

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 6 in Room 210 Memorial Hall

All members were present except: Representative Brenda Landwehr, Excused

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Norman Furse, Revisor of Statute's Office
June Evans, Secretary

Conferees appearing before the committee: Elizabeth Jessee, CDM, CFPP, Kansas Dietary Managers Association
Nancy Fraser, CDM, CFPP, Horton Community Hospital
Ron Hein, Dietetic Association of Kansas
Terry Roberts, Executive Director, Kansas State Nurses Association
Carolyn Keil, PhD, Pittsburg State University
Mark Stafford, Board of Healing Arts
Chris Collins, Kansas Medical Society

Others attending: See Attached Sheet

The Chairperson welcomed the girl scouts that were in the audience.

The Chairperson stated before working **HB 2041**, some of the members might want to contact their constituents back home and find out what their wishes were and bring that information to the table when working the bill which will probably be next week.

The Chairperson opened the hearing on **HB 2117 - Dieticians licensing acts; defining dietetic services supervisor and certified managers.**

Dr. Bill Wolff, Kansas Legislative Research Department gave a briefing stating there were two amendments to the dieticians licensing act. On page 1, line 34 "dietetic assistant" is being changed to "certified dietary manager (CDM)". On page 3, the term "certified dietary manager" is going to be defined in the statute where previously these terms were defined by regulation adopted by the secretary of health and environment. On lines 2 and 3 the term "dietetic services supervisor" is defined.

Elizabeth Jesse, CDM, CFPP, State Spokesperson, Kansas Dietary Managers Association, testified as a proponent to **HB 2117**, stating the Association agrees and understands that CDM's should not be held to the same standards as a dietitian. CDM's work together with registered dietitians to provide quality nutritional care for residents/patients and perform the following tasks on a regular basis.

The educational curriculum to become a certified dietary manager (CDM) consists of one hundred twenty(120 hours of course study, followed by an additional one hundred fifty(150) hours of supervised field experience. CDM's deserve the recognition for achieving above and beyond the educational standards required by the state of Kansas (Attachment 1).

Nancy Fraser, CDM, CFPP, a proponent to **HB 2117** stated she was concerned about accumulating 45 CEU's in a 3 year period which is required, but soon learned about all the educational sessions and has learned many things that has helped make competent work decisions (Attachment 2).

Ron Hein, legislative counsel for the Dietetic Association of Kansas (DAK), stated DAK can support the change of title from "dietary manager" to "Certified Dietary Manager" as requested in this legislation. Licensed dietitians work with dietary managers in providing food service and nutritional care to clients in

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 210, Memorial Hall at 1:30 p.m. on February 6.

institutions as long term care facilities, hospitals and rehabilitation centers (Attachment 3).

After discussion Joe Kroll, KDHE, stated there was no objection in adopting this more contemporary language. There also would be no objection to amending regulations with this change. This does not expand the scope of practice.

The Chairperson closed the hearing on **HB 2117**.

The Chairperson opened the hearing on **HB 2060 - Factors in licensure determinations for deciding whether certain individuals have been sufficiently rehabilitated to warrant the public trust.**

Norman Furse, Revisor of Statutes Office, gave a briefing on **HB 2060** reviewing the criminal convictions as grounds for licensure action (public health statutes) (Attachment 4).

Terri Roberts, J.D., R.N., Kansas Nurses Association, stated they could not support the elimination of the proposed amendment on page 2, lines 19-26 that eliminate the felony prohibition on licensure (Attachment 5).

Carolyn Keil, R.N., PhD, Chair, Department of Nursing, Pittsburg State University, spoke in opposition to the elimination of the felony prohibition in the Nurse Practice Act (Attachment 6).

Mark W. Stafford, General Counsel, Kansas Board of Healing Arts, stated that **HB 2060** establishes guidelines to assist licensing agencies determine whether a person who has been convicted of a felony should obtain or keep a professional license. The Board supports **HB 2060** and requests that it be expanded to also include physician assistants when they are convicted of a crime (Attachment 7).

Chris Collins, Director of Government Affairs, Kansas Medical Society, provided written testimony supporting **HB 2060** with clarification (Attachment 8).

The Chairperson closed the hearing on **HB 2060**.

The meeting adjourned at 3:05 p.m. and the next meeting will be February 7.

To: Health and Human Services Committee
From: Elizabeth Jesse, CDM, CFPP, State Spokesperson, Kansas Dietary Managers Association
Subject: House Bill #2117

- *Kansas Dietary Managers Association was founded on October 16, 1963 under the directorship of the Kansas Dietetic Association. In 1983 the Dietary Managers Association formed its own board of directors.**
- *There are 392 Kansas Dietary Managers Association members
89% of all members are CDM's, CFPP's (Certified Dietary Managers, Certified Food Protection Professionals).**
- *Approximately 15,000 members across the country are experienced, educated, and trained professionals who work in nursing homes, hospitals, schools and other institutional, and restaurant settings.**
- *The Dietary Managers Association agrees and understands that CDM's should not be held to the same standards as a Dietitian. CDM's work together with registered Dietitians to provide quality nutritional care for residents/patients and perform the following tasks on a regular basis.**
 - *Conduct routine nutritional screening/assessments**
 - *Identifies nutrition problems and needs**
 - *Implements diet plans and physicians diet orders using appropriate modifications**
 - *Documents nutrition information in the medical record**
 - *Supervise preparation and serving of therapeutic diets and supplemental feedings**
 - *Protect food in all phases of preparation, holding, service, cooling, and transportation.**
 - *Purchase, receive, and store food following established sanitation and quality standards**
 - *Write purchase specifications for supplies, chemicals, and equipment**
 - *Supervise, discipline, and provide education for dietary staff**
 - *Develop annual budget and operate within budget parameters**
 - *Develop and implement policies and procedures**
- *The Dietary Managers Association(DMA) has been the leader in training and testing food service managers for more than 15 years.**
 - *There are five vocational training centers in Kansas and four correspondence schools across the country.**
 - *The future certification testing procedures will be computer based with immediate access and results.**
- *The educational curriculum to become a Certified Dietary Manager(CDM) consists of one hundred(120) hours of course study, followed by an additional one hundred(150) hours of supervised field experience.**

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***CDM's obviously go above and beyond what the state requires for Dietetic Services Supervisor, since CDM's are required by the Dietary Managers Association to earn the CFPP credential in Sanitation and Safety.**

***The CDM, CFPP credential are only maintained through obtaining 45 CEU's in a three year period**

***The Dietary Mangers Association offers the following educational opportunities to its members.**

***District Meetings**

***Two state workshops per year**

***One annual meeting**

***DMA offers the CFPP credential for all food service workers to become qualified in food safety. This program has already gained acceptance by many states and health departments in the last two years. DMA leads the way in this endeavor by offering the CFPP credential. Individuals wishing to earn this credential must pass an approved 16 hour training program and successful completion of a 75-question Sanitation and Safety Exam. Once the CFPP credential is earned, the individual must maintain the credential through five hours of continuing education every three years, to ensure he or she remains current on safety and sanitation.**

***Kansas does not have statewide requirements for LTC food manager certification.**

***Food borne illness reports are on the rise**

***LTC residents are in the high risk category for food borne illness**

***One of the top five cited adult care home regulations in Kansas and across the nation is storage, preparation, and transportation of food under safe and sanitary conditions.**

***In section B paragraph 3 of the current LTC regulations the term "dietetic services supervisor": The term no loner exist. Dietetic Services Supervisors are CDM's due to the Dietary Managers Association governing board put in place 1983. CDM's were Dietetic Service Supervisors prior to 1983.**

***Overall LTC residents require optimum nutritional care. CDM's deserve the recognition for achieving above and beyond the educational standards required by the state of Kansas. The Certified Dietary Manager is the person who operates the facility food service on a daily basis. This law is just an update and will recognize the transfer in terms from Dietetic Services Supervisor to Certified Dietary Manager.**

WHAT I HAVE LEARNED BY BEING A CERTIFIED DIETARY MANAGER

When I passed the certification exam in 1987 I was concerned about how I would be able to accumulate 45 CEU's in a 3 year period. I soon learned about all the educational sessions I would be able to attend to earn the CEU's. By having to accumulate the 45 CEU's to keep the certification, I have learned many things that have helped me make competent decisions in my work.

I've learned to maintain dietary employee work schedules, work assignments, interview and hire workers. I've learned to discipline and counsel employees, conduct performance evaluations, recommend promotions and how to terminate an employee. How to write policies and procedures, conduct dietary inservices, do ongoing education on new/different procedures, maintain a cleaning schedule and monitor that it is followed, enforce proper hand washing, ongoing sanitation techniques.

I've learned to purchase food and supplies needed in the dietary department, staying within the facility budgets, maintaining records of purchases. Select qualified vendors and service people.

What to look for when food is delivered, (broken boxes, dented cans, torn sacks, proper temperatures, etc.), items that were ordered were delivered.

I've learned about monitoring food temperatures and the time food is on line, how to prevent cross-contamination of food, safe procedures for thawing frozen food, proper technique for cooling food, to label, date and monitor food rotation.

Learned to write menu's (with dietitian's approval), evaluate food acceptance surveys, prepare standard recipes.

I've learned how to interview a client and document for the nutritional history and chart, prepare a plan of nutritional care for the client, identify nutritional problems and make recommendations. Look for food/drug interaction. How to implement Dr. diet orders, instructing the dietary staff on the needs of the client.

Many of the items above I don't think I would have learned if I wasn't required to accumulate the 45 CEU's by attending workshops and networking with my peers, to keep my certification.

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**Testimony re: HB 2117
House Health and Human Services Committee
Presented by Ronald R. Hein
on behalf of the
Dietetic Association of Kansas
February 6, 2001**

My name is Ron Hein, and I am legislative counsel for the Dietetic Association of Kansas (DAK). The DAK is the trade association in Kansas representing licensed dietitians and registered dietitians.

As licensed dietitians, the DAK can support the change of title from "dietary manager" to "Certified Dietary Manager" as requested in this legislation. Licensed dietitians work with dietary managers in providing food service and nutritional care to clients in institutions such as long-term care facilities, hospitals and rehabilitation centers.

Dietary Managers have completed 270 hours of vocational-technical training including the areas of personnel management, food production and service, cost control, basic nutrition, modified diets and care planning. To earn the title Certified Dietary Manager, they must also successfully complete an exam administered by the national Dietary Managers Association which validates they have the core knowledge needed by an entry-level manager of institutional food service. The Dietary Managers Association takes care to write a valid exam that is administered by a recognized independent testing association.

Dietary managers direct the food service departments of many small to mid-size hospitals, nursing homes, assisted living and rehabilitation centers in Kansas. They oversee the preparation and serving of food according to the KDHE standards and the federal regulations applicable to their institution. In addition, they monitor the nutritional status of the clients served, and with the consultation of the licensed dietitian, deliver the needed nutritional care. If potential problems or risks are identified, the dietary manager refers to the licensed dietitian for full nutritional assessment to determine the care needed. As dietitians, the DAK supports the recognition of the title, Certified Dietary Manager, as indicating a level of preparedness for this role.

Our concern is about a possible confusion of scope of practice. Only licensed dietitians have the education and training (4 year college degree plus supervised practice) to deliver medical nutritional therapy (formerly diet therapy) as described in federal and state

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regulations. Certified Dietary Managers gather information regarding nutritional status, screen for risks and problems using protocols developed by the licensed dietitian, and deliver nutritional care as ordered by the physician in consultation with nursing and the dietitian. They play an important and vital role in the day-to-day planning and delivery of nutritional care, but are not prepared by education and training to deliver medical nutrition therapy.

We appreciate the opportunity to contribute to your consideration of this legislation. Although the DAK had concerns about the bill introduced previously, they can support HB 2117.

Thank you for permitting me to testify, and I will be happy to yield to questions.

MEMORANDUM

TO: Health Care Reform Legislative Oversight Committee

FROM: Norm Furse, Revisor of Statutes

DATE: November 8, 2000

RE: Criminal Convictions as Grounds For Licensure Action (Public Health Statutes)

	<u>Crime</u>	<u>Convicted</u>	<u>Rehabilitated</u>
65-1120 (Nurses)	Felony or Misdemeanor (1)	Yes	Yes (2)*
65-1517 (Optometrists)	Felony	Yes	No
65-1436 (Dentist, dental hygienist)	Felony or Misdemeanor (3)	Yes	Yes*
65-1627 (Pharmacist)	Felony	Yes	Yes*
65-1751 (Mortuary Arts)	Felony or Offense involving moral turpitude	Yes	Yes*
65-1908 (Cosmetology)	Felony	Yes	Yes*
65-1947 (Tattooing, body piercing)	Related Crime (4)	Yes	No
65-2006 (Podiatry)	Felony	Yes	Yes*
65-2836 (Healing Arts)	Felony or Misdemeanor (5)	Yes	Yes*
65-2912 (Physical Therapy)	Felony	Yes	Yes*
65-3508 (ACH Administrator)	Related Crime (6)	Yes	No
65-4209 (Mental Health Technician)	Felony or Misdemeanor (1)	Yes	Yes (2)*
65-5410 (Occupational Therapy)	Felony (7)	Yes	No
65-5510 (Respiratory Therapy)	Felony (7)	Yes	No
65-5809 (Professional Counselor)	Felony	Yes	Yes*
65-6129b (Instructor-Coordinator, Ambulances)	Felony or Other Crime (8)	Yes	Yes*

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65-6129c (Training Officer, Ambulances)	Felony or Other Crime (8)	Yes	Yes*
65-6133 (Ambulance Attendant)	Felony	Yes	Yes*
65-6311 (Social Worker)	Felony	Yes	Yes*
65-6408 (Marriage and Family Therapy)	Relevant Crime (9)	Yes	No
65-6508 (Speech Pathologists and Audiologists)	Relevant Crime (10)	Yes	No
65-6604 (Alcohol or Other Drug Abuse Counselor)	Relevant Crime (10)	Yes	No
65-6911 (Athletic Trainer)	Felony	Yes	Yes*
74-5324 (PhD Psychologist)	Felony (11)	Yes	No
74-5369 (Masters Level Psychologist)	Felony (11)	Yes	No

*Sufficiently rehabilitated to warrant the public trust.

- (1) Misdemeanor involving an illegal drug offense.
- (2) Except no license shall be granted to any person with a felony conviction for a crime against persons under article 34 of chapter 21 of the K.S.A. (crimes against persons)
- (3) Misdemeanor involving moral turpitude.
- (4) Convicted of crime relating to tattooing or body piercing.
- (5) Class A misdemeanor, whether or not related to practice of healing arts. The board of Healing Arts is required to revoke license of licensee following conviction of a felony unless a 2/3 majority of board members present and voting determine by clear and convincing evidence that the licensee will not pose a threat to the public in the licensed capacity and has been sufficiently rehabilitated to warrant the public trust. The same requirements apply to an application for an original license or to reinstate a canceled license.
- (6) Crime having a direct bearing on whether person should be entrusted to serve public.
- (7) Only a felony conviction which is found by the board to bear directly on whether the applicant or licensee should be entrusted to serve the public.
- (8) The crimes, other than a felony, must be related substantially to the qualifications, functions and duties of the certificate holder.
- (9) Any crime the board determines would render the convicted person unfit to practice.
- (10) Any crime found by the licensing agency to bear directly on whether the applicant or licensee should be entrusted to serve the public.
- (11) A felony involving moral turpitude.

Attached

K.S.A. 74-120
Montana Licensure of Criminal Offenders Act
New Mexico Criminal Offender Employment Act
Black's Law Dictionary definition of moral turpitude



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H.B. 2060 Determining Qualifications of Certain Individuals for Licensure

Representative Gary Boston and members of the House Health and Human Services Committee, my name is Terri Roberts R.N., J.D., and I represent the KANSAS STATE NURSES ASSOCIATION (KSNA). The KANSAS STATE NURSES ASSOCIATION is the professional organization for registered nurses in the state.

We understand that the intent of H.B. 2060 is to provide clear direction to state health licensing agencies of specific criteria that should be considered when evaluating whether a potential licensee has been sufficiently rehabilitated to warrant the public's trust. The new section on page one appears to incorporate the criteria from the *Vakas v. The Kansas Board of Health Arts* case decided by the Kansas Supreme Court in January of 1991. This case and its criteria have been used by the Kansas Board of Nursing in recent years in discussion we have had about matters related to fair and equitable review when they are making determinations affecting licensure status.

KSNA supports the codification of these criteria that appears in the New Section 1 as it applies to those "guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense" (in the case of licensees of the Board of Nursing K.S.A. 65-1120).

In our discussions we questioned the wording that appears in the criteria listed as (2), (4), (5), (6) and (7) as it appears to use terminology that *assumes* a "previous disciplinary action by the regulatory body" and we are unclear about the legislative intent of how this is to be used for new licensing applicants that the Board would be considering? Clearly (1) *The present moral fitness of the licensee or applicant* and (3) *the extent of the licensee's or applicant's rehabilitation* provide direction to the agency, but again, we are not clear if the Board of Nursing will have to use the other criteria that appear to be predicated on previous disciplinary action by the agency. KSNA staff were present during the discussion regarding these issues during the interim committee meeting where they were explained, but now with the statutory language being proposed we are seeking greater clarity in its applicability, if at all for new applicants for licensure and how the Board of Nursing would

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

Constituent of The American Nurses Association

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be expected to implement the criteria in statute.

The next area we would like to comment on is the proposed amendment to K.S.A. 65-1120 which would eliminate the "Article 34, Chapter 21" felonies as absolute bars to licensure as an RN, LPN or advanced practice nurse. **We cannot support the elimination of the proposed amendment on page 2 lines 19-26 that eliminate the felony prohibition on licensure.** The list of felonies in Article 34, Chapter 21 are the most heinous crimes against persons that are recognized in state criminal statutes, and in the 1997 legislative session, KSNA worked alongside many other nursing organizations to seek this very important absolute bar to nursing licensure. Subsequent to the statute being changed, an Attorney General's Opinion was requested by the Board of Nursing to ensure that they would be clear about the applicability to previously licensed felons who would be seeking renewal. Since that opinion the Board of Nursing has been denying licensure to applicants with Article 34, Chapter 21 felony convictions.

We supported the absolute bar on licensure because in our profession we are expected to be responsible for the health care and medical services rendered to clients who are in various stages of health. Patients have great expectations of licensed nurses, many times we are responsible for their care 24 hours a day, 7 days a week, 365 days a year, and this enormous responsibility can only be accomplished with a high level of confidence and trust by the patients that we have the requisite clinical competence and moral and ethical tenants to perform those duties. Current Kansas law prohibits convicted felons from obtaining teaching certificates from the Board of Education (*K.S.A. 72-1397, K.A.R. 91-221a*), and prohibits convicted felons from operating licensed day cares or even living in a home where a licensed day care is operated.

Because licensed nurses have the responsibility for life/death in many circumstances involving the care they deliver, we believe it is essential that the absolute bar on licensure from those convicted of the states most heinous crimes be preserved. We ask for your support in making this amendment if this bill moves forward.

Thank you.

Felony Crimes Against Persons

Article 34, Chapter 21

Sorted by Severity Level and then by Statute Number

<u>Reference</u>	<u>Description</u>
21-3401	Murder in the first degree
21-3402(a)	International second degree murder
21-3439	Capital Murder
21-3412(c)(3)*	Domestic Battery; third or subsequent w/in last 5 yrs
21-3401	Murder in the first degree
21-3421	Aggravated kidnapping
21-3401	Murder in the first degree; Conspiracy (21-3302)
21-3402(b)	Murder in the second degree (reckless)
21-3401	Murder in the first degree; Solicitation (21-3303)
21-3403	Voluntary manslaughter
21-3420	Kidnapping
21-3427	Aggravated robbery
21-3415(b)(1)	Aggravated battery on LEO-intentional, great bodily harm (see 21-344(a)(1)(A))
21-3440	Injury to a pregnant woman in the commission of a felony
21-3414(a)(1)(A)	Aggravated battery - intentional, great bodily harm
21-3440	Injury to a pregnant woman in commission of K.S.A. 21-342 (aggravated assault), K.S.A. 21-3413(a)(1), battery or K.S.A. 21-3517, sexual battery
21-3404	Involuntary manslaughter
21-3426	Robbery
21-3414(a)(2)(A)	Aggravated battery - reckless, great bodily harm
21-3411	Aggravated assault on law enforcement officer
21-3437	Mistreatment of a dependent adult - physical
21-3410	Aggravated assault
21-3422a(b)	Aggravated interference with parental custody
21-3428	Blackmail
21-3413(a)(2)	Battery against a correctional officer
21-3413(a)(3)	Battery against a youth center officer
21-3413(a)(4)	Battery against a juvenile detention officer
21-3413(a)(5)*	Battery against a city/county correctional officer/employee
21-34(a)(1)(B)	Aggravated battery - intentional, bodily harm
21-3414(a)(1)(C)	Aggravated battery - intentional, physical contact
21-3438(c)	Stalking when the offender has a previous conviction within 7 years for stalking the same victim
21-3414(a)(2)(B)	Aggravated battery - reckless, bodily harm
21-3406	Assisting suicide
21-3419	Criminal threat
21-3438(a)	Stalking in all other cases
21-3422(c)(2)	Interference with parental custody in all other cases

*This crime was created or the severity level of this crime was amended during the 1996 legislative session.

Attorney Generals Opinion 97-88 addresses interpretation of Felony Licensure Prohibition in S.B. 164

The Board of Nursing (BON) at their May meeting requested a formal Attorney General's opinion regarding the revision of K.S.A. 65-1120 found in S.B. 164 which became effective July 1, 1997. Several questions was posed to the Attorney General in a letter from the Board.

The section questioned reads as follows K.S.A. 65-1120 (a) The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing: . . . (2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

The questions posed by the BON were as follows:

1. With an effective date of July 1, 1997, does the conviction have to be after that date or is it time related at all?
2. What if the conviction was outside of Kansas?
3. Since there is no grandfather clause, what about those students who have such conviction who are now in school? Shall we deny the license?
4. Does it effect those licensees who may be renewing a license but have a past conviction?
5. If a person is licensed and commits a felony which fall under article 34 of chapter 21, do we just then proceed with revoking that license as we do now? Does the new language refer only to granting a license?
6. What if a person who has been licensed which lapses and then submits a reinstatement:
 - a. Has a conviction before new law becomes effective, can we then grant a reinstated license? or
 - b. Has a conviction between the license lapses and application is submitted for reinstatement (can show rehabilitation), can we then deny with new law?

Kansas Board of Nursing Only Has Statutory Authority to Set the Minimum Standard for R.N. Education Programs

The Board of Nursing recently requested clarification of the NPA regarding authority to regulate the curriculums of BSN programs. Steve Phillips, (the Board's attorney) reply is provided below.

Pat Johnson
Executive Director—Board of Nursing
900 SW Jackson, Rm 551s
Topeka, KS 66612-1230

Dear Pat:

You asked whether the board has authority to set the curriculum for bachelor of nursing programs. K.S.A. 65-1119 allows the board to require a school to submit proof that it "will maintain the standard and basic professional nursing curriculum. . . ." A school must submit evidence that "(1) It is prepared to carry out the professional curriculum as prescribed in the rules and regulations of the board- and is prepared to meet such other standards as shall be established by this law and the rules and regulations of the board."

Implicit is that the board has authority to set a minimum standard for the curriculum to be a professional nurse. The statute does not give the board additional authority to regulate the parts of a curriculum which go beyond the minimum. The statute does not give the board authority to establish different categories of professional nursing, schools. In other words, the board can only hold a bachelor of nursing program to the same standard as any other accredited program, i.e. an associate degree program.

The board does not have authority to regulate the curriculum of a bachelor of nursing program. The board could, however, raise the overall minimum curriculum requirements to a high enough level that as a practical matter, a bachelor's program would be required for all professional nursing programs.

This is not a formal attorney general's opinion. Attorney General Stovall has not reviewed the letter.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL
Steve Phillips
Assistant Attorney General

Attorney General Opinion No. 97-88

Public Health—Regulation of Nursing; Nurses-Denial, Revocation of License; Prohibition on Licensure of Felons; Retroactivity

Synopsis: Amendments to the Nurse Practice Act stating that no license shall be granted to a certain class of felons apply only to applicants for new licenses after the effective date of the amendment. The class of felonies, however, is not limited by time, and applies to felonies occurring before the effective date of the amendment. This limit on licensure is a rational exercise of the state's police power and is not prohibited by the ex post facto clause of the United States Constitution. Cited herein: K.S.A. 1996 Supp. 65-1120 as amended by 1997 S. B. 14, S 4; K.S.A. 65-1117; U.S. Const., Article 1, S 10, Amend. XIV.

NOTE:

The entire text of AG's Opinion 97-88 is not being printed here, but is available from KSNA. The following excerpts from the opinion are helpful in understanding the synopsis.

Excerpts Only AG Opinion 97-88

Before addressing your specific questions, it is necessary to determine the rights of a nursing licensee once a license is granted. The Fourteenth Amendment to the United States Constitution, commonly known as the Due Process Clause, provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

In order for the Fourteenth Amendment to apply, a nurse would have to have a property interest in his or her license. In *Board of Regents v. Roth*, 408 U.S.564,33L.Ed.2d548, 92 S.Ct. 2701 (1972) the Court determined,

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined.

■ ■ ■ ■ ■ ■ ■ ■

"Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents v. Roth*, 408 U.S. at 577, 33 L.Ed.2d at 561.

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"Similarly, mutual expectations may create an entitlement in a license. For instance, a state-issued license for the continued pursuit of the licensee's livelihood, renewable periodically on the payment of a fee and revocable only for cause, creates a property interest in the licensee."

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Based upon the structure of the Kansas Nurse Practice Act, we believe a nurse has a property right in a nursing license once the nurse receives the nurse's license, certificate of qualification, or authorization to practice.

You ask whether the prohibition on licensure of a person with an article 34, chapter 21 person felony is limited to felonies occurring after the effective date of the amendments (July 1, 1997), or if it also applies to article 34 person felonies committed before that date. The amendment refers to "a felony conviction." We believe these words are clear and unambiguous, and that no statutory construction is necessary—there is nothing in this phrase to limit application to new felonies. We believe it applies to all such felonies, whether the felonious act or conviction occurred before or after the effective date of the amendment (July 1, 1997). We do not believe that this constitutes a retrospective application of the statute (which is not favored at law) because, as will be discussed, we believe this portion of the amendment only applies to those persons applying for a new license after July 1, 1997.

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Under the statutory scheme, so long as a nurse continues to meet certain requirements, including "the requirements set forth in K.S.A. 65-1115 or 65-1116 and amendments thereto in effect at the time of initial licensure of the applicant" the nurse receives a renewal license" K.S.A. 65-1117(a). Reinstatement of a lapsed license is different, however. The nurse must essentially furnish "proof that the applicant is competent and qualified." K.S.A. 65-1117(b)

The issue is whether the words in the amendment "no license ... shall be granted" refer to just the initial issuance of the license or renewals also. Because a license becomes a type of property right once issued, we believe that a "renewal license" is something different from the issuance of the initial license.

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You also ask whether the bar on licensure would apply to students who entered nursing school before the effective date of the amendments, but who have a prior person felony conviction under article 34, chapter 21.

The state has police power to regulate the practice of health care providers. *State ex. rel Schneider v. Liggett*, 223 Kan. 610, 615 (1978). Prior to licensure, a person has no "property right" in the practice of nursing and is not entitled to constitutional procedural due process rights.

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Nurses routinely deal with patients who are in a weak and dependent condition. The level of trust between a patient and nurse must be uncompromised. The absolute bar on felons as nurses is only for those with article 34 person-felony convictions, meaning violent, person felonies such as murder, manslaughter, kidnapping, etc. We believe there is a rational relationship between an absolute bar against future licensure of nurses with such convictions and the goal of protecting the public health

and promoting the profession of nursing.

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In *Meffert v. Medical Board*, 66 Kan. 723 (1903), aff'd. 195 U.S. 625, the court upheld a new statute allowing the Medical Board to deny a license to practice medicine based upon a felony conviction. The court said it was not an invalid ex post facto law:

"The revocation of a license to practice medicine for any of the reasons mentioned in the statute was not intended to be, nor does it operate as, a punishment, but as a protection to the citizens of the state."

We believe that the clear purpose of the amendments to K.S.A. 65 1120 are for the protection of the public. They are not punitive and do not constitute an ex post facto law. Consequently, a nursing student who applies for a license after July 1, 1997, with a person felony conviction as specified in article 34, chapter 21 must be denied a license.

In determining the scope of the amendments to K.S.A. 65-1120, we have attempted to determine the Legislature's intentions. We note that the Legislature could constitutionally have gone further and barred licensure (or made revocation mandatory) for persons with other convictions, so long as there was a rational basis for barring licensure. For instance, the bar for licensure for article 34 felonies does not prohibit licensure of a person convicted of any of the felony sex offenses set forth in article 35. We believe that a bar of licensure or revocation of licensure for such crimes would not be punitive in nature, but would be a rationally based measure designed for the protection of the citizens of this state. It is unclear to us why the legislatively enacted ban was drawn so narrowly.

Finally you ask whether the absolute bar applies to convictions which occur outside of Kansas. The bar on licensure applies to persons with a "felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated." The Legislature is presumed to intend that a statute be given a reasonable construction so as to avoid unreasonable or absurd results. *Todd v. Kelly*, 251 Kan. 512 (1992). It would make no sense to distinguish between crimes committed in another state and those committed in Kansas. We believe that by saying "as specified," the Legislature meant any criminal conviction in any jurisdiction which meets the elements of a crime as set forth in the person felonies in article 34 of chapter 21 of Kansas Statutes Annotated. We do not believe it is limited to Kansas convictions.

In summary, we believe that the amendments to K.S.A. 1996 Supp. 60-1120 which provide "no license.... shall be granted" apply only to applicants for new licenses after the effective date of the amendment, July 1, 1997. The felonies to which the amendment applies, however, include felonies committed before or after the effective date of the act. The felonies may be from another jurisdiction, so long as the elements are the same as those of crimes specified in the person felonies in article 34 of chapter 21.

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Kansas Statutes

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65-516

Chapter 65.--PUBLIC HEALTH Article 5.--MATERNITY CENTERS ANDCHILD CARE FACILITIES

65-516. Restrictions on persons maintaining or residing, working or volunteering at child care facility or family day care home. (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who:

Felony
Prohibition

(1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under the uniform controlled substances act, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto or a conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any such act, or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto, or is any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to K.S.A. 38-1523 and amendments thereto and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states;

the time of the original conduct;

(8) the licensee's or applicant's present competence in the skills of the profession; and

(9) such other factors as the licensing agency deems appropriate.

Sec. 2. K.S.A. 2000 Supp. 65-1120 is hereby amended to read as follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, ~~except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto in accordance with the provisions of section 1 and amendments thereto;~~

(3) to have committed an act of professional incompetency as defined in subsection (e);

(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto;

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country

KANSAS STATE NURSES ASSOCIATION
PROPOSED AMENDMENTS TO H.B. 2060
Page 2 February 6, 2001

felony prohibition on licensure to remain,
do not eliminate strike through section line 19-26.

DATE: February 6, 2001

TO: Gary Boston, Chair
House Health and Human Services Committee

FROM: Carolyn Keil, RN, PhD
Chair, Department of Nursing, Pittsburg State University

RE: Elimination of the Felony Prohibition in the Nurse Practice Act

Chairperson Gary Boston and members of the House Health and Human Services Committee, my name is Carolyn Keil. I am Chair of the Department of Nursing at Pittsburg State University. I am here to speak on behalf of the nursing faculty at Pittsburg State University in opposition to elimination of the felony prohibition in the Nurse Practice Act.

At Pittsburg State University we are passionate about the issue of felons in nursing, based on painful past experience. Many of you will remember the brutal murder of a Pittsburg State University student, Carrie Williams, in 1996, and the arrest, trial, and conviction of Gary Kleypas, a senior nursing student, for that murder.

Nineteen years earlier, Gary Kleypas had been convicted of another murder, in Missouri. His victim then was a woman in her 70s, his neighbor. She was raped and brutally stabbed multiple times. He pled guilty to 2nd degree murder and was sentenced to 30 years in prison. Fifteen years later, in 1992, he was paroled. A year after he was paroled he came to Pittsburg State University and applied to the nursing program. His parole officer, who had supervised him for over a year, was one of his references. She said, "he has learned a valuable lesson from his past mistakes." Without knowing the details of the murder, and with legal advice, the Department of Nursing reluctantly admitted him.

In the spring of 1996, Gary Kleypas was within weeks of graduation, almost a nurse, when he murdered again. Carrie Williams was 20 years old, and his neighbor. He tied her to a chair, sexually assaulted her, and brutally stabbed her multiple times. The headlines read, "CONVICTED FELONS CAN PRACTICE NURSING" and "THE NURSE MIGHT BE AN EX-CONVICT."

Six weeks after the murder the nursing faculty at Pittsburg State University wrote a letter to the Kansas State Board of Nursing, saying "...Many people are asking questions about the nursing department's admission criteria and the potential licensure of a known felon. We have learned that in the state of Kansas, known felons cannot be granted a teaching certificate to teach our children --- but they can be a nurse.... It is our belief that...violent criminals and sex offenders have **no place** in the profession of nursing. Nurses are entrusted to care for vulnerable populations.... The potential risks of harm are too great." We asked for restrictions to licensure based on criminal history, believing that

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such a policy would help schools of nursing decline admission to individuals with felony backgrounds and would help protect the public.

Pittsburg State University's senior nursing students, who were classmates of Gary Kleypas, also wrote to the Kansas State Board of Nursing. They stated that "our government has not been able to protect us from our own criminals.... Why would we, the people of Kansas, want someone who had raped and murdered another person, to be a nurse? How can we ask our patients to trust us when one of us may be a murderer or rapist? We want stricter guidelines for admission to nursing education programs and for the Kansas State Board of Nursing to prohibit licensure of convicted rapists and murderers in Kansas."

Later that year, Joan Sheverbush, a member of our nursing faculty, wrote to the Kansas State Nurses Association in support of its position on absolute prohibition. She said "the safety of patients, the general public, and all health care givers is of prime importance when considering the issue of licensing convicted felons. There is no convincing evidence that ...by merely completing a period of incarceration, probation, and parole does an individual who has committed a violent act against another human become rehabilitated."

In a presentation to the Kansas State Board of Nursing regarding the situation, Jo Ann Marrs, then Chair of the nursing program, read an original poem. The poem expressed the feelings of the faculty and said, in part:

"How could someone eligible to become a nurse
Be suspected of such a heinous crime and worse?

Nursing is about protecting, caring, and healing,
Not about abuse, rape, and killing.

Surely violent and sex offenders could have been kept away
From all the vulnerable populations they would meet everyday.
But no laws exist in Kansas that support that view.
Violent offenders and sex offenders too, could be nursing
Your grandparents, child, or you."

In the succeeding months, the Kansas Legislature did pass such a law, and a felon who had been convicted of a violent crime against another person could no longer become a nurse in Kansas. Today, merely four years later, we are discussing the removal of that prohibition. For the nursing faculty at Pittsburg State University the emotions about the prohibition are still very intense. We strongly believe that sexual predators and convicted violent felons should not be licensed as nurses. People trust their lives to us. We respectfully request that you allow the felony prohibition to stand.

I thank you for the opportunity to share our thoughts and feelings. I would be happy to answer any questions that I can.

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



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(785) 368-7102

February 6, 2001

The Honorable Garry Boston, Chairperson
Health and Human Services Committee
Room 156-E
State Capitol

Re: 2001 House Bill No. 2060

Dear Chairman Boston and Members of the Committee:

Thank you for the opportunity to appear before you on behalf of the Kansas Board of Healing Arts in support of House Bill No. 2060. This bill establishes guidelines to assist licensing agencies determine whether a person who has been convicted of a felony should obtain or keep a professional license.

The Board is a fifteen member body appointed by the Governor. It is comprised of five medical doctors, three doctors of osteopathic medicine and surgery, three doctors of chiropractic, one podiatrist and three members of the general public. The Board regulates MDs; DOs; DCs; podiatrists; physician assistants; respiratory, physical, and occupational therapists; PT and OT assistants; and athletic trainers. The Board's mission is to protect the public health and safety. This is accomplished by granting licenses or registrations to those who are qualified, and by taking disciplinary action against or denying licenses to those who engage in unprofessional, dishonorable, or incompetent practice.

This state's public policy has long been that licensing boards should exercise discretion when determining whether a person who has been convicted of a felony should be allowed to obtain or keep a professional license. This policy was announced in K.S.A. 74-120, adopted in 1972. In summary, that statute states that a conviction may be considered, but is not an automatic barrier to professional licensure. The Board agrees that this is the appropriate policy, and supports legislation that maintains that public policy.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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Testimony of Mark W. Stafford
Regarding House Bill No. 2060
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Initially, the fact of a criminal conviction, or even the acquittal from criminal charges, should not be the only determining factor of whether a person may practice the healing arts. Standing between an accusation and an actual conviction lie many things, some of which have nothing to do with whether the misconduct actually occurred. For example, the skill of the prosecutor and defense counsel, the accuracy of the jury instructions, the competence of the law enforcement officers in collecting information, and sometimes even the popularity of the accused may influence the actual verdict. When disciplining a licensed professional, the greatest concern should be with the facts of the case rather than with the ultimate outcome of a criminal trial.

Secondly, the Board believes that licensing cases should be considered for the purpose of public protection, not for additional punishment. Protecting the public does not require automatic revocation of a professional license following every conviction. The public expects to be protected from dangerous practitioners of the healing arts, but the public also needs access to professional services provided by competent practitioners. The physician's skills are a unique benefit to society. Thus, when the practitioner engages in misconduct, discretion should be applied to fashion appropriate remedies. Revocation or denial of a license might be the appropriate remedy. However, placing conditions or limitations upon the license might provide adequate public protection. The only purpose served by systematically revoking or denying a license based upon a felony conviction is to punish the individual. Exacting appropriate and sufficient punishment is the function of the criminal justice system, and not of regulatory boards.

Thirdly, the Board believes that determining rehabilitation is possible, though not a perfect science. However, the Kansas Supreme Court has approved factors for establishing rehabilitation. In *Vakas v. Kansas Board of Healing Arts*, 248 Kan. 589 (1991), the Court upheld the Board's decision not to reinstate a revoked license. The Board had applied eight factors in finding that Dr. Vakas was not sufficiently rehabilitated. Those factors included: (1) the present moral fitness of the doctor; (2) the demonstrated consciousness of the wrongful conduct and the disrepute brought upon the profession; (3) the extent of rehabilitation; (4) the nature and seriousness of the original misconduct; (5) subsequent conduct; (6) the time elapsed since the original discipline; (7) the individual's character, maturity, and experience at the time of the original revocation; and (8) the individual's present competence in medical skills. While *Vakas* dealt with reinstatement of a revoked license, the Board may apply these factors any time rehabilitation is questioned.

The Board has had several opportunities to consider whether a person convicted of a felony should be granted a license or should have a license disciplined. Several licenses have been denied or revoked based upon a person's conduct which led to the felony conviction. In those instances when revocation or denial has not been ordered some other discipline generally has been ordered, usually in the form of a fine, censure, limitation and monitoring. Limitations on the scope or extent of practice have been ordered when the Board believed these were necessary as a means of protecting the public. Ultimately, the decision must be made whether

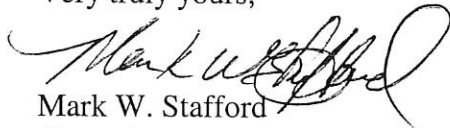
Testimony of Mark W. Stafford
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the individual warrants the public trust, and usually this requires considering the extent to which the person has been rehabilitated. The factors for determining rehabilitation that were identified in *Vakas v. Kansas Bd. of Healing Arts* are identical to the factors for determining rehabilitation in House Bill No. 2060. Those factors are appropriate not only in reinstatement cases, but also in any case in which an individual's rehabilitation following a conviction is in question.

Finally, the Board suggests a minor amendment to the bill. K.S.A. 2000 Supp. 65-28a05 states grounds for disciplinary action against physician assistants. This is a new statute adopted last session, and was apparently left out of this bill as an oversight. The Board asks that this statute also be included in the amendments.

In conclusion, the Board fully supports House Bill No. 2060, and requests that it be expanded to also include physician assistants when they are convicted of a crime.

Very truly yours,



Mark W. Stafford
General Counsel



KANSAS MEDICAL SOCIETY

TO: House Committee on Health and Human Services
FROM: Chris Collins *Chris Collins*
Director of Government Affairs
DATE: February 6, 2001
RE: HB 2060: Licensure Reinstatement

Chairman Boston and Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify today in support of HB 2060. The Kansas Medical Society endorses the concept of this bill and respectfully urges this committee to pass it after some clarification.

HB 2060 standardizes the criteria that all licensing boards must utilize in determining whether a licensee, whose license has been revoked because of a felony or misdemeanor conviction, should have that license reinstated. KMS supports the concept of standardization of criteria for all licensing boards on this issue. The criteria articulated in HB 2060 have their genesis in the Kansas State Supreme Court case Vakas v. Kansas Board of Healing Arts, 248 Kan. 589, 808 P.2d 1355 (1991). The criteria are reasonable and, as a practical matter, have been applied by the Kansas State Board of Healing Arts in making such determinations since the Vakas decision was handed down. The criteria ensure that all licensing boards require moral fitness of its licensees while ensuring that each licensing board is still afforded a reasonable measure of discretion in policing its profession. Furthermore, setting forth the Vakas factors in statute will afford applicants some measure of predictability of their likelihood for success prior to committing considerable time and financial resources to the licensure reinstatement process.

However, the Vakas factors may not be appropriate for those seeking licensure for the first time. For example, factors set forth on lines 41 and 42 on page one of the bill, "(5) the conduct subsequent to discipline; and (6) the time elapsed since the original discipline" assume that the licensing board has already taken disciplinary action against the applicant. As a practical matter, that would have been impossible as the licensing board would have had no jurisdiction over that individual prior to initial licensure. KMS would respectfully ask this committee for additional clarification on the application of those factors to those seeking initial licensure.

For the foregoing reasons, KMS urges the House Committee on Health and Human Services to pass the bill, with some additional clarification. Thank you for the opportunity to comment today on this important issue.

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