

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:45 p.m. on February 11, 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:

Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts

Mr. Don Jordan, Superintendent of Osawatomie State Hospital

Ms. Chris Collins, Director of Government Affairs, Kansas Medical Society

Others attending:

See Attached List.

Hearing on SB 426 - an act concerning institutional licenses under the Kansas Healing Arts Act

Upon calling the meeting to order, the Chair announced there would be a hearing on SB 426, an act concerning institutional licenses under the Kansas Healing Arts Act and asked that Mr. Furse give an overview of the bill.

Highlights included:

1) Page 1, modifies current law and makes two primary policy changes, provides slightly modified language relating to persons eligible who may be issued a license, line 16 would delete healing arts and require that a person be graduated from a school of medicine or osteopathic medicine; in lines 20 and 21 that individual must have completed two years of post graduate training program; old language in line 22 must be employed as provided in this section;

2) The language relating to the branch of the healing arts is deleted in line 25 and "medicine and surgery" is inserted as in lines 16 and 17 and still refers to a medical doctor and osteopathic doctor;

3) Then (©) provides the location basically where the license holders may practice; in line 31 it provides that the holder is employed by any institution with SRS and for at least three years as described in subsection ©) (1) then goes on to list the mental health services, contracted affiliates or a federal, state, county or municipal agency, etc. (This change was made by the legislature several years ago to pick up these contract kinds of situations Senator Salmans was referring to in yesterday's committee meeting.)

4) On page 2, the third area of practice would be for individuals who have been in practice for at least three years and are providing mental health services pursuant to a written protocol with the person who holds a license to practice medicine and surgery other than an institutional license;

5) One of the major policy changes is in lines 15 through 17, which provides that an institutional license is valid for a period two years as current law but it also provides that it may be renewed for an additional two year periods, currently the license is limited to one two-year period;

6) The new language in lines 20 through 24, relating to meeting requirements of the subsection (©) of this section (the applicant has submitted an application for renewal on a form provided by the Board, paid the renewal fee established by rules and regs of the Board, not to exceed \$500) with the deleted language, lines 24 through 28, strikes the continuing education requirement.

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7) New language in lines 28 through 32, and the second major change, provides that in addition, an applicant for renewal employed under the subsection (1) is to submit with the application a recommendation that the institutional license is renewed signed by the superintendent of the institution to which the license holder is assigned;

8) In lines 39 through 40, this new language allows a person who no longer has an institutional license, to come back and apply for one if they met the requirements set out here and have had an institutional license before.

The Chair then asked for questions for Mr. Furse. A discussion ensued between Senator Salmans, Mr. Buening, and Mr. Furse regarding a question Senator Salmans asked concerning when someone is working for one of the centers where they do not have a superintendent or some of the other areas, and after the first two years, do you think this would cause a problem? Mr. Furse mentioned that he also questioned this and would like to look at massaging some of the language (ex. Superintendent, clinical director.) Mr. Buening stated that they were only thinking about state hospitals and referred the Committee to page 2, line 29, the way he drafted this was that he limited the employment to only the SRS and Department of Corrections institutions and did not intend to make a recommendation from anybody else a requirement of renewal if they were employed in the other two situations. Mr. Furse also stated that they would be subject to the individual body that they would be employed. Senator Salmans followed by saying their employment could be terminated by that employer and would fall outside the scope of this. The issue of massaging this language was again asked and it was felt that clarification was made and that no change was necessary. The Chair then asked who had written the bill and was there any other place in the bill where language needed to be massaged. As this was the only question posed, the Chair then called upon the first proponent to testify.

Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts, who stated that the bill amends the current statute pertaining to institutional licenses stating the current qualifications for an institutional license, what is needed to be eligible for renewal, and the proposed amendment provisions and allow expanded practice by an institutional licensee if they have practiced with an SRS or DOC institution for at least three years. He also offered the history behind the institutional license which has been around for 35 years. And lastly, he said the purpose of the proposed amendments is to increase the requirements to be eligible for an institutional license, but the enabled renewal of the license following issuance without having to meet additional qualifications. A copy of his testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The second proponent conferee was Mr. Don Jordan, Superintendent of Osawatomie State Hospital and Rainbow Mental Health Facility, which he stated were the two state mental health hospitals managed by the Department of Social and Rehabilitation Services (SRS). He offered three features that are managed by the services of physicians who are employed at a state institution. He stated that the changes to the institutional license option contained within the bill strengthen its value by:

1) Removing the prior limitation of two years which can and has, because of such reasons as cultural or language barriers, served as an automatic disqualification of an otherwise capable physician; and,

2) Including the two-year postgraduate training requirement, they are assured of this as a minimum standard for future holders of these licenses, and in no way limited from including additional training requirements in employment contracts with these physicians when appropriate.

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3) And lastly, he suggested one adjustment at the subsection (e), recommending the addition of language to this effect: "In addition, nothing in this section will prohibit the renewal of an existing institutional license originally issued prior to the effective date of this act if the person meets the requirements of the subsection.", thus ensuring that a person who has long held an institutional license is able to renew that license by meeting the renewal criteria.

A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The third and final proponent conferee to testify was Ms. Chris Collins, Director of Government Affairs, Kansas Medical Society (KMS), who also offered history and stated that KMS remains opposed to the concept of granting a license to practice medicine and surgery to those who have not met the full academic and examination requirements set forth in the Healing Arts Act for all physicians. However, she stated, in the present case, the bill simply creates a "grandfather clause" for those currently practicing in state institutions under these licenses and may only continue to practice as they currently are within the state institutional setting, a venue where recruitment of new practitioners can be somewhat challenging. She ended by saying, for the above reason, the Kansas Medical Society urges the passage of this bill. A copy of her testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there were no opponent or neutral conferees or written testimonies, the Chair asked the Committee if there were questions or comments. Senators Salmans, Wagle, and Barnett asked a range of questions from would the Kansas Medical Society be agreeable to the addition as was just heard from the last conferee, what kind of salary are these individuals working on, do you have any range, geographical differences, to, is it hard to fill these positions. Senator Salmans did want to thank Mr. Buening and the others who had taken on the research for this legislation, and if passed, would be a major betterment for the kids and patients of these institutions, and also for giving him the opportunity to work with the foreign doctors working in these institutions.

As there were no further questions or comments, the Chair announced the hearing closed.

Adjournment

As there was no further business, the meeting was adjourned. The time was 2:25 p.m.

The next scheduled meeting is Thursday, February 12, 2004

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KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS, GOVERNOR

MEMO

TO: Senate Committee on Public Health and Welfare

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

DATE: February 11, 2004

RE: Senate Bill No. 426

Thank you for the opportunity to appear before you on behalf of the State Board of Healing Arts. S.B. No. 427 amends the current statute pertaining to institutional licenses. Currently, the only qualifications for an institutional license are: (1) graduation from an accredited school of the healing arts or a school which has been in operation for not less than 15 years; and (2) employment as described in K.S.A. 65-2895. To be eligible for renewal, an institutional license holder must successfully complete the clinical practice examination required for a permanent license. The proposed amendments to K.S.A. 65-2895 provide that completion of two years of postgraduate training in the United States will be required for the initial issuance of an institutional license (page 1, lines 20 and 21). However, completion of an examination is deleted as being a requirement for renewal (page 2, lines 17-20). Additionally, the amendments would allow expanded practice by an institutional licensee if they have practiced within and SRS or DOC institution for at least three years.

The concept behind the institutional license has been around for 35 years. The 1969 Legislature created a new category of medical license called a Fellowship License. This license was for individuals employed by the division of institutional management of the state board of social welfare or employed by any institution with the state department of penal institutions until they obtained a permanent license. There was no provision for renewal and the license remained valid as long as the holder met the employment qualifications. This law was included in the statute books as K.S.A. 65-2895.

*Senate Public Health & Welfare Committee
Attachment 1
Date: February 11, 2004*

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K.S.A. 65-2895 has been amended seven times since it was originally enacted. In 1976, the permitted employers for a holder were changed to SRS and Department of Corrections. Further, language was added that no Fellowship License would be valid for more than two years and the license was not renewable. In 1985, the Fellowship License was changed to an Institutional License. Also, it was made a requirement that an applicant pass an examination in basic and clinical science approved by the Board, but the license could be renewed if the holder successfully completed the examination required under K.S.A. 65-2873(a)(3). In 1988, the requirement that a new applicant for an Institutional License pass a clinical science examination was deleted but the applicant still had to pass a basic science examination to qualify for the license. In 1997, the requirement that an applicant for a new license pass any examination was deleted. However, the requirement for successful completion of the examination required under K.S.A. 65-2873(a)(3) has been retained since 1988 and remains a requirement for renewal today.

In 2000, a new subsection (c) was added to K.S.A. 65-2895 that allowed an institutional license to be renewed once for two years if the holders was issued the Institutional License prior to May 8, 1997, and had successfully completed two years of postgraduate training in the United States. The 2001 Legislature inserted a provision in the Board's appropriations bill directing the Board, notwithstanding the provisions of K.S.A. 65-2895, to renew all Institutional Licenses which expired during FY2002 and FY2003 and were valid on May 1, 2001, for an additional two years. The 2002 and 2003 Legislatures had bills introduced that would have granted certain Institutional License holders a permanent license (See 2002 S.B. No. 584 and 2003 S.B. No. 107). These, however, did not pass.

Currently, there are 18 individuals holding active and valid Institutional Licenses. The employment within state institutions for the Institutional Licensee is as follows:

Larned-----9
Osawatomie-----3
Rainbow-----2
Parsons-----1

Three Institutional Licensees qualify to provide mental health services in an employment setting outside a state institution. There is one each in Kiowa, Emporia, and Salina.

The purpose of the proposed amendments is to increase the requirements to be eligible for an institutional license, but to enable renewal of the license following issuance without having to meet additional qualifications. The circumstances vary insofar as the ineligibility of current Institutional Licensees to qualify for either a permanent license or for renewal of the institutional license. It appears that seven Institutional Licensees are eligible to renew their Institutional License under the current statute so long as the have qualifying employment. The remaining 11 will not be able to renew their licenses. Since October 1999, the Board has issued 5 institutional licenses to individuals who were not eligible to renew and, therefore, their licenses have been canceled. Four of these worked at Larned and one at KNI. Obviously, being unable to retain these Institutional Licensees for more than two years results in high turnover, particularly at SRS institutions.

The Board has been in contact with SRS and DOC to determine whether the need for an institutional license still exists. We have received responses from both Departments that Institutional Licensees do provide a benefit, particularly in those areas of the state where it is difficult to attract fully-licensed physicians. Based upon this factor and that it has been public policy in the state for 35 years to provide for a separate category of license for physicians working in state institutions, the Board is supportive of S.B. No. 426.

Again, thank you for the opportunity to appear before you. I would be happy to respond to any questions.

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Public Health and Welfare Committee

February 11, 2004

Senate Bill 426 - Institutional Licenses

Division of Health Care Policy

Don Jordan, Superintendent, Osawatomie State
Hospital

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Senate Public Health and Welfare Committee
Attachment 2
Date: February 11, 2004

**Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary**

Senate Public Health and Welfare Committee
February 11, 2004

Senate Bill 426 - Institutional Licenses

Madam Chair and members of the committee, thank you for the opportunity to speak to you about Senate Bill 426. My name is Don Jordan, and I am the Superintendent for Osawatomie State Hospital and Rainbow Mental Health Facility, two state mental health hospitals managed by the Department of Social and Rehabilitation Services (SRS). On behalf of SRS, I offer support of this bill.

Since the inception of the institutional license option, SRS has made good use of it. Within its state hospitals, SRS currently employs 15 physicians who hold institutional licenses with the Kansas State Board of Healing Arts. Nine are employed at Larned State Hospital; three at Osawatomie State Hospital; two at Rainbow Mental Health Facility; and one at Parsons State Hospital and Training Center.

In providing patient care at these hospitals, often to Kansans at their most vulnerable and in situations of acute illness and crisis, we take very seriously our job of providing high quality patient care, in safe and effective treatment settings, and in ways that demonstrate fiscal responsibility. We support this bill because it does a good job of supporting those important public interests.

When physicians are employed at a state institution, their services are managed by an array of features, including:

- The significant qualifications included in this statute, being the medical education, post-graduate training and continuing medical education.
- An employment contract which requires both pre- and post-employment training, as well as ongoing solid performance outcomes.
- A service setting that supports each physician's work with on-site presence and supervision by a medical/clinical director holding a full medical license; colleagues with full medical licenses; and/or a limited scope of practice, primarily related to psychiatric/mental health services.

Particularly during times of economic difficulty, our state hospitals have limited success in funding salaries that can attract and retain fully licensed physicians. Certainly we do that when we can. The option of institutional licenses allows Kansans to take advantage of the safeguards inherent in our state hospital settings and employ physicians who can fully meet the treatment needs of our patients.



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TO: Senate Public Health and Welfare Committee

FROM: Christina Collins
Director of Government Affairs

DATE: February 11, 2004

RE: SB 426

Madame Chairman and Members of the Committee:

Thank you for the opportunity to testify today in support of SB 426.

SB 426 would extend a law within the Healing Arts Act to continue the concept of an institutional license to practice medicine. This applies only to approximately nine individuals who currently practice solely within the state institutional setting.

According to prior testimony by the Board of Healing Arts, the concept of this discrete license category first developed in 1969 when the legislature created a fellowship license for persons who held a degree of doctor of medicine and who were employed by the division of institutional management of the state board of social welfare or employed by any institution within the state department of penal institutions. Practice privileges under a fellowship license were restricted to the period of employment and only within the institution to which the individual was assigned.

In 1976, the requirements were added that the individual had to be a graduate of an accredited medical school and had to successfully complete an examination by the education commission on foreign medical graduates. The license was restricted to two years and was not renewable. In 1985, the fellowship license was changed to an institutional license. Holders of this license were also required to pass an examination approved by the Board in basic and clinical sciences. The license could be renewed if the examination was passed – a requirement later eliminated by the legislature. In 1997, the license was expanded to allow licensees to provide mental health services within a community mental health center, a duly chartered educational institution, a hospital or a psychiatric hospital. In 2000, the license scope was further expanded to include the provision of mental health services pursuant to a written protocol with an individual with a full and unrestricted license to practice medicine and surgery. At the same time, the requirement for passage of the examination in basic and clinical sciences as a condition

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KMS Testimony on SB 426

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of renewal was waived if the individual had completed two years of post-graduate training in the U.S. In 2001 the legislature directed the Board to renew all institutional licenses which expire during 2002 and 2003 for two more years. This was done by a last-minute proviso to an appropriations bill.

The Kansas Medical Society remains opposed to the concept of granting a license to practice medicine and surgery to those who have not met the full academic and examination requirements set forth in the Healing Arts Act for all physicians. In years past, KMS has consistently opposed bills that would expand the scope of practice for those practicing under institutional licenses. For example, SB 584, introduced last year, would have granted institutional license-holders what amounted to an unrestricted license to practice medicine anywhere within the state without having met the academic and examination requirements that all other physicians must meet before being given the privilege of practicing medicine.

However, in the present case, SB 426 simply creates a "grandfather clause" for those currently practicing in state institutions under these licenses. These practitioners may only continue to practice as they currently are within the state institutional setting, a venue where recruitment of new practitioners can be somewhat challenging. For this reason, the Kansas Medical Society urges the passage of SB 426. Thank you for the opportunity to testify today and I am pleased to stand for any questions the committee may have.