

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on February 14, 2002 in Room 231-N , of the Capitol.

All members were present except: Senator Nick Jordan (EA)
Senator Nancey Harrington
Senator Pete Brungardt (EA)

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Mr. Chip Wheelen, Executive director,
KS Association of Osteopathic Medicine
Mr. Larry Buening, Executive Director,
KS Board of Healing Arts
Ms. Chris Collins, Director of Government Affairs for
KS Medical Society

Others attending: See attached guest list.

Withdrawing introduction of a bill

Upon calling the meeting Chairperson Wagle announced that before the hearing she would ask that Senator Barnett to withdraw his request for introduction of a bill dealing with medicaid fraud and abuse. Senator Praeger seconded the motion and the motion carried.

Hearing on SB447 - an act concerning the compensation of review committee members appointed by the State Board of Healing Arts.

Next the Chair announced that before the hearing, Ms. Emalene correll, Kansas Legislative Research Department, would present a brief overview of the bill. The highlights on the three sections were: compensation, new language in the statute, and the amendment substitute having the same language. Senator Praeger and Ms. Correll discussed if this was a new provision because it was a new bill.

Chairperson then called on the first opponent. Mr. Chip Wheelen, Executive Director, KS Association of Osteopathic Medicine, who gave some background as to how individuals are recruited to serve on review committees, how in the past a modest fee for service for compensation was paid to the members, but that the practice was curtailed because of concerns of inconsistencies with provisions of current law limiting the amount elected & appointed officials may be paid.. He also stated that the bill clarifies hourly compensation. A written copy of his testimony is (Attachment 1) attached hereto and incorporated into the Minutes by reference.

Following Mr. Wheelen presentation, Chairperson Wagle recognized Mr. Larry Buening, Executive Director, KS Board of Healing Arts, who gave a history of the review committees and their importance (i.e. expert witnesses for a disciplinary proceeding involving the standard of care of a practitioner.)and dollar amounts the Board expended in 2001 and 2002. He also stated that HB2121 does not require the Board to compensate review committee members for time expended in preparation for the meetings. A copy of his written testimony is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

The last proponent testimony is from Ms. Chris Collins,, Director of Government Affairs who stated the lack of compensation makes it very difficult for the Board to attract talented physician reviewers willing to accept the task. A written copy of her testimony is ([Attachment 3](#)) attached hereto and incorporated into the Minutes by reference.

Last to testify was Ms. Carolyn Middendorf, representative of the Kansas State Nurses Association who stated that the Board was interested in amending into the bill, the statutes pertaining to the Board of Nursing so that they would have authority to not only appoint peer review committees, but to compensate them. Written testimony was not provided.

As there were no proponent or written testimony, Chairperson Wagle asked for questions or comments from the Committee. Questions from Ms. Correll, Senators Salmans and Barnett ranging from "expert witness" seeming a little broad, the fiscal note (impact on the budget?), to other disciplines, the three branches of healing arts and podiatry . The questions were answered by Mr. Buening.

Hearing on SB448 - the exclusion of team physicians for the purpose of practicing the healing arts.

Chairperson Wagle then moved on to the hearing of SB448, an act concerning the exclusion of team physicians for the purpose of practicing the healing arts. Again, she called upon Ms. Emalene Correll to give a brief overview of the bill. The highlights of the bill included ramifications that are well identified (i.e. acupuncture and ear piercing by department store clerks), exclusion on language (ninety (90) days), to a major policy amendment in included in SB448.

Chairperson Wagle then called the first proponent to the bill, Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts who stated the bill gives a more detailed description of what constitutes a surgical operation and includes procedures that fall within that definition when performed for cosmetic or figurative purposes and would specifically exclude individuals licensed in another state who accompany school and professional athletes in this state. A copy of his written testimony is ([Attachment 4](#)) attached hereto and incorporated into Minutes by reference.

Next proponent to testify was Mr. Chip Wheelen, Executive Director, Kansas Association of Osteopathic Medicine, who stated it might be helpful to remember that the Healing Arts Act is based on the premise that there are 3 distinct branches of th healing arts. The definition of osteopathic practice is over four decades old and an example is shown in subsection (a) that relies on the phrase "as heretofore interpreted by the supreme court of this state. 45 years later, no one is really certain what that means. Their proposed amendment would specifically rely on the definition of medicine and surgery but condition that definition on the person's academic degree. A copy of his written testimony is ([Attachment 5](#)) attached hereto and incorporated into Minutes by reference.

The third proponent to testify was Ms. Chris Collins, Director of Government Affairs to the Kansas Medical Society. Ms. Collins stated that she would forgo speaking in absence of time. A copy of her written testimony is ([Attachment 6](#)) attached hereto and incorporated into Minutes by reference.

Chairperson Wagle then introduced Mr. Keith Landis, Christian Science Commissioner of Publications, who proposed an amendment on page 1 of the bill replacing lines 37-39 to read:

"Individuals practicing religious beliefs which provide for reliance on spiritual means alone for healing."

A copy of his written testimony is ([Attachment 7](#)) attached hereto and incorporated into Minutes by reference.

Chairperson Wagle then asked for questions or comments from the Committee. A discussion ensued between Senators Salmans and Barnett, Ms. Correll, and Mr. Larry Buening regarding the HB on cosmetology introduced last year regarding parking lot issues, sonograms, "mental disorder", ear piercing, and laser surgery.

Adjournment

As there was no further discussion, the meeting was adjourned. Adjournment time was at 2:35 p.m.

The next meeting is scheduled for February 19, 2002.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

26

DATE: Thurs. Feb 14, 2002

NAME	REPRESENTING
LARRY BUENING	BD OF HEALING ARTS
Ron Zoeller D.C	" " Healing Arts
Mark Stafford	"
Steve Cook	"
Shelly Wakeman	"
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Chip Wheeler	Osteopathic Assn
Carolyn Maggendorff	Ks St Ds Assn
Michelle Peterson	Ks Environmental Council
Ruth Kelly	Social Work Student - Washburn
PHILIP HURLEY	PAT HURLEY & CO. / KATP
Chris Collins	Kansas Medical Society



Testimony on Senate Bill 447
Senate Public Health and Welfare Committee
By Charles L. Wheelen
February 14, 2002

Thank you for this opportunity to express our support for the provisions of SB447. This bill would allow the State Board of Healing Arts to resume the practice of compensating members of committees who review medical charts and related information in order to render a professional opinion whether a licensee adhered to appropriate standards of care. This bill would also allow the Board to hire expert witnesses without soliciting competitive bids.

You will note that current law allows the Board to accept review committee nominees from professional associations. When we seek out individuals to serve on these review committees we try to recruit members of the profession who are respected by their peers for consistently sound medical judgment. After all, they are being asked to judge their professional peers and their opinions can possibly determine whether the peer loses or retains his or her license to practice. The kind of people we ask to serve on review committees are typically very busy physicians whose time is extremely valuable.

The peer review process is tedious and oftentimes requires detailed reading of numerous medical charts and similar records. It can be very time consuming. In the past the Board of Healing Arts paid review committee members a modest fee for service to compensate them for their time devoted to reviewing charts and records. But this practice was curtailed because of concerns that it may be inconsistent with the provisions of current law which limit the amount that elected and appointed officials may be paid.

K.S.A. 75-3223 is the section of Kansas law that sets out the standard rate for attendance at meetings of boards and subcommittees of boards. Neither this section of law nor any of the other sections referenced in K.S.A. 75-3223 provides for hourly compensation; thus the need to clarify the Board's authority to pay members of review committees. That's what SB447 does.

We believe that because of the importance of their role in the regulatory process, only the most respected physicians should be appointed to serve on review committees. And we also believe that qualified professionals should receive reasonable compensation for their work. The amount of compensation to be paid review committee members would be a function of the budget process. And of course the source of revenue would be the Healing Arts Fee Fund. In other words, licensees rather than the State General Fund would afford the cost.

Section three of the bill would allow the Board of Healing Arts to seek out expert witnesses who have specialized expertise in a certain medical discipline or field. When seeking such expertise, accepting the lowest responsible bid could be counterproductive to the goal of obtaining the most knowledgeable opinion. And again, in matters pertaining to licensure, it is important to obtain the most qualified individual to express an opinion regarding appropriate standards of care.

Thank you for considering our comments. We urge you to recommend passage of SB447.

*Senate Public Health & Welfare Committee
Date: February 14, 2002
Attachment 1*

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



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MEMORANDUM

TO: Senate Committee on Public Health and Welfare

FROM: Lawrence T. Buening, Jr. *LTB*
Executive Director

DATE: February 14, 2002

RE: **SENATE BILL NO. 447**

Chairperson Wagle and members of the Committee, I want to thank you for authorizing the introduction of S.B. No. 447 and for setting the bill for hearing and possible final action. This bill was requested for introduction by the State Board of Healing Arts and the Board is a strong proponent for the bill.

There are two parts to S.B. No. 447. Sections 1 and 2 would enable but not require the Board to compensate healing arts and podiatry review committee members for time expended reviewing investigative records and reports in preparation of attendance at review committee meetings. Section 3 of the bill would exempt the Board from competitive bids when obtaining experts to render opinions and testimony on matters which may result in a disciplinary action.

As to Sections 1 and 2, this is not the first time this issue is before the Legislature. Bills containing similar provisions were introduced in 1997, 1999 and 2000. One of the reasons this did not pass is because one of the members of the Board is personally opposed as that member has advised each of you by e-mail. However, the remainder of the Board is solidly in support of this bill.

Review committees in the three branches of the healing arts were created by the 1984 Legislature to provide assistance to the Board in the analysis of investigative information and to make recommendations to the Board when, in the judgment of the review committee, a violation of the healing arts act had occurred. The review committee for the practice of podiatry was created by the 1992 Legislature. Currently, the Board has 6 three-member review committees—one each for osteopathic medicine and surgery, chiropractic and podiatry and three for medicine and surgery.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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*Senate Public Health & Welfare Committee
Date: February 14, 2002
Attachment 2*

Several years ago, the Board recognized the increasing number of investigative cases being presented to the review committees and the amount of time expended by each of the members in reviewing investigative materials and preparing for the committee meetings. For instance, in FY1985 the Board received a total of 190 complaints, not all of which were made into investigative cases. In FY2000, the Board opened 372 investigative cases. This dramatic increase has occurred even though complaints are carefully screened and only the more serious cases are opened for investigation. In the early 1990s, the Board authorized payment of hourly compensation to the review committee members for time expended outside of the review committee meetings themselves. When the Board itself questioned if it had the necessary statutory authority to pay this compensation, it sought the advice of the Attorney General. In August 1996, the AG issued an informal opinion stating that, in the absence of statutory authority which authorizes compensation for time spent reviewing files outside of a meeting, review committee members may not receive additional compensation for reviewing files. The Board immediately discontinued the payment of any compensation over and above that authorized by K.S.A. 65-2840c. In FY 1996, the Board had authorized compensation at the rate of \$70 per hour for time expended outside of review committee meetings. The Board paid compensation of \$13,653.50 to 8 review committee members for their preparation time for record review prior to 16 review committee meetings. This was less than 1% of the Board's expenditure limitation for FY 1996. For FY 2003, it is estimated that less than \$22,000 will be expended, if the Legislature allows for outside compensation.

In preparing for review committee meetings, the members may spend between 4-6 hours reviewing investigative material including medical records for a meeting where an average of 15 cases are reviewed. The investigative materials for an average meeting fill 2 to 3 bank boxes.

Review committee members are appointed by the Board. They operate in relative obscurity as the peer review function they perform is confidential. Review committee members are generally not recognized and they do not have their names on the Board's letterhead. However, the review committees perform a vital function in the manner in which the Board operates. Review committees are utilized not only to review investigative materials following the conclusion of an investigation, but also to review information and complaints received in the Board office to determine whether an investigation should be commenced. The review committees recommend to Board staff whether the treatment that a licensee provided adhered to the applicable standard of care. Occasionally, they request more information or an interview with the physician before reaching their recommendation. For performing these functions, the review committee members currently receive \$35 for attending the meeting plus their mileage expenses.

The Board does not have anyone on staff who is licensed to practice any of these four professions. By necessity, review committees are utilized exclusively when issues relating to standard of care arise. In October 1999, the Board adopted a policy that review committee members should not serve more than three consecutive two-year terms. Although we have included articles in our Newsletter, we have had very few individuals express an interest in serving.

Senate Bill No. 447 does not change the amount of compensation review committee members would receive for attending the meetings themselves. The review committee members will still be required to spend their day off or to take a day away from their practice and receive \$35 for attending the meeting. Further, House Bill No. 2121 **does not require** the Board to compensate review committee members for any of their time expended in preparation for the meetings. It would provide the Board with the authority to compensate them for this outside preparation time. However, whether and if the Board would exercise this authority would depend on the Legislature authorizing these expenditures through the budget process and on whether the Board's fee fund balance could accommodate such additional expenditures.

As to Section 3 of the bill, the Board is subject to the competitive bid law set forth in K.S.A. 75-3739. That law requires, as a general rule, that all contracts for construction and repairs, and all purchases of contracts for supplies, materials, equipment and contractual services to be acquired for state agencies be based on competitive bids. No competitive bids are required if, in the judgment of the director of purchases, no competition exists or when not seeking competitive bids is in the best interest of the state. Competitive bids are also not required when any state statute provides an exemption from the provision of that statute. When no competitive bid is required, agencies are authorized to obtain "sole source" authority from the director of purchases.

Expert witnesses are necessary whenever a disciplinary proceeding involves the standard of care of the practitioner involved. K.S.A. 60-3412 requires that expert witnesses in medical malpractice liability actions spend at least 50% of their professional time devoted to clinical practice. While the Board is not bound by this statute in an administrative proceeding, the Board utilizes only experts who would qualify under this statute. A disciplinary action taken for professional incompetence would not likely withstand judicial scrutiny if there was no expert testimony that there was a deviation from the expected standard of care. Expert witnesses must have impeccable qualifications, experience in the specialty field of the practitioner against whom an action is brought, and no financial or geographic relationship to the licensee involved. Considerable time is expended in selecting experts who have not only the necessary qualifications and experience, but who also are willing to devote time required to review the material, issue a written opinion, be deposed by the opposing party and testify at the hearing. Not all licensees are appropriate to serve as an expert witness. In some cases, there may only be one or two persons in the state with the necessary expertise to render an opinion. When an expert is first contacted, it is impossible to tell exactly how much time will be required. That is one of the reasons that the Legislature has not made expenditures for disciplinary hearings subject to the expenditure limitation imposed on the healing arts fee fund for FY 2002 and FY 2003.

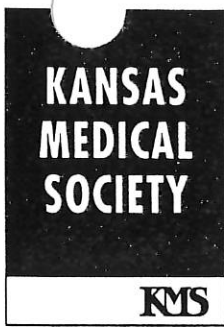
The Legislature has previously acknowledged that contracting with expert witnesses should not be subject to competitive bids. The 2000 Legislature, in enacting the Professional Services Sunshine Act (K.S.A. 2001 Supp. 75-37,130 *et seq*) specifically stated that professional services "shall not include the services of persons who assist in the preparation of expert testimony for litigation or who act as expert witnesses in litigation".

When an expert is engaged, it is practically impossible to determine whether the amount of fees will exceed the \$2000 threshold established by the Department of Administration and will require "sole source" authority. While the "sole source" authority has been questioned by the Division of Purchases, it has never been denied. However, it is extremely cumbersome and the potential exists for denial of sole source authority. Further, K.S.A. 75-3739 is applicable if the Board utilizes different practitioners as experts within the same group practice such as the Cotton-O'Neil clinic here in Topeka.

In FY 2000, the Board expended \$19,837.25 for 14 different physicians and/or groups. Four of these exceeded \$2000 during the fiscal year. In FY 2001, \$18,221.61 was paid to 13 different physicians and/or groups. Again, four of these exceeded \$2000. To date in FY2002, \$16,581.10 has been paid to 11 physicians and/or groups. So far, two of these have exceeded \$2000 and, therefore, required sole source authority from the Division of Purchases.

Adopting the provisions of Section 3 of the bill will not increase the Board's expenditures or require an increase in the limitation heretofore imposed by the Legislature on the healing arts fee fund for FY 2002 and FY 2003. Passage of this section will serve only to improve the efficiency of both the Division of Purchases and the Board by not requiring needless paperwork.

In conclusion, on behalf of the State Board of Healing Arts, I urge your favorable consideration of S.B. No. 447 and ask that it be approved favorably by this Committee for passage by the entire Senate. Thank you for your time and I would be happy to respond to any questions.



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TO: Senate Public Health and Welfare Committee

FROM: Chris Collins *Chris Collins*
Director of Government Affairs

DATE: February 14, 2002

RE: SB 447: Compensation of Board of Healing Arts Review Committee Members

Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify today in support of SB 447. The Kansas Medical Society respectfully urges this committee to pass the bill as written.

SB 447 reinstates the long-standing practice of compensating health care professionals fairly for the time that they spend reviewing medical records or otherwise preparing to review disciplinary proceedings before the Board of Healing Arts. The skills involved in participating in these review panels are professional skills and participation on the review panels requires members to exercise their clinical judgment. Panels are frequently time-consuming and require a physician or other panel member to set aside their other professional duties in order to serve the public good. As a practical matter, this lack of compensation makes it very difficult for the Board of Healing Arts to attract talented physician reviewers willing to take on this very important task. It makes it difficult for the Board of Healing Arts to effectively and efficiently research cases that may fall below the standard of care and may merit disciplinary action.

For the same reasons, KMS supports the provision in the bill enabling the Board of Healing Arts to bypass the competitive bid process when engaging medical experts in its disciplinary cases. It comes as no surprise that the best and most effective trial expert is not usually the one with the lowest fees. The Board is at a distinct disadvantage in the hearing process when faced with financial constraints in retaining medical expert witnesses that the licensee whose competence is in question does not face.

The Kansas Medical Society remains committed to patient safety and quality medical care. For these reasons, KMS respectfully urges this committee to ensure that the Board of Healing Arts has adequate research and enforcement mechanisms to fulfill its charge to protect the safety of the public.

*Senate Public Health and Welfare Committee
Date: February 14, 2002
Attachment 3*

KANSAS BOARD OF HEALING ARTS


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MEMORANDUM

TO: Senate Committee on Public Health and Welfare

FROM: Lawrence T. Buening, Jr. 
Executive Director

DATE: February 14, 2002

RE: **SENATE BILL NO. 448**

Chairperson Wagle and members of the Committee, again I want to thank you for authorizing the introduction of this bill and for setting it for hearing and possible final action. The State Board of Healing Arts requested that this bill be introduced and is strongly in support of its provisions.

As with S.B. No. 447, S.B. No. 448 has two parts. Section 1 gives a more detailed description of what constitutes a surgical operation and includes procedures that fall within that definition when performed for cosmetic or figurative purposes. Section 2 would specifically exclude from the practice of the healing arts those individuals licensed in another state who accompany school and professional athletes in this state.

Section 1 of the bill provides additional clarification on what constitutes a "surgical operation". Neither "surgery" nor "surgical operation" is defined in the healing arts act. Therefore, the Board currently relies on the language contained in a 1979 Kansas Supreme Court case entitled Acupuncture Society of Kansas v. Kansas State Board of Healing Arts, 226 Kan. 639 (1979). In that case, the Supreme Court defined surgery as "...what surgeons do. Sever the tissues of the body for the purpose of penetration for treatment, replacement or removal of afflicted parts.". That definition does not take into account the developments in the past 23 years of numerous new "surgical" processes. Specifically, the use of lasers is now common in many procedures, including skin resurfacing, lesion and spider vein removal, and hair removal. In those instances, the light does not actually sever the tissue, but rather is absorbed by the skin or hair shafts and destroys the tissue from the inside. The Board is strongly of the opinion that devices which "sever, penetrate, destroy or alter body tissue" all come within the practice of "surgery" and should be limited to those individuals who have shown the requisite qualifications to perform surgery by being licensed by the Board to engage in the practice of medicine and surgery.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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*Senate Public Health & Welfare Committee
Date: February 14, 2002
Attachment 4*

By requesting passage of Section 1 of this bill, the Board has not requested any change to the existing language of K.S.A. 65-2872, which sets forth a detailed listing of acts which are not to be construed as the practice of the healing arts, including surgery. Under subsection (g) of that statute, persons may still perform acts which constitute the healing arts if "...those professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under this act." However, a licensee who "directs, supervises, orders, refers, accepts responsibility for, enters into practice protocols with, or who delegates acts which constitute the practice of the healing arts to other persons..." would be bound by the provisions of K.S.A. 2001 Supp. 65-28,127, a copy of which is attached.

Section 1 of the bill further defines the procedures which would constitute the practice of medicine and surgery to include those which are "for cosmetic or figurative purposes". Last year, during the hearings on House Bill No. 2275, it became obvious that persons were implanting and embedding foreign objects into the human body as a form of "body piercing". As a result, in enacting H.B. No. 2275, the Legislature did not authorize a person authorized to perform body piercing to implant or embed foreign objects. The Board has also been contacted by individuals inquiring about "branding" persons. Under current law, individuals are engaged in the practice of medicine and surgery for which they must have a license issued by the board only if the surgical operation which they perform is for the "diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder".

As to Section 2 of the bill, the Board is responding to several inquiries by individuals who accompany teams at secondary, college and professional events. The amendment made at page 3, lines 10 through 15 would make it clear that these individuals would not be construed to be engaged in the practice of the healing arts and, therefore, unlawfully engaged in such practice without a license, so long as there is an agreement with a person licensed to practice in Kansas to be available in the case of an emergency or when a referral for hospitalization, etc. is necessary.

Thank you for your consideration of this bill. I hope the Committee will pass it favorably for adoption by the Senate as a whole. I would be happy to respond to any questions.

65-28,127
Chapter 65.—PUBLIC HEALTH
Article 28.—HEALING ARTS

K.S.A. 65-28,127. Licensees who direct, supervise, order, refer, accept responsibility for, enter into practice protocols with or delegate acts which constitute practice of healing arts to others; requirements and limitations; construction of section. (a) Every responsible licensee who directs, supervises, orders, refers, accepts responsibility for, enters into practice protocols with, or who delegates acts which constitute the practice of the healing arts to other persons shall:

(1) Be actively engaged in the practice of the healing arts in Kansas;

(2) review and keep current any required practice protocols between the responsible licensee and such persons, as may be determined by the board;

(3) direct, supervise, order, refer, enter into a practice protocol with, or delegate to such persons only those acts and functions which the responsible licensee knows or has reason to believe such person is competent and authorized by law to perform;

(4) direct, supervise, order, refer, enter into a practice protocol with, or delegate to other persons only those acts and functions which are within the normal and customary specialty, competence and lawful practice of the responsible licensee;

(5) provide for a qualified, substitute licensee who accepts responsibility for the direction, supervision, delegation and practice protocols with such persons when the responsible licensee is temporarily absent.

(b) "Responsible licensee" means a person licensed by the state board of healing arts to practice medicine and surgery or chiropractic who has accepted responsibility for the actions of persons who perform acts pursuant to practice protocols with, or at the order of, or referral, direction, supervision or delegation from such responsible licensee.

(c) Notwithstanding the provisions of this section, the physician assistant licensure act shall govern the direction and supervision of physicians' assistants by persons licensed by the state board of healing arts to practice medicine and surgery.

(d) Nothing in subsection (a)(4) shall be construed to prohibit a person licensed to practice medicine and surgery from ordering, authorizing or directing anesthesia care by a registered nurse anesthetist pursuant to K.S.A. 65-1158 and amendments thereto.

(e) Nothing in this section shall be construed to prohibit a person licensed to practice medicine and surgery from ordering, authorizing or directing physical therapy services pursuant to K.S.A. 65-2901 et seq. and amendments thereto.

(f) Nothing in this section shall be construed to prohibit a person licensed to practice medicine and surgery from entering into a co-management relationship with an optometrist pursuant to K.S.A. 65-1501 et seq. and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas healing arts act.

History: L. 1998, ch. 170, § 1; L. 2000, ch. 162, § 20; Feb. 1, 2001.



Testimony on Senate Bill 448
Senate Public Health and Welfare Committee
By Charles L. Wheelen
February 14, 2002

Thank you for the opportunity to request an amendment to Senate Bill 448. Because this bill consists of technical amendments that are intended to update the Healing Arts Act, we respectfully request that the section of the Healing Arts Act defining osteopathic practice be updated as well.

It may be helpful to remember that the Healing Arts Act is based on the premise that there are three distinct, separate "branches" of the healing arts. Prior to enactment of the Kansas Healing Arts Act, M.D.s (allopathic physicians), D.O.s (osteopathic physicians), and D.C.s (chiropractors) were licensed and regulated by separate boards. The Healing Arts Act consolidated the licensing and regulation of these three professions. Consequently, there are three different sections in the Healing Arts Act that define: (1) the practice of medicine and surgery, (2) the practice of osteopathy, and (3) the practice of chiropractic.

Current law at K.S.A. 65-2870 was originally enacted in 1957 and was amended only slightly in 1969 and 1976. In other words, the definition of osteopathic practice is over four decades old. Perhaps most troubling is subsection (a) that relies on the phrase, "as heretofore interpreted by the supreme court of this state." Forty-five years later, no one is really certain what that means. Because subsection (b) mentions the practice of "medicine and surgery" it has been assumed that it was legislative intent to allow osteopathic physicians to engage in the same practices as allopathic physicians.

Our proposed amendment would specifically rely on the definition of medicine and surgery contained in K.S.A. 65-2869 (the allopathic definition) but would condition that definition on the person's academic degree. In other words, our definition would be almost identical to the definition used to describe M.D. physicians except that the person would be identified as a Doctor of Osteopathy or an osteopathic physician or surgeon. Our definition would also mention osteopathic manipulative treatment, which is unique to those physicians who have obtained their graduate degree from an osteopathic medical school. By defining osteopathic medicine and surgery in this manner, any future amendments to the allopathic definition of medicine and surgery would automatically be incorporated by reference in the definition of osteopathic medicine and surgery.

We ask you to incorporate our amendment in SB448 so that the definition of osteopathic practice can be made contemporary. Thank you for considering our request.

*Senate Public Health & Welfare Committee
Date: February 14, 2002
Attachment 5*

SENATE BILL No. 448

By Committee on Public Health and Welfare

1-25

[insert section]

9 AN ACT concerning the state board of healing arts; relating to the ex-
10 clusion of certain team physicians from the licensure requirement;
11 amending K.S.A. 65-2869 and 65-2872 and repealing the existing
12 sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 65-2869 is hereby amended to read as follows: 65-
16 2869. For the purpose of this act the following persons shall be deemed
17 to be engaged in the practice of medicine and surgery:

18 (a) Persons who publicly profess to be physicians or surgeons; or pub-
19 licly profess to assume the duties incident to the practice of medicine or
20 surgery or any of their branches.

21 (b) Persons who prescribe, recommend or furnish medicine or drugs;
22 or perform any surgical operation of whatever nature to sever, penetrate,
23 destroy or alter body tissue by the use of any surgical instrument, pro-
24 cedure, equipment or mechanical device for the diagnosis, cure or relief
25 of any wounds, fractures, bodily injury, infirmity, disease, physical or men-
26 tal illness or psychological disorder; or for cosmetic or figurative purposes
27 of human beings.

28 (c) Persons who attach to their name the title M.D., surgeon, physi-
29 cian, physician and surgeon, or any other word or abbreviation indicating
30 that they are engaged in the treatment or diagnosis of ailments, diseases
31 or injuries of human beings.

32 Sec. 2. K.S.A. 65-2872 is hereby amended to read as follows: 65-
33 2872. The practice of the healing arts shall not be construed to include
34 the following persons:

35 (a) Persons rendering gratuitous services in the case of an emergency.

36 (b) Persons gratuitously administering ordinary household remedies.

37 (c) The members of any church practicing their religious tenets pro-
38 vided they shall not be exempt from complying with all public health
39 regulations of the state.

40 (d) Students while in actual classroom attendance in an accredited
41 healing arts school who after completing one (±) year's study treat diseases
42 under the supervision of a licensed instructor.

43 (e) Students upon the completion of at least three (±) years study in

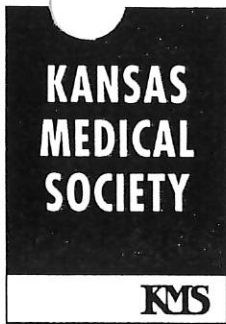
Sec. []. K.S.A. 65-2870 is hereby amended to read as follows:
65-2870. For the purpose of this act the following persons shall be
deemed to be engaged in the practice of ~~osteopathy~~ *osteopathic
medicine and surgery* or to be osteopathic physicians and surgeons:

(a) Persons who publicly profess to be osteopathic physicians, or
publicly profess to assume the duties incident to the practice of
osteopathy, ~~as heretofore interpreted by the supreme court of this state,~~
~~shall be deemed to be engaged in the practice of osteopathy~~
osteopathic medicine and surgery.

(b) ~~Osteopathic physicians and surgeons shall mean and include
those persons~~ *Persons* who receive a license to practice medicine and
surgery pursuant to the provisions of this ~~act~~ *section.*

(c) *Persons who engage in those activities described in subsection
(b) of K.S.A. 65-2869 and amendments thereto or perform osteopathic
manipulative treatment and who attach to their name the title D.O.,
osteopathic physician, osteopathic surgeon, or any other word or
abbreviation indicating that they are engaged in the practice of
osteopathic medicine and surgery.*

[and re-number ensuing sections]



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TO: Senate Public Health and Welfare Committee
FROM: Chris Collins *Chris Collins*
Director of Government Affairs
DATE: February 14, 2002
RE: SB 448: Compensation of Board of Healing Arts Review Committee Members

Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify today in support of SB 448. The Kansas Medical Society respectfully urges this committee to pass the bill as written.

SB 448 solves a current technical deficiency in the Healing Arts Act by exempting out-of-state professional athletic team physicians from the Kansas licensure requirement when they travel with their teams to professional events. We respectfully urge the passage of this section as written.

Likewise, the bill updates and refines the definition of the "practice of medicine and surgery." We support the Board of Healing Arts' definition. Likewise, KMS supports the amendment proposed by Mr. Chip Wheelen of the Kansas Osteopathic Association.

KMS urges this committee to pass the bill as written.

*Senate Public Health & Welfare Committee
Date: February 14, 2002
Attachment 6*

Christian Science Committee on Publication For Kansas

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February 14, 2002

To: Senate Committee on Public Health and Welfare

Re: SB 448

Beginning with the 1980 session and continuing to the present, I have brought requests to the Legislature for accommodation of religious views in Kansas statutes. I am grateful that help usually has been given as requested. And, I am again asking for your assistance.

The language in this bill on page 1, lines 37-39, in the list of persons not included in the practice of the healing arts, has become outdated. It is my understanding that the phrase "all public health regulations of the state" no longer has any meaning. My request is that the wording used in K.S.A. 65-28a06, part of the physician assistant licensure act (2000 session SB 599), be used to replace the present provision.

The amendment requested on page 1, replacing lines 37-39, would read:

(c) Individuals practicing religious beliefs which provide for reliance on spiritual means alone for healing.

I believe the requested change will more correctly reflect current practices and will do no harm to Kansans.

I have discussed this change with representatives of the Kansas Board of Healing Arts and the Kansas Medical Society. No opposition or concern was expressed.

Your favorable consideration of this request will be appreciated.



Keith R. Landis
Committee on Publication
for Kansas

Senate Public Health & Welfare Committee
Date: February 14, 2002
Attachment 17