

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 p.m. on February 10, 2004 in Room 231-N of the Capitol.

All members were present except.

Ms. Emalene Correll, Legislative Research - excused

Committee staff present:

Ms. Terry Munchmore, Legislative Research
Mr. Norm Furse, Revisor of Statutes
Mrs. Diana Lee, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Ms. Phyllis Gilmore, Executive Director of the Behavioral Sciences Regulatory Board (BSRB)
Dr. Richard Maxfield, Behavioral Sciences Board Member

Others attending:

Please See Attached List.

Approval of Minutes

Upon calling the meeting to order, the minutes of February 2, 3, 4, and 5, 2004 were passed out to each member of the Committee. The Chair asked that the members notify Ms. Cianciarulo if changes are requested and if none are received by the end of the day Friday, February 13, 2004, they would stand approved.

Hearing on SB 443 - an act concerning the Behavioral Sciences Regulatory Board relating to disciplinary authority

The next order of business was a hearing on SB 443, an act concerning the Behavioral Sciences Regulatory Board (BSRB) relating to disciplinary authority. The Chair asked Mr. Norm Furse, Revisor of Statutes, to give an overview of the bill. Mr. Furse stated that, beginning on page 1, there are a series of sections in the bill which give the Board the authority not only to suspend, refuse to renew or revoke a license, but also to place conditions on a license itself.

1) An overview of the disciplinary action sections are as follows:

- A) Sec.1 relates to professional counselors and in line 17 provides this extra language;
- B) On page 2, Sec. 2, relates to social workers and again authorizes the Board to condition a license (line 26);
- C) Sec. 3 relates to license psychologists and in line 12 inserts the word "conditions" relating to the Board's action against the licensee;
- D) Sec. 4 relates to the master level social workers and in line 32 provides for placing the conditions upon this license.

2) An overview of the powers of duties sections of the BSRB begins on page 4 and are as follows:

A) At the bottom of page 5, it lists the new duties, the first being the Board being able to assess an administrative fine not to exceed \$1,000, the second would be if an order is adverse to a practitioner, allowing the cost of the proceedings to be charged as an ordinary civil action in the district court in an amount not to exceed \$200, and the third, at the top of page 6, states that district court witness fees and costs may be taxed according to the statutes;

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B) Sec. 6 provides language in connection with investigations of the BSRB and language in current law that was just added recently relating to subpoena power and other authorities of the Board, but the new language appears on page 7, para. 3A providing that if the Board determines that an individual has practiced the behavioral sciences without a valid license in addition to any other penalties, the Board may issue a cease and desist order against such an individual; in sub (b), line 13, provides that whenever in the judgement of the Board, a person who has engaged or about to engage in an act which would constitute a violation, then it lists out the various acts and two statutes, and provides that the Board may make application to the courts for an order to enjoin to such acts of practices; and

C) On page 8, new (e) provides that in all matters before the Board, the Board has the power to revoke the license or registration of a licensee or register who voluntarily surrenders such person's license or registration and in all matters pending before the Board, it would have the option of censuring the practitioner holding the license in question. (This would be an alternative to their present authority to revoke or suspend, and new (f) states that in all matters pending, the Board has the option of censuring the practitioner holding the license.

The Chair then asked Mr. Furse if this was the bill that if the Committee chose to pass, still needed some massaging on the language? Mr. Furse stated that if the Committee authorized him, he would like to meet with Board's administrator to refine a couple of points.

As there were no further questions of Mr. Furse, the Chair called upon the first proponent, Ms. Phyllis Gilmore, Executive Director of the Behavioral Sciences Regulatory Board (BSRB). A copy of her testimony is ([Attachment 1](#)) attached hereto and incorporated into the Minutes as referenced. Ms. Gilmore stated that:

1) The BSRB is the licensing Board for most of the state's mental health professionals and some of the drug and alcohol counselors;

2) With this bill, the ability to assess a fine of up to \$1,000 per violation, to issue a cease and desist order, and to revoke a license after it has been voluntarily surrendered would be new areas of authority to the BSRB and all of its professions; however, other Kansas Licensor Boards hold these powers;

3) One area where the BSRB has made great progress is in the timeliness of disciplinary action and that a backlog no longer exists; and,

4) Through the leadership of a diligent investigator, the Board has instituted a new complaint review committee process that has enhanced efficiency and consistency.

Questions of Ms. Gilmore came from Senators Wagle and Brownlee asking if the Board members and all of these health professions agreed to this, regarding page 7 line 14 why is this worded toward a future event and is it necessary?

As there were no opponents or neutral conferees, or written testimonies, the Chair announced this would conclude the hearing of the above bill.

Hearing on SB 452 - an act concerning the regulation of psychologists

The Chair then stated the Committee would be hearing testimony on SB 452, an act concerning the regulation of psychologists and again called upon Mr. Furse to give an overview of the bill. Highlights included:

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1) Introduced by the Public Health & Welfare Committee and relates to the regulation of psychologists and unlicensed assistants,

2) This is language that is amendatory of existing law, so the change appears in the bill on page 2, lines 6 through 16, creating exceptions to those individuals in situations that don't fall under the licenser of psychologists act and makes it illegal to assistants to fall within the category unless they are licensed or unless they fall within one of the exclusions;

3) This bill would delete the exclusion that states that nothing in the act would currently prevent the employment by a person, association, or corporation, furnishing psychological services for remuneration and would not prevent the employment, in this context, of persons not licensed as psychologists under the provision of the act, but to practice if under the supervision of a psychologist or psychologist licensed under the provision of this act and not held out as any psychologist to the public and therefore, any person who would fall within the language being deleted, would be subject to the licenser of psychologists act. (He stated that basically, this takes away the exclusion and would make these persons subject to the act rather than being excluded from the act.)

As there were no questions of Mr. Furse, the Chair called upon the only proponent to testify, Dr. Richard Maxfield, Behavioral Sciences Board Member. A copy of his testimony is ([Attachment 2](#)) attached hereto and incorporated into the Minutes as referenced. Highlights of his testimony are as follows:

1) This section of the licenser of psychologists act was created in order to allow them to employ and to supervise "Unlicensed Assistants" and at the time of enactment, the only regulated professions in the mental health field were licensed psychologists and licensed social workers; in ensuing years, a number of other professionals have gained licensure or certification and fall under the regulation of the BSRB and now, professionals employed as unlicensed assistants would fall into one of these groups, thus making the exception to psychologists' practice act essentially irrelevant;

2) The Board is now capable of granting a temporary license to employed assistants who were completing their training or after moving to the state prior to full licenser; and

3) The Psychology Advisory Committee to the BSRB recommended repeal of this section of statute beginning in July, 2007 to allow those very few currently employed unlicensed assistants to obtain retraining and allow them to continue practice in their current setting.

Again, as there were no opponents or neutral conferees, or written testimony, the Chair then asked for questions or comments from the Committee. Questions came from Senators Salmans and Wagle, and Mr. Furse ranging from does this bill eliminate the psychologist one positions, which is entry level, that just perform studies, do these regulations relate to state hospitals, right to work laws, why did you not have a grandfather clause versus the far out date of 2007, clarification of Dr. Maxfield's statement that he has asked the questions of all the practitioners (do they have an unlicensed assistant),, isn't this a clean up of an old statute, allowing corporations, etc. to employ unlicensed associates, if you were to grandfather again would you know who you would be grand fathering, with the elimination of the authority of psychologists to delegate to unlicensed people is there any other alternative authority, prison health services (contracts for prisons, temporary help, etc.) to a suggestion being made to put the survey question in the renewal for license

As there were no more questions of the Committee, the Chair asked Ms. Gilmore to look over the questions raised by the Committee and get back with them.

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A discussion ensued between Ms. Gilmore, Senators Salmans and Wagle, and Mr. Furse when Ms. Gilmore asked Senator Salmans if he knew of any unlicensed assistants out in his area, or does Larned have any? (Ex college students working during the summer, primarily administering tests using the MMPI and the MCMI, and temporary help) Do these personnel fall outside of this? Mr. Furse referred the Committee to the bottom of page 2 through the top of page 3, stating the exclusion was still there. Senator Salmans said that the personnel he was referring to were people who were working for a company that did contracting work.

As there was no further discussion, the Chair told Ms. Gilmore that the Committee would wait to hear back from her since the first bill needed to be amended and in the second bill to review the questions that were brought up. The Chair announced the hearing was closed.

Adjournment

As there was no further business, the meeting was adjourned at 2:25 p.m. with the next meeting scheduled for Wednesday, February 11, 2004.

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**SENATE TESTIMONY
PUBLIC HEALTH AND WELFARE
FEBRUARY 10, 2004**

SB 443

Madam Chair and Committee Members:

Thank you for the opportunity to testify today in support of SB 443. I am Phyllis Gilmore the Executive Director of the Kansas Behavioral Sciences Regulatory Board (BSRB).

The BSRB is the licensing board for most of the state's mental health professionals, the doctoral level psychologists, the master level psychologists, the clinical psychotherapists, the bachelor, master and clinical level social workers, the master and clinical level professional counselors, and the master and clinical level marriage and family therapists. Additionally, some of the drug and alcohol counselors are registered with the board, although most of them are certified with SRS at the present time.

SB 443 relates to several areas of disciplinary authority of the board. The conditioning of a license, assessing the costs of disciplinary action to the unsuccessful party and requesting an injunction, restraining order, or other such order from a court are areas of authority currently held by some of our professions, but not all. The ability to assess a fine of up to \$1,000 per violation, to issue a cease and desist order and to revoke a license after it has been voluntarily surrendered would be new areas of authority to the BSRB and all of its professions. However, other Kansas licensure boards hold these powers.

One area where the BSRB has made great progress in recent years is in the timeliness of disciplinary action. A backlog no longer exists. Four years ago when I came to the BSRB there was a backlog of over 100 cases. Today we have 26 active cases. We have a very diligent investigator and through his leadership, the board has instituted a new complaint review committee process that has enhanced efficiency and consistency. SB 443 is one of the outcomes of this committee. It is brought forth with the unanimous recommendation of the entire board and will help to continue the positive direction of our improved disciplinary process.

Thank you for the opportunity to speak to you this afternoon. I will be happy to stand for questions.

Senate Public Health & Welfare Committee
Attachment 1
Date: February 10, 2004

Profession	Current statutory sanctions available
Psychologists K.S.A. 74-5324	suspend, limit, revoke (+ refuse to issue or renew)
Clinical psychotherapists and masters level psychologists K.S.A. 74-5370	suspend, limit, revoke (+ deny or not renew)
Social workers, all levels K.S.A. 76-6311	suspend, limit, revoke (+ refuse to issue or renew)
Professional counselors and clinical professional counselors K.S.A. 65-5809	suspend, limit, revoke (+ refuse to issue or renew)
Marriage & family therapists and clinical marriage & family therapists	suspend, revoke, condition, limit, qualify or restrict (+ refuse to grant)

RAV Statistics for FY 2004

July 2003					
FY 1998	1	FY 2002	5	FY 2003	25
Received			9		
Closed			4		
Total # of Cases			36		

August 2003					FY 1998	1
FY 2002	5	FY 2003	21	FY 2004	9	
Received			3			
Closed			5			
Total # of Cases			34			

September 2003					FY 1998	1
FY 2002	5	FY 2003	17	FY 2004	11	
Received			6			
Closed			5			
Total # of Cases			35			

October 2003					FY 1998	1
FY 2002	5	FY 2003	15	FY 2004	14	
Received			6			
Closed			7			
Total # of Cases			34			

November 2003					FY 1998	1
FY 2002	5	FY 2003	11	FY 2004	17	
Received			3*			
Closed			4			
Total # of Cases			33			

December 2003					FY 1998	1
FY 2002	6	FY 2003	11	FY 2004	15	
Received			2			
Closed			6			
Total # of Cases			29			

* 2 new cases received, 1 case reopened when jurisdiction was regained.

Open Cases Breakdown

12/31/2003

Profession	Number Of Cases Open	Percentage Of Cases Open
LP	08	27.59%
LMLP	00	00.00%
LCP	03	10.34%
LMFT	00	00.00%
LCMFT	00	00.00%
LPC	00	00.00%
LCPC	01	03.45%
LASW	01	03.45%
LBSW	03	10.34%
LMSW	05	17.24%
LSCSW	06	20.69%
RAODAC	00	00.00%
No License	02	06.90%
Total	29	100.00%

Open Cases				Pre 2002	1
FY 2002	6	FY 2003	8	FY 2004	14

FY 2004 Year to Date

Profession	Number Of Cases Received	Percentage Of Cases
LP	10	35.71%
LMLP	01	03.57%
LCP	02	07.14%
LMFT	00	00.00%
LCMFT	00	00.00%
LPC	00	00.00%
LCPC	00	00.00%
LASW	01	03.57%
LBSW	05	17.86%
LMSW	03	10.72%
LSCSW	04	14.29%
RAODAC	00	00.00%
No License	02	07.14%
Total	28	100.00%

CY 2003 Report

There were 45 open cases on January 1, 2003 and 29 open cases on December 31. 55 new complaints were received and 71 complaints were completed.

Profession	Current statutory sanctions available
Psychologists K.S.A. 74-5324	suspend, limit, revoke (+ refuse to issue or renew)
Clinical psychotherapists and masters level psychologists K.S.A. 74-5370	suspend, limit, revoke (+ deny or not renew)
Social workers, all levels K.S.A. 76-6311	suspend, limit, revoke (+ refuse to issue or renew)
Professional counselors and clinical professional counselors K.S.A. 65-5809	suspend, limit, revoke (+ refuse to issue or renew)
Marriage & family therapists and clinical marriage & family therapists K.S.A. 65-6408	suspend, revoke, condition, limit, qualify or restrict (+ refuse to grant)

BSRB seeks legislation for authority in relation to all licensed professions to:

Condition a license

Censure or reprimand

Assess administrative fines with a cap of \$1,000 per violation

Assess reasonable and standard costs not to exceed \$200 and other witness costs

Issue cease and desist orders

Apply to court for injunction

Order revocation upon surrender of license during investigation or disciplinary action

MEMO

Dr. Rich
Maxfield's
testimony

TO: Members of the Senate Public Health and Welfare Committee

DATE: 2-9-04

RE: Senate Bill #452
Repealing Section E of KSA 74-5344, commonly referred to as the
Unlicensed Assistant Section. Repeal would occur July 1, 2007.

This section of the licensure of psychologist act was created in order to allow psychologists to employ and to supervise "Unlicensed Assistants". At the time of enactment the only regulated professions in the mental health field were Licensed Psychologist, and I believe, Licensed Social Workers.

In the ensuing years a number of other professionals have gained licensure or certification and fall under the regulation of the Behavioral Sciences Regulatory Board. Those groups include various levels of licensed or regulated social workers, professional counselors, registered master's level psychologist, clinical psychotherapists, professional counselors, drug and alcohol abuse counselors, and marital and family therapists. Generally, professionals employed as unlicensed assistants would now fall into one of the above noted regulated professions, thus making the exception to the psychologist's practice act essentially irrelevant.

In addition, a number of unlicensed assistants were employed while completing their training or after moving to the state prior to full licensure. The Behavioral Sciences Regulatory Board is now capable of granting temporary license to such persons, allowing them to practice and to be regulated under the auspices of the Behavioral Sciences Regulatory Board.

In a survey conducted by Larry Hayes, PhD, my predecessor as a psychologist member of the Behavioral Sciences Regulatory Board, he found broad and substantial support from licensed psychologists in regard to repealing this section of law. He found that 78% of those responding to his inquiry supported the repealing and the statute, 9% were opposed, 7% favored some revision, the remainder expressed no opinion. Only one of the psychologists in opposition to the repeal noted that he currently, and has for some time, employed an unlicensed assistant.

The Assistant Attorney General advising the Behavioral Sciences Regulatory Board has stated that the regulations pertaining to the employment of unlicensed assistants and therefore oversight of their practices in on shaky legal ground. Thus, in her opinion the Behavioral Sciences Regularly Board may not have legal authority to regulate the practice of unlicensed assistants, leaving the public in a position of vulnerability.

The psychology advisory committee to the Behavioral Sciences Board recommended repeal of this section of statute to begin in July 2007. The Behavioral Sciences Board unanimously agreed. Putting the repeal date in the future would allow those very few currently employed unlicensed assistants to obtain retraining and therefore allow them to continue practice in their current setting. This provision would allow for the continuation of treatment already established and would give currently practicing unlicensed assistants an opportunity to continue their employment, but with the Behavioral Sciences Board having oversight of their practice as they would be licensed or registered as one of the regulated professions.

Senate Public Health & Welfare Committee
Attachment 2
Date: February 10, 2004