

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 p.m. on March 16, 2004 in Room 526-S of the Capitol.

All members were present except:

Representative Brenda Landwehr- excused
Representative Joe McLeland -excused

Committee staff present:

Dr. William Wolff, Legislative Research Department
Renaee Jefferies, Office of Revisor of Statutes
Gary Deeter, Secretary

Conferees appearing before the committee:

Senator Barbara Allen
Paul Morrison, District Attorney, Johnson County 10th Judicial District
Jerry Slaughter, Executive Director, Kansas Medical Society
Amy Campbell, Kansas State Ophthalmological Society
(written testimony only) Gary Robbins, Executive Director, Kansas Optometric Association

Others attending:

See Attached List.

Acting Chair Nancy Kirk opened the hearing on **SB 466**, a bill which deals with reporting medical information to the Division of Motor Vehicles.

Senator Barbara Allen spoke as a proponent. (Attachment 1) She said the bill will allow a physician or optometrist to report to the appropriate authorities a condition in a patient which could prevent that patient from safely operating a motor vehicle, noting that the Senate adopted amendments suggested by the Kansas Medical Society.

Paul Morrison, District Attorney for Johnson County's 10th Judicial District, spoke in support of the bill. (Attachment 2) He stated that the bill updates the statutes (**K.S.A. 8-255c**), which currently do not address privacy or privilege issues, noting that the bill protects these health-care providers from civil liability, also protecting them from the strictures of HIPAA (Health Insurance Portability and Accountability Act) regarding privacy and confidentiality.

Answering questions, Mr. Morrison said the reporting procedure sets in motion a process to review the patient's driver's license, but does not automatically result in revocation of the license. He said there is no mandate in the bill requiring a physician to make a report, and it provides confidentiality assurances for the doctor and the patient; the medical information can be released only by order of a district court.

Jerry Slaughter, Executive Director, Kansas Medical Society, testified as a proponent. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:30 p.m. on March 16, 2004 in Room 526-S of the Capitol.

He said the bill is a positive step which brings Kansas in line with most other states regarding such reporting procedures. Answering a question, he said that the bill allows privilege to be waived.

Members observed that the bill appears to protect the person on the street, the patient, and the health-care professional.

Answering another question, Martha Bean, Administrator for Driver's License Review, said that when a report is received, the review team does not automatically revoke a person's license, and any revocation is not permanent; a further positive medical report allows the person to renew his or her license.

Amy Campbell, Kansas State Ophthalmological Society, spoke as a proponent. (Attachment 4) She encouraged the Committee to retain the Senate amendments, noting that her governing board is in full support of the bill.

Not appearing, but providing written testimony as a proponent: Gary Robbins, Executive Director, Kansas Optometric Association (Attachment 5)

The Chair closed the hearing on **SB 466**.

Staff Bill Wolff briefed the Committee on **SB 426**, which creates an institutional license under the Board of Healing Arts, saying that the statute would authorize the Board of Healing Arts to issue an institutional license to persons who are graduates of accredited schools of medicine or osteopathic medicine, who have had at least two years of approved postgraduate training in the United States, and who are employed by the Kansas Department of Social and Rehabilitative Services or the Kansas Department of Corrections, noting that the license may be renewed for another two-year period if the licensee's supervisor signs the renewal application.

Regarding **HB 2832**, Dr. Wolff said the bill addresses certification of emergency medical services attendants and the issuing of temporary certificates. He said the bill extends the temporary certification to two years and sets up a new process and standards for receiving a temporary license.

The minutes for 3-15-04 were approved.

A motion was made to work **SB 466**.

A further motion was made to recommended **SB 466** favorable for passage. The motion was seconded and passed.

The meeting was adjourned at 2:05 p.m. The next meeting is scheduled for Wednesday, March 17, 2004.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

DATE: MARCH 16 2004

NAME	REPRESENTING
DAVIN LAKE	KBEMS
Elizabeth Phelps	SRS/Health Care Policy
Mary Feyhuy	KBEMS
Martha Bean	KDOR
Linda Berndt	KHCA
KEVIN FOWLER	KHCA
Cindy Luxem	KHCA
Shane Ann Lower	KAAP
JERRY STANTON	FAUS
Chip Wheelen	Assn of Osteopathic Med.
Barb Conant	KTLA
Amy Campbell	KSOS
Bud Burke	KPTA
Pat Lehman	KFSA

March 16, 2004

Re: SB 466

Mr. Chairman:

Thank you for the opportunity to testify today in support of SB 466.

The idea for this bill originated from our Johnson County District Attorney, Paul Morrison. This legislation would allow a physician or optometrist to report to the appropriate authorities a condition in a patient that could, in the physician's or optometrist's professional judgment, prevent that patient from safely operating a motor vehicle.

This bill would allow such reporting without violation of the Physician-Patient privilege. Safeguards for physicians and optometrists have been built into the bill to ensure that a physician or optometrist has no duty to report.

SB 466 passed the Senate on February 27, 2004, on a vote of 34 - 6. I encourage your support, and would be happy to answer questions.

Barbara P. Allen
Senator, District 8

Attachment 1
HHS 3-16-04

Testimony Regarding Senate Bill 466

Paul J. Morrison, District Attorney - Tenth Judicial District
March 16, 2004

Every year thousands of people die on our highways as a result of motor vehicle accidents. Tragically, most of these are preventable. One need only read the newspapers or watch the evening news to see that occasionally these deaths occur because someone was driving who has neither the mental nor physical capacity to safely do so.

Oftentimes physicians are the first to notice when an individual lacks the mental or physical capacity to safely drive an automobile. K.S.A. 8-255c allows physicians or optometrists to provide this information to the medical advisory board of the Division of Motor Vehicles. Unfortunately, this statute in its current form does not address issues of privacy and/or privilege that doctors oftentimes face when they decide whether or not to report a patient. This bill updates the statute and specifically allows a physician to report these concerns without violating their physician patient privilege. It also insures confidentiality of those reports.

I am told that this amendment to the statute will allow for greater reporting and hopefully savings of lives in the future.

Attachment 2
HHS 3-16-04



To: House Health and Human Services Committee

From: Jerry Slaughter
Executive Director

Date: March 16, 2004

Subject: SB 466; concerning medical information reported to DMV

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 466, which amends the laws governing the reporting of certain medical information to the Division of Motor Vehicles. The bill is designed to encourage and facilitate the reporting of medical information when a physician has reason to believe that his or her patient is not capable of safely operating a motor vehicle due to a medical condition.

Physicians are often faced with a dilemma – should they report a potentially unsafe driver to the state at the expense of breaching confidentiality and damaging the physician-patient relationship, or should they forgo reporting and risk being liable for potential future injuries to the patient or others? It's a difficult issue for physicians, because it can transform their role from patient advocate to patient reporter to potential defendant - when they are sued by the patient for making a report, or sued by a third party for not reporting.

Most states, including those surrounding Kansas, encourage, but do not require, reporting of mental or physical conditions which could affect a patient's ability to safely operate a motor vehicle. Our current law could best be categorized as one that allows such reports, but does not necessarily encourage them. The changes contained in SB 466 would appear to move Kansas into the group of states that encourages such reports. Virtually all states with similar laws provide immunity for good faith reports, as does our law. We strongly support the language in the bill which makes it clear that the change in law does not create a new duty to report.

Finally, there could be an issue relating to the new federal privacy law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA generally prevents physicians and others from releasing protected health information without a proper authorization from the patient. However, if a patient has a medical condition that would cause an "immediate and serious danger" to the public, then reporting such information without patient authorization is allowed. The senate committee added an amendment we suggested on lines 29-30 that should overcome the HIPAA threshold for release of information in such situations. We would be happy to respond to questions.

Attachment 3
HHS 3-16-04

Kansas State Ophthalmological Society

PO Box 4103
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Testimony presented to the House Health and Human Services Committee
Amy A. Campbell
Executive Director

Thank you Mr. Chair for the opportunity to testify in favor of Senate Bill 466 on behalf of the Kansas State Ophthalmological Society.

It is our recommendation that the bill be accepted in its current form and would ask to have the opportunity to review any potential amendments.

Ophthalmologists are pleased to provide a service to their patients by completing the forms necessary for them to obtain their driver's license. When a patient develops a condition which makes it unsafe for him or her to operate a vehicle, we hope to prevent harm to the patient and to the public through a thorough medical evaluation and reporting.

In order to insure that M.D.s will continue to perform this service, it is important to maintain the language pertaining to the immunity from civil action and the voluntary nature of reporting.

If the committee requires and further information regarding ophthalmology or the details of eye examinations relating to driver's licenses, we would be happy to answer them.

Attachment 4
HHS 3-16-04

March 15, 2004

TO: HOUSE HEALTH & HUMAN SERVICES COMMITTEE
FROM: GARY L. ROBBINS, CAE, EXECUTIVE DIRECTOR
RE: TESTIMONY ON SENATE BILL 466

I appreciate the opportunity to submit testimony to the House Health & Human Services Committee on Senate Bill 466. I will be out of town on Tuesday and unable to attend the hearing.

On behalf of the Kansas Optometric Association, I want to express our strong support for Senate Bill 466 as amended by the Senate Committee. The Senate Committee amendment in lines 29 and 30 addresses our concerns about HIPAA and we strongly support that amendment. Currently, optometrists and ophthalmologists routinely report their findings regarding the vision of their patients renewing their drivers' licenses to the Division of Vehicles. This legislation clarifies this issue for all physicians and optometrists while assuring that this reporting remain voluntary.

In closing, we would respectfully ask the House Health & Human Services Committee to pass Senate Bill 466.

Thank you for your consideration of our request.

Attachment #5
HHS 3-16-04