those meetings, it was determined that further investigation would be conducted by the KBI and the Board's case would be placed in a pending status. The Board's investigative case remained opened, but no further investigation was conducted by the Board. On July 6, 1993, The Board's case was closed to enable Dr. Naramore to obtain a medical license in Wyoming.

Following Dr. Naramore's arrest on July 19, 1994, his attorney was provided on February 7, 1995, with a settlement proposal to avoid formal administrative proceedings in the form of a document entitled Stipulation and Agreement and Enforcement Order. This document was signed by the doctor on February 18, 1995. The Stipulation was accepted by the Board at its meeting April 29, 1995, and was filed in the Board office on May 2, 1995. By virtue of the Stipulation, Agreement and Enforcement Order, Dr. Naramore surrendered his license to practice osteopathic medicine and surgery and released the Board from all claims. A copy of the Stipulation, Agreement and Enforcement Order is enclosed.

The Board accepted Dr. Naramore's surrender of license eight months before the criminal trial began. After accepting the surrender of the license, there was no further involvement of the Board with Dr. Naramore until he applied for reinstatement of his license following the Court of Appeals decision. At its meeting October 17, 1998, the Board granted reinstatement of Dr. Naramore's license. He currently holds a valid and unrestricted license to practice osteopathic medicine and surgery in the state of Kansas.

I have reviewed the information and testimony which was provided to the Joint Committee on Special Claims Against the State. The only suggestions that the Board acted inappropriately were raised by Harold Riehm of the Kansas Association of Osteopathic Medicine. He argued that the Board disregarded its own policies regarding the handling of the hospital reports and ignored its procedures for peer review of the reports. However, the manner in which the Board conducted its investigation is totally unrelated to the criminal prosecution and incarceration which form the basis for Dr. Naramore's claim.

The Board contacted one consultant who reviewed the medical records of Mr. Willt and wrote the letter of October 1, 1992. This physician was an anesthesiologist and was requested to provide an expert opinion since Versed®, Norcuron®, and fentanyl citrate were involved and all are indicated for or used as an adjunct to general anesthesia. The fact this consultant testified during the criminal trial at the request of the prosecution does not involve any conduct by the Board.

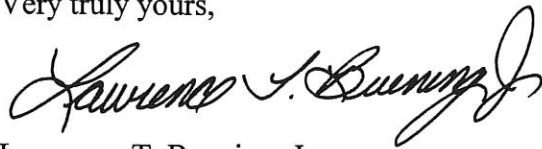
The Kansas State Board of Healing Arts concurs with the position taken by the Health Care Stabilization Fund. The Board is funded totally by fees charged to the individuals it regulates in 11 health care professions. Use of monies in the healing arts fee fund to pay Dr. Naramore is totally inappropriate and may be unlawful. In Panhandle Eastern Pipe Line Company v. Fadely, 183 Kan. 803, the Kansas Supreme Court found a senate bill unconstitutional which directed the transfer of \$100,000 from the unexpended balance in the state corporation commission's natural gas conservation fund to the state general fund. The Court held that use of funds for a purpose other than what was necessary to reimburse the state for the costs of regulation and supervision of the persons or businesses regulated exceeded the police power. Should Section 12(b) be enacted, the money directed to be paid to Dr. Naramore will come from the fees the Board has collected from the individuals it regulates as reimbursement for the costs of that regulation. Every individual regulated by the Board would contribute to this payment since it is the fees they have paid that would be used to compensate Dr. Naramore.

Finally, I refer you to the Stipulation, Agreement and Enforcement Order which Dr. Naramore signed on February 18, 1995, and which was approved by the Board on April 29, 1995. Specifically, in Paragraph 5(f) on page 5 of that document, Dr. Naramore released the Board from all claims he may have had against the Board, its employees and agents. To pay any portion of Dr. Naramore's claim from the healing arts fee fund would be in direct contravention of his own agreement with the Board.

In conclusion, the Kansas State Board of Healing Arts urges the Senate Committee on Ways and Means to delete Section 12(b) from H.B. No. 2660, as amended. Whether Dr. Naramore should receive any money based on his claim and what amount that should be is within the power of the Legislature to determine. However, no amount should be paid from the healing arts fee fund.

Please advise if you have any questions or desire any additional information. Thank you for your consideration of the Board's concerns.

Very truly yours,



Lawrence T. Buening, Jr.  
Executive Director

cc: Members, Senate Ways and Means Committee

**FILED**

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

MAY 02 1995

**KANSAS STATE BOARD OF  
HEALING ARTS**

IN THE MATTER OF )  
 )  
L. STAN NARAMORE, D.O. )  
Kansas License No. 05-24020 )  
\_\_\_\_\_ )

Case # 93-00034

-- STIPULATION AND AGREEMENT  
AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel, and L. Stan Naramore, D.O. ("Licensee") by and through his attorney, Andrew L. Warren, and stipulate and agree as follows:

1. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of osteopathic medicine and surgery. K.S.A. 65-2801 et seq; K.S.A. 65-2869. At 12:25 P.M. on the thirteenth (13th) of August 1994, the Board filed a Petition to Revoke, Suspend or Otherwise Limit Licensure against Licensee. On or about August 16, 1994, the Board appointed a presiding officer to conduct disciplinary proceedings in the case. On or about September 1, 1994, the Board filed its Amended Petition to Revoke, Suspend or Otherwise Limit Licensure. Licensee admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with the requirements of law; that the Board has jurisdiction to consider the Stipulation and is lawfully constituted to consider this matter to include consideration of this Stipulation. Licensee further notes that the Kansas Healing Arts Act is constitutional on its face and as applied in this case. Licensee further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.



2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued license number 04-14767 on June 5, 1971. At all times relevant to the allegations set forth below, Licensee has held a current license to engage in the practice of osteopathic medicine and surgery in the state of Kansas, having last renewed his license on June 21, 1993.

3. It is alleged by the Board that Licensee has committed the acts alleged by the Counts recited in the Amended Petition to Revoke, Suspend or Otherwise Limit Licensure, filed September 1, 1994. The Counts recite the alleged violations of the Healing Arts Act. The Board states it would present substantial evidence in an administrative hearing in support of its allegations. Licensee neither confirms nor denies the allegations.

4. Such acts or conduct as set forth above could constitute grounds for disciplinary action by the Board pursuant to the cited provisions of the Healing Arts Act. Under the provisions of K.S.A. 65-2838(a), the Board has jurisdiction to impose appropriate discipline if a licensee to the Board has engaged in any commissions or omissions to bring licensee within the purview of K.S.A. 65-2836. Under the provisions of K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing. Licensee voluntarily and affirmatively waives his right to a hearing pertaining to any matter under the jurisdiction of the Board regarding his license to engage in the practice of osteopathic medicine and surgery. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, to conduct such cross-examination of witnesses as may be desired and to waive any and all substantive and procedural motions and defenses that could be raised if an administrative hearing would be held.

The terms and conditions of the Stipulation are entered into between the undersigned parties and are submitted for the purpose of allowing these



terms and conditions to become an Order of the Board. This Stipulation shall not be binding on the Board until an authorized signature is affixed at the end of this document. Upon signature by Licensee to this document, it shall be deemed a unilateral contract and agreement and shall bind Licensee to the terms and conditions set forth in the Stipulation whether or not the Board's signature is affixed to the document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

5. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

a) In lieu of the continuation of formal proceedings and/or the making of findings by the Board, Licensee, by signature attached to this Stipulation and Agreement, hereby voluntarily agrees to the following disciplinary measures placed on his license to engage in the practice of osteopathic medicine and surgery in the State of Kansas:

i) Licensee agrees to surrender his license to practice the healing arts in the state of Kansas. Such surrender includes the return of his certificate of license and current registration card. Said surrender occurs during the course of disciplinary proceedings, and shall be treated as a revocation for reporting purposes.

ii) Licensee agrees that if he applies for reinstatement of his license, such application will be considered in accordance with the provisions of K.S.A. 65-2844, and the Board will, in considering such application for reinstatement, utilize the eight factors enumerated by the Kansas Supreme Court in Kansas State Board of Healing Arts v. Vakas. Licensee agrees that he must take and pass a SPEX test within the preceding six months prior to Board consideration of his application for reinstatement. Licensee agrees that he must comply with all requirements of

all applicable statutes, rules and regulations pertaining to reinstatement of revoked licenses to practice the healing arts in the State of Kansas.

(iii) Licensee agrees that he will only enter health care facilities in the State of Kansas as a patient or as a non-health care providing visitor of a patient in the health care facility. The term "health care facility" includes, but is not limited to, clinics, medical offices, hospitals, laboratories, surgical centers, health maintenance organizations, etc. Licensee agrees that he will not participate in the health care field in the State of Kansas in any manner whatsoever to include, but not limited to, employment by another health care provider, serving as an officer or director of any professional corporation, or buying, obtaining or in any manner acquiring an interest in any professional association, partnership or sole proprietorship, or providing any services in any managerial capacity therein. Licensee specifically agrees that he will provide no professional or other services listed under the exceptions to the practice of the healing arts found under K.S.A. 65-2872(d), (e), (f), (g), (h), (i), (j), and (o).

b) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate in compliance with the Kansas Administrative Procedure Act and/or the terms of this Stipulation.

c) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 et seq, that are unknown and are not covered under the conditions of this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act, including the information which provides the basis for this Stipulation.

d) This Stipulation constitutes the entire agreement between the parties and may only be modified and/or amended by a subsequent document executed in the same manner by the parties.

e) Licensee acknowledges that he has read this Stipulation and fully understands its contents. Licensee acknowledges that this Stipulation has been entered in freely and voluntarily given.

f) Licensee releases the Board, its employees and agents, from all claims to mean those damages, actions, liabilities and causes of actions, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions; K.S.A. 77-601 et seq. This release shall discharge the Board of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Board, its employees or agents, arising out of acts leading to the execution of this Stipulation and Agreement or the contents of this Stipulation and Agreement.

g) Licensee acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document and Board acceptance of the terms of this document, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

6. All correspondence or communication between Licensee and the Board shall be by certified mail addressed to: Kansas State Board of Healing Arts, ATTENTION: Disciplinary Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

7. Licensee shall obey all federal, state, and local laws and rules governing the practice of osteopathic medicine and surgery in the State of

Kansas that may be in place at the time of execution of the Stipulation and Agreement or may become effective subsequent to the execution of this document.

8. Licensee has an affirmative duty to notify the Board of changes in his personal professional status which would inhibit compliance with the above conditions in this Stipulation.

9. Upon execution of this Stipulation by the affixing of a Board authorized signature below, the provisions of this Stipulation shall become an Order of the Board and shall be deemed a proper and lawful Enforcement Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

IN WITNESS WHEREOF, the parties have executed this agreement on the 2<sup>d</sup> day of May, 1995.

KANSAS STATE BOARD OF HEALING ARTS

Lawrence T. Buening, Jr.  
Lawrence T. Buening, Jr.  
Executive Director

May 2, 1995  
Date

L. Stan Naramore  
L. Stan Naramore, D.O.  
Licensee

2-18-95  
Date

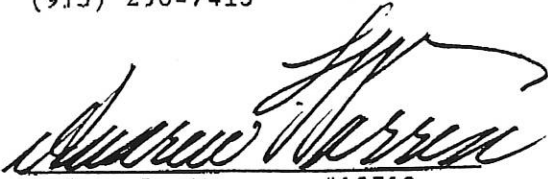
TEL:

Feb 07 95 11:09 No.002 P.08

Prepared and Approved As To Form By:



Kevin K. LaChance, #15058  
Disciplinary Counsel  
Kansas State Board of Healing Arts  
235 S. Topcka Boulevard  
Topeka, Kansas 66603-3068  
(913) 296-7413



Andrew L. Warren, #12713  
Counsel for Licensee  
7143 W. 80th, Suite 207  
Overland Park, Kansas 66204  
(913) 642-2766

# HEIN AND WEIR, CHARTERED

ATTORNEYS-AT-LAW

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telephone: (785) 273-1441

Telefax: (785) 273-9243

Ronald R. Hein

Email: rhein@hwchtd.com

Stephen P. Weir\*

Email: sweir@hwchtd.com

\*Admitted in Kansas & Texas

## MEMO

**TO: Members of the Senate Ways and Means Committee**  
**FROM: Ron Hein**  
**RE: HB 2660, Dr. Stan Naramore Claim**  
**DATE: March 6, 2000**

---

**Does this claim set a precedent?** Since 1976, there have been 8 claims for wrongful incarceration (five paid and three denied). This claim does not set a precedent, and is consistent with previous claims awarded, ranging from \$5,000-\$350,000.

**Should the Legislature approve claims where the law does not permit relief?** The Legislature created the Special Claims committee (by a different name then) in 1970. In 1978, K.S.A. 46-919 was enacted stating: "It is the purpose of this act [Claims Against the State] to provide an orderly and expeditious procedure to aid the legislature in the consideration and evaluation of those claims against the state which cannot be lawfully paid by the state or any agency thereof except by appropriation of the act of the legislature." Staff and members and leadership of the committee have characterized Special Claims as a court of equity which awards claims when no legal remedy is permissible against the state. If the Legislature wants to change the process, they should not do so in the middle of a claim that was filed pursuant to the process. If the Legislature wants to change the process, by disallowing claims of this type, it should pass legislation amending the statutes setting up the special claims process. Numerous states are struggling with the process regarding wrongful incarceration claims. A March, 1999, American Bar Association Journal article addresses how states are handling these claims.

**Was Dr. Naramore acquitted on a technicality?** No. See copy of Rep. O'Neal's letter attached.

**Has the Naramore prosecution "chilled" appropriate pain relief by physicians?** Yes.

**Does Dr. Naramore have any other remedy at law or otherwise other than this claim?** No.

**Will payment of this claim fully compensate Dr. Naramore for his injuries?** Absolutely not, but it will send a message that he was wronged and partially compensate him.

**Not only is Dr. Naramore innocent, no crime was even committed. He should never have been prosecuted. If the medical evidence in its entirety had been given to a panel of medical peers for review, this case would never have happened.**

Senate Ways and Means Committee

Date *March 6, 2000*

Attachment #

*6*



STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

10TH DISTRICT  
HUTCHINSON/NORTHEAST KENOSHA COUNTY

LEGISLATIVE HOTLINE  
1-800-432-3924  
e-mail: oneal@house.state.ks.us



CHAIRMAN:  
JUDICIARY COMMITTEE

VICE-CHAIR:  
REDISTRICTING ADVISORY COMMITTEE

MEMBER:  
BUSINESS, COMMERCE & LABOR  
FISCAL OVERSIGHT  
STATE-TRIBAL RELATIONS  
UNIFORM LAW COMMISSION  
KANSAS JUDICIAL COUNCIL

February 1, 2000

**Dear Members of the Kansas House of Representatives**

**Re: H.B. 2600 - A.G.'s position on Special Claim of Dr. Stan Naramore**

I take strong exception to Attorney General Carla Stovall's January 31, 2000 letter to House members, distributed in connection with consideration of the claims bill. Indeed, the tone of the letter is proof positive of why we should pass the bill containing the appropriation for Dr. Naramore. Dr. Naramore was the victim of opportunistic prosecution by the Attorney General's office and once the Kansas Court of Appeals finally delivered justice by granting Dr. Naramore a complete and unqualified acquittal of all charges, the Attorney General's response was to claim he was discharged on a "technicality". Amazingly, she still refers to him as a "convicted felon", something that suggests to me actual malice that may be libelous. She would obviously claim immunity in her defense.

Her letter assumes that no member of the House would take the time to read the Court of Appeal's decision. Anyone reading the opinion will quickly conclude that the A.G.'s remarks in the January 31, 2000 letter are, in a word, reckless.

The Court of Appeals, in its July 24, 1998 opinion, pointed out that there has NEVER been a conviction of a physician for attempted murder or murder of a patient which has been

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sustained on appeal based on evidence of the kind presented by the A.G.

Why the conviction by the Cheyenne Co. jury? The Court of Appeals noted that the jury was not instructed on the very difficult issues of palliative care and what are appropriate resuscitation attempts, two important components of Dr. Naramore's defense. The Court noted that the American Medical Association's Council on Ethical and Judicial Affairs has adopted a position that "the administration of a drug necessary to ease pain of a patient who is terminally ill and suffering excruciating pain may be appropriate medical treatment even though the effect of the drug may shorten life."

The Court of Appeals' view of the case couldn't have been clearer. The Court noted that *"there is nothing close to a medical consensus that Dr. Naramore's actions were homicidal. In fact, there was extremely strong testimony to the contrary."*

*"...We find that no rational jury could find criminal intent and guilt beyond a reasonable doubt based on the record here. When the issue is whether there is reasonable doubt, a jury is not free to disbelieve undisputed facts. What occurred here is generally known. The jury was not free to disbelieve that there was substantial competent medical opinion in support of the proposition that Dr. Naramore's actions were not only noncriminal, but were medically appropriate."*

I am extremely disappointed with the A.G.'s remarks, which demonstrate a complete lack of respect for the appellate process and I'm even more troubled by her apparent lack of acceptance for the finality of the Court's decision to grant Dr. Naramore a verdict of acquittal. Dr. Naramore and the public at large deserve better.



March 6, 2000

TO: Senate Ways and Means Committee

FROM: Kansas Association of Osteopathic Medicine  
By Charles Wheelen, Executive Director

SUBJECT: House Bill 2660

We hope you've had an opportunity to read our letter to you regarding the special claim submitted by L. Stan Naramore, D.O. Dr. Naramore's claim is contained in section 12 of HB2660.

The House version of HB2660 appropriates funding "for the prosecution and incarceration of the claimant, who was subsequently acquitted by the state court of appeals." **The Court of Appeals overturned Dr. Naramore's convictions saying**, "We find that no rational jury could find criminal intent and guilt beyond a reasonable doubt based on the record here. When the issue is whether there is reasonable doubt, a jury is not free to disbelieve undisputed facts. What occurred here is generally known. The jury was not free to disbelieve that there was substantial competent medical opinion in support of the proposition that **Dr. Naramore's actions were not only noncriminal, but were medically appropriate.**" (emphasis added)

In other words, Dr. Naramore was prosecuted by the State in a case that should have never been pursued. As a result, he spent over two years in prison deprived of the opportunity to engage in his profession, instead of practicing medicine and earning income. This is the principal reason he should be compensated by the State of Kansas.

Some legislators have questioned whether Dr. Naramore has exhausted all of his legal remedies. You might ask why Dr. Naramore has not filed a petition for civil damages under the Kansas Tort Claims Act. Ostensibly he should be compensated from the Tort Claims Fund pursuant to K.S.A. 75-6103 which makes governmental entities liable for "damages caused by the negligent or wrongful act or omission of any of its employees..." But K.S.A. 75-6104 defines an exception to the Act for discretionary functions "whether or not the discretion is abused." This effectively excludes any claim like Dr. Naramore's under provisions of the Tort Claims Act.

We urge your favorable consideration of Dr. Naramore's claim and respectfully request that you examine options for funding the compensation. The House version appropriates funding from three different sources. The portion of the payment to Dr. Naramore appropriated from the Healing Arts Fee Fund in effect transfers the funding to physicians and other licensees who finance the Fund. And the portion of the payment appropriated from the Health Care Stabilization Fund also shifts the cost to physicians and other health care professionals as well as hospitals that pay premiums into the Fund for liability insurance coverage.

Thank you for considering our comments. We urge you to support Dr. Naramore's claim.

Senate Ways and Means Committee


Date *March 6, 2000*Attachment # *7*



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To: **Members, Senate Ways and Means Committee**

From: Harold Riehm, Kansas Association of Osteopathic Medicine 

Subject: **Claim Against the State of Dr. Naramore**

Date: March 06, 2000

I write in support of the claim against the State of Dr. Stan Naramore. The Claims Against the State Committee, House Appropriations and the House have approved an award of \$250,000. I urge your support of this claim. The overwhelming consensus of the physician community in Kansas--MD and DO,--is that Dr. Naramore was the victim of an abuse of the criminal justice system with the result that a Kansas physician spent more than 30 months in jail.

This is a very complex case. Space here permits only these brief observations. There are many more.

\*\*\*\* At the Court of Appeals level, not only did the Court reverse the conviction of Dr. Naramore, they acquitted him--an almost unheard of ruling at the appellate level. To quote from the appeals decision: "*We find that no rational jury could find criminal intent and guilt beyond a reasonable doubt based on the record here.*" What should be noted is that the evidence reviewed by the appellate court is the same evidence presented by the prosecution and the same evidence upon which they based a decision to prosecute.

\*\*\*\* The Kansas State Board of Healing Arts totally ignored its own procedures for peer review in reviewing a complaint against Dr. Naramore. Instead of review by a rural family practice physician, the Board hired an urban anesthesiologist. Upon his recommendation, the Board concluded that there was likely evidence of criminal acts. That same Board consultant then became a paid witness and paid consultant to the prosecution prior to and during the trial.

\*\*\*\* Two physicians--an MD and a DO--declared that the patient Dr. Naramore was convicted of murdering, was dead before artificial respiration was removed. Yet, based upon a thoroughly discredited exhumation autopsy report of the State, charges of first degree murder--premeditated--hard forty--were brought against Dr. Naramore, claiming the patient died from premature removal of artificial breathing. One of those physicians declaring the patient dead, was a deputy county coroner. This, after Dr. Naramore had treated the patient for more than three hours in the St. Francis Emergency Room.

\*\*\*\* In the attempted murder conviction, Dr. Naramore, after family consultation, was administering pain relief to a cancer patient near death and experiencing excruciating pain. That such charges were brought against a physician in exercising his professional judgment, with family consultation, has had a severe chilling effect on physicians who struggle with a most difficult decision--knowing that for near death patients, pain relief *may* hasten death. The State proved no intent.

In sum, this is a case involving charges that should not have been brought, a trial that should not have been held (especially in St. Francis) and a verdict that no reasonable jury could reach. The loser is Dr. Naramore--loss of reputation, family and earnings far greater than the amount of the current claim award.

At the Claims Committee hearing, the prosecutor for the State, even after the Appellate Court found that evidence produced by the State could not conceivably support charges or prosecution, told the Committed that with the same evidence again, he would file the same charges. *We think the prosecution needs to be sent a message, loud and clear, that this kind of abusive behavior will not be tolerated against a physician--or any Kansas citizen.*

Thank you. I will be pleased to discuss this case with you at any time.

Senate Ways and Means Committee

Date *March 6, 2000*

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