

Approved: February 15, 2006

Date

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 February 14, 2006, in Room 526-S of the Capitol.

All members were present except Representatives Bethell and Hill.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Mary Galligan, Kansas Legislative Research Department
Rena Jefferies, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Representative Nancy Kirk
Rebecca Rice, Kansas Association of Nurse Anesthetists
Chip Wheelen, Executive Director, Kansas Association of Osteopathic Medicine
Jerry Slaughter, Executive Director, Kansas Medical Society
Lawrence Buening, Executive Director, Kansas Board of Healing Arts
Mark McCune, M.D., Kansas Board of Healing Arts

Others attending:

See attached list (not available on electronic copy).

The minutes for February 13, 2006, were approved.

The Chair opened the hearing on **HB 2829**.

Representative Nancy Kirk spoke in support of the bill. (Attachment 1) She commented that the bill addresses the need to regulate presently unregulated facilities where office-based surgeries and specialized procedures are performed. She stated that the bill does not list best practices, since such practices are constantly upgraded; rather standards are allowed to be more flexible under the direction of the rules and regulations of the Kansas Department of Health and Environment (KDHE). She estimated about 300 facilities would fall under the scope of the bill. She suggested several clarification changes to the bill.

Rebecca Rice, Kansas Association of Nurse Anesthetists, provided neutral written testimony. (Attachment 2)

Chip Wheelen, Executive Director, Kansas Association of Osteopathic Medicine, spoke as an opponent to the bill. (Attachment 3) He commented that only a few osteopathic physicians would be affected by the bill; he suggested an alternative as the tiered standards established by the Kansas Board of Healing Arts, which apply to all members regulated by the Board of Healing Arts. He noted the significant increase in cost by implementing the bill.

Jerry Slaughter, Executive Director, Kansas Medical Society, testified as an opponent. (Attachment 4) He stated that the Board of Healing Arts has adopted regulations that encompass the intent of the bill, making the proposed legislation unnecessary, duplicative, and costly. He observed that nothing in the bill requires the Secretary of the Kansas Department of Health and Environment to adopt rules and regulations that match those established by the Board of Healing Arts, setting up potential conflicts.

Lawrence Buening, Executive Director, Kansas Board of Healing Arts, spoke in opposition to the bill. (Attachment 5) He included a survey to illustrate the Board's interest in oversight for free-standing clinics. (Attachment 6) He was especially concerned about section 6, which requires the Board to reimburse KDHE for inspections, significantly increasing the Board's expenditures; he suggested reimbursements be drawn from the State General Fund. He referenced board member Dr. Mark McCune's written opposition to the bill. (Attachment 7)

Committee members had several questions: Mr. Slaughter replied that the Board of Healing Arts already has the authority to investigate any physician's office. Mr. Wheelen said that ambulatory surgical centers have stringent regulations similar to what has been adopted by the Board of Healing Arts. He replied to another question that assessing a fee to the inspected facility would help defray costs.

A fiscal note was included. (Attachment 8)

The hearing on **HB 2829** was closed.

The committee considered **HB 2497**. A motion was made, seconded and passed to adopt the Revisor's technical amendment.

A motion was made and seconded to accept the balloon amendments from KDHE testimony on February 8, excluding the word *arrest*. Discussion centered on issues of fingerprint identity, DNA identity, and implications of an arrest. The motion passed.

A motion was made and seconded to strike the words *and expungement*. The motion passed 7-6.

A motion was made and seconded to recommend **HB 2497** favorable for passage as amended. The motion passed. Representative Colloton volunteered to carry the bill.

The Chair announced that **HB 2649** with the Bethell amendment would be worked on Monday.

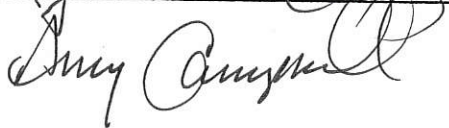
Staff Melissa Calderwood briefed the committee on **HB 2752**, which amends current law regarding a trauma registry, expanding the authority of the Secretary of KDHE to develop rules and regulations, including fees, to support the designation of trauma facilities by level of trauma care capabilities after consultation with, among others, the American College of Surgeons Committee on Trauma Standards. She noted changes in reference to clarify current resources and agencies.

The meeting was adjourned at 2:49 p.m. The next meeting is scheduled for Wednesday, February 15, 2006.

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

DATE: February 14 2006

NAME	REPRESENTING
LARRY BUENINGA	BD OF HEALING ARTS
Chip Wheelen	As'n of Osteopathic Med.
CATHERINE KE HEWELL	R.N. MSN Student WU
Marybeth Cassidy	W.V. - MSN grad. student
Kim Lynch	KFMC
Rosanne Rutkowski	KDAE
Mark Pederson	Aid For Women
Marty Heilman	Corley Consulting Grp. Inc.
EM Landry	KSDV
Lindsey Douglas	Hein law Firm
Jeanne Gaud	KFI
Mike Farmer	KS Catholic Conference
Daniel R. Morin	Kansas Medical Society
Gerry Slaughter	" " "
Tim Carpenter	" " "
Mary Thompson	Rep. Bill Otto
Mazd Borzayat	CAPITOL STRATEGISTS
J. Clayton	Federal Comedy
Roger Warren	Ks Bd of Healing Arts


 KS Society of Eye Physicians & Surgeons

NANCY A. KIRK
 REPRESENTATIVE, FIFTY-SIXTH DISTRICT
 SHAWNEE COUNTY
 HOME ADDRESS: 932 FRAZIER
 TOPEKA, KANSAS 66606
 (785) 234-8806
 OFFICE: ROOM 284-W, STATE CAPITOL
 TOPEKA, KANSAS 66612-1504
 (785) 296-7673



TOPEKA
 HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 HEALTH AND HUMAN SERVICES
 INSURANCE
 TAXATION

Testimony on HB2829

HB 2829 regulates medical clinics and facilities in which office based surgeries and specialized procedures are performed. Since the late 1990's efforts were made to regulate facilities that perform abortions and all of these efforts met with ultimate defeat.

The primary problem with these earlier efforts rested with the failure to recognize the need for much broader regulation. The delivery of health care in this country has changed dramatically. Procedures that were once restricted to hospital settings are now performed in doctor's offices or out patient facilities. Hospitals are regulated, health care providers are regulated, ambulatory surgical clinics are regulated, but these outpatient facilities are not regulated. Those of us of a certain age have probably received or are anticipating colonoscopies. Most Kansans are unaware these facilities are unregulated. Laser surgery is performed in other unregulated facilities, as are abortions.

HB 2829 charges the Secretary of Health and Environment with the responsibility of developing rules and regulations and for the inspection of facilities in which office based surgeries or specialized procedures are performed. The bill requires the Secretary to collaborate with the Board of Healing Arts. It is important that the medical profession be involved in the development of rules and regulations to assure that best practices are continually updated and reflected in the rules and regulations. I am providing the Committee with a copy of the recent regulations adopted by the Board of Healing Arts for office based surgeries and specialized procedures. These rules and regulations would reflect the minimum standards that could be adopted by KDHE.

The bill establishes fine for facilities that remain out of compliance and the Secretary is given injunctive authority to force facilities to stop operating if conditions are found to pose an immediate threat of potential harm to patients. KDHE would report its findings to the Board of Healing Arts and to the Board of Nursing when facilities were out of compliance. The inspections would be conducted every five years on an unannounced and random basis and more often if complaints were received. Funding for these inspections would come from the Board of Healing Arts fee fund. It is anticipated that there are any where from 250-300 facilities that would meet the definition of office based surgeries and specialized procedures.

Out of respect for those specifically concerned about facilities performing abortions, the

Attachment 1
 HHS 2-14-06

bill requires the first facilities to be inspected under the newly developed rules and regulations would be those facilities in which abortions are performed.

As with any piece of legislation, I discovered changes that needed to be made in this bill. Following is a list of alterations that I believe would offer clarity

1. Section 1.(d) The last two words in the definition of Minor Surgery “ is remote” should be struck and new words inserted “not reasonably foreseen” This makes the definition consistent with the words in the approved rules and regulations adopted by the Board of Healing Arts.
2. Section 1 (i) definition of surgery - After the phrase preserving health, add “terminating a pregnancy” this is simply for clarification
3. Section 2 © The last sentence should be struck and the following added “ Rules and regulations shall be adopted under this section within 60 days of this bill becoming law”
4. Section 3 (b) after the word noncompliance, insert “the correction order will become an open record at this time, and”
5. Section 6 (a.) after As soon as possible after the effective date of this act, insert “and after the effective dates of the adoption of the new rules and regulations under this act,”



PO BOX 4108
TOPEKA, KS 66604
- ♦ -
KANSASLOBBYIST@COX.NET

PHONE: 785.271.5462
CELL: 785.633.4962
FAX: 785.273.3705

REBECCA RICE
ATTORNEY AT LAW

Testimony Presented to
House Health & Human Services Committee
February 14, 2006
Re: HB 2829

Thank you Mr. Chairman and members of the committee for allowing me to present a couple of concerns about this legislation which we believe are technical in nature. Although I rarely appear as "neutral" on a bill, I chose to do so in this instance because I believe our concerns are technical. However, with that said, the changes are of sufficient concern to the nurse anesthetists that without the changes we will become opponents due to what we believe is the potential of the Secretary of Health and Environment to change the scope of practice of nurse anesthetists. At best, we are concerned that the language of HB 2829 could cause confusion as to whether the scope of practice contained in the nursing statutes or rules and regulations adopted by KDHE govern in the medical facilities and situations addressed in HB 2829.

In particular, KANA's concerns include Section 2 (a)(1) regarding the authority of KDHE to adopt rules and regulations regarding the qualifications and supervision of non-physician personnel; (a)(4) patient screening, assessment and monitoring; and (a)(6) anesthesia services. Nurse anesthetists are not supervised and are particularly concerned that (a)(1) not be applied to them. However, (a)(4) and (6) are also of concern because the nurse anesthetists have worked with the board of healing arts to adopt rules and regulations regarding the need for nurse anesthetist's independent role in both areas.

In addition, KANA is opposed to the language in Section 2(b) line 30 regarding adoption of the Kansas Medical Society guidelines. In particular, those guidelines include a requirement that nurse anesthetists be supervised by physicians. Supervision is not required by Kansas law and we believe adoption of these guidelines as to supervision would be unduly confusing.

KANA assumes however that the authors of the legislation do not intend for conflicting rules and regulations to exist between state agencies. Therefore, Mr. Chairman, assuming the various possible conflicts that we have identified are clarified and resolved, we remain neutral on HB 2829.

Thank you for allowing us to present this testimony.

Attachment 2
HHS 2-14-06



Testimony in Opposition to House Bill 2829
House Health and Human Services Committee

By Charles L. (Chip) Wheelen
February 13, 2006

Thank you for this opportunity to express our opposition to HB2829. This issue is not new, and because we have discussed it among our general membership as well as our elected officers, we know that it would affect only a few of our members. We are, nonetheless, opposed to the bill because it would impose duplicative regulation on those few physicians who do perform office based surgery or special procedures.

You will note that HB2829 makes reference to “guidelines for office-based surgery and special procedures approved by the Kansas medical society house of delegates on May 5, 2002.” The KAOM participated in a multi-specialty task force convened by the Kansas Medical Society which developed those guidelines. It was a diligent effort by a diverse group of representatives from different areas of medical expertise to develop responsible standards for office based surgery and special procedures. Those guidelines were subsequently endorsed by the State Board of Healing Arts and for that reason, we believe those guidelines reflect the applicable standard of care for any physician who performs those types of procedures in our State.

More recently, we participated in a number of committee meetings convened by the Board of Healing Arts. Using the KMS guidelines as a template, regulations were developed that create a three-tiered approach regulating all medical and chiropractic offices in Kansas. Those regulations have been adopted by the Board of Healing Arts and are now in effect. The first level of regulation applies to all licensees under the Healing Arts Act and establishes basic standards for cleanliness and patient safety, the second level of regulations establishes higher standards for those office practices where mid-level surgery or special procedures are performed, and the third level of regulation applies to any office practice where general anesthesia is administered. Each level of regulation builds upon the previous level, and is a reflection of the comparative risk associated with the procedures and level of anesthesia. Those regulations may be accessed at <http://www.ksbha.org/agendas/05-1116-reg.html>.

The regulations adopted by the Board of Healing Arts accomplish almost all of the objectives set out in HB2829. For this reason, we respectfully suggest that in lieu of HB2829, you recommend to the Appropriations Committee that additional positions and expenditure authority be granted to the Board of Healing Arts with a proviso requiring that the Board conduct inspections of medical practices where office-based surgery and special procedures are performed. This would accomplish the remainder of the objectives set out in HB2829. According to the fiscal note submitted on a similar bill introduced last year, this would require 15.0 FTE new positions and expenditure authority amounting to about \$1.1 million. Of course the funding would be from licensure fees.

Thank you for considering our comments and recommendations. We urge you to recommend that HB2829 not be passed.

*Attachment 3
HHS 2-14-06*



623 SW 10th Avenue
Topeka KS 66612-1627
785.235.2383
800.332.0156
fax 785.235.5114

www.KMSonline.org

To: House Health and Human Services Committee

From: Jerry Slaughter
Executive Director

Subject: HB 2829; concerning the regulation of office-based surgery facilities

Date: February 13, 2006

The Kansas Medical Society appreciates the opportunity to submit the following comments on HB 2829. This bill would require the Kansas Department of Health and Environment to establish regulations governing physician clinics at which office-based surgery and other special medical procedures are performed.

We want to make it clear from the outset that our comments on this legislation are not made in reference to any specific medical procedure and how it might be affected by the provisions of this bill, but rather how this legislation affects all physician offices at which surgery and special procedures are performed.

We do not support HB 2829, because we believe it is unnecessary and duplicative of regulations adopted by the Board of Healing Arts, a copy of which may be viewed as follows: <http://www.ksbha.org/regulations/article25.html>. These regulations were based on a set of clinical guidelines developed by a task force of our organization in 2002, after over a year of study and deliberation, and after reviewing virtually every set of similar guidelines which were in existence throughout the country at the time. Our task force included twenty-one physicians, representing twelve medical specialties. The purpose of the guidelines, and the resulting regulations, is to promote patient safety in the non-hospital surgical setting. These regulations represent a clinically sound, responsible approach to assuring patient safety in such settings. They are comprehensive in scope, covering the wide spectrum of surgical and special medical procedures involving anesthesia which may be safely and appropriately provided in a physician office. The regulations also include basic facilities cleanliness, safety and sanitation standards which are applicable to all physician offices, including those that do not provide surgical services.

This legislation would require the Secretary of KDHE to promulgate another set of regulations, to address the very thing the Healing Arts Board regulations accomplish. At a minimum, this is just simply duplicative, and unnecessarily costly. Moreover, the potential exists that KDHE could adopt regulations that are materially different than those adopted by the Board of Healing

Attachment 4
HHS 2-14-06

Arts, which will create a confusing, untenable situation for physicians. How could a physician be expected to know which set of competing regulations to comply with, or face sanctions? Such a situation sets physicians up for almost certain compliance failure at one or both state agencies, with all the legal and financial implications that brings.

If we all share the same goal of promoting patient safety in the office-based surgical setting, we urge you to reject this legislation. The regulations that are already in place will allow us to achieve that goal, without imposing a second set of requirements that are duplicative, costly and confusing.

MEMORANDUM

TO: House Health and Human Services Committee

FROM: Lawrence T. Buening, Jr.
Executive Director

RE: **H.B. No. 2829**

DATE: February 13, 2006

Thank you for the opportunity to appear before you and express the opposition of the Kansas Board of Healing Arts to H.B. No. 2829. The Board met on Friday and Saturday, February 10 and 11, 2006, and reviewed this bill in detail. The Board took action to direct that I inform the Committee of the Board's opposition to this bill.

Separate written testimony has been provided by Mark A. McCune, M.D., one of the 15 members of the Kansas Board of Healing Arts. Also present today is Roger Warren, M.D., the current president of the Board. Dr. Warren practices general surgery in Hanover, Kansas, and is here to answer any questions you might have regarding the Board position on this bill.

The Board's concerns regarding this bill primarily involved the duplication of administrative oversight and the costs of the bill. Dr. McCune's testimony reviews the Board's efforts in adopting guidelines for office-based surgery. The Board's rules and regulations first became effective on a temporary basis on August 22, 2005. The rules and regulations were re-adopted as temporary regulations effective December 20, 2005, and those will continue in effect until April 18, 2006. However, at the meeting held on Saturday, February 11, 2006 Board did adopt these as permanent regulations which will become effective 15 days following publication in the Kansas Register. A copy of these rules and regulations can be viewed from the Board's website at www.ksbha.org, clicking on "Rules and Regs" and then clicking on "100-25. Office Requirements".

Attachment 5
HHS 2-14-06

In preparation for the enforcement of these rules and regulations, an Office-Based Surgery Survey was mailed to approximately 6000 licensees on February 10. This survey was mailed to all medical doctors, osteopathic doctors, and podiatric doctors with an active Kansas license who have a practice address in Kansas or Kansas City, Missouri. A copy of the survey is attached. Also, the Board directed that the Committee that developed the rules and regulations continue to meet and discuss the process by which the Board will conduct inspections and investigations of offices. It is expected that this Committee will meet in March and have recommendations for presentation to the Board as a whole at the regular meeting to be held April 8.

The other primary concern for the Board is the provision in last sentence of Section 6 (page 4, lines 16 through 19). This sentence provides that the Board would be responsible to pay to the Kansas Department of Health and Environment for the costs of inspections conducted by KDHE. KDHE has indicated a fiscal note of \$2.2 million. The Board is totally funded by the fees it collects from the approximately 20,500 individuals it regulates in 13 health care professions. Currently, the Board's total expenditure limitation for FY2006 is \$2,639,456 (L. 2005, Chapter 206, Section 66). Based on current statutory maximums for the regulated professions, it would not be possible for the Board to pay KDHE for the costs of inspections. Further, the 2005 Legislature directed that \$750,000 be transferred from the Board's fee fund in addition to other transfers to the general fund the Board is required to make (L. 2005, Chapter 174, Section 14). As a result, the Board's fee fund has been severely depleted and steps are currently ongoing to arrange to delay payment of bills during March, April and May.

Thank you for the opportunity to appear before you and provide you with the Board's position on H.B. No. 2829. I would be happy to respond to any questions.

KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS
GOVERNOR

February, 2006

OFFICE- BASED SURGERY SURVEY

The Kansas Board of Healing Arts is implementing new regulations regarding office-based surgery performed in Kansas. More information about these regulations may be found at our website, www.ksbha.org. (Click on Rules and Regulations, see 100-25 Office Requirements.) We are interested in the kinds of surgery you perform outside of a hospital or licensed ambulatory surgery center. Please answer the questions that follow and return the survey within 14 days of receipt. Your participation is greatly appreciated.

1. Do you have an *ACTIVE* or *EXEMPT* Kansas license to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery? YES _____
NO _____.
2. Do you have a *PRACTICE LOCATION* in Kansas that is not a medical care facility? (A medical care facility is a hospital or state-licensed ambulatory surgery center.) YES _____
NO _____.

IF YOU ANSWERED "NO" TO BOTH QUESTIONS 1 AND 2 ABOVE, YOU MAY STOP AND MAIL THIS SURVEY BACK TO US. OTHERWISE, PLEASE CONTINUE.

The following questions relate **only** to your practice location that is *not a medical care facility*:

3. Do you perform any minor surgery, which means surgery that is not expected to have any complications and can safely and comfortably be performed with no anesthesia or with only local or topical anesthesia? YES _____ NO _____.

MEMBERS OF THE BOARD:

ROGER D. WARREN, M.D., PRESIDENT
Hanover

CAROLINA M. SORIA, D.O., VICE-PRESIDENT
Wichita

VINTON K. ARNETT, D.C., Hays
MICHAEL J. BEEZLEY, M.D., Lenexa
RAY N. CONLEY, D.C., Overland Park
GARY L. COUNSELMAN, D.C., Topeka
FRANK K. GALBRAITH, D.P.M., Wichita
MERLE J. "BOO" HODGES, M.D., Salina

SUE ICE, PUBLIC MEMBER, Newton
BETTY McBRIDE, PUBLIC MEMBER, Columbus
MARK A. McCUNE, M.D., Overland Park
CAROL SADER, PUBLIC MEMBER, Prairie Village
NANCY J. WELSH, M.D., Topeka
JOHN P. WHITE, D.O., Pittsburg
RONALD N. WHITMER, D.O., Ellsworth

235 S. Topeka Boulevard, Topeka, Kansas 66603-3068
Voice: 785-296-7413 Toll Free: 888-886-7205 Fax: 785-296-0852 www.ksbha.org

Attachment 6
HHS 2-14-06

Addressee

4. Do you perform any office-based surgery, which means surgery that requires any anesthesia, parenteral analgesia, or sedation and that is performed by or upon the order of a physician in an office? (This does not include minor surgery). YES _____ NO _____.
5. Do you use sedation, which means your patient has a depressed level of consciousness but can still maintain on their own adequate cardiorespiratory functioning, an airway, a regular breathing pattern, protective reflexes and respond to commands? YES _____ NO _____.
6. Do you perform any special procedures, which means a patient service with any potential painful contact for the purpose of diagnosis or therapy that requires any anesthesia to prevent or reduce pain? (For example endoscopy, invasive radiology, manipulation under anesthesia, and pain management when performed using more than local anesthesia.) YES _____ NO _____.
7. Do you perform any surgery, which means a manual or operative method that involves any alteration of tissue by any means, including by use of lasers, for the purpose of preserving health, diagnosing or treating disease, repairing injury, correcting deformity or defects, prolonging life, terminating pregnancy, relieving suffering, or for aesthetic, reconstructive, or cosmetic purposes? YES _____ NO _____.

Thank you for your responses. If you have any questions, please call or e-mail Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts, at 785-296-7413, or lbuening@ink.org.

Please mail your completed survey in the enclosed, self-addressed envelope to:

**Kansas Board of Healing Arts
Attn: Survey
235 S.W. Topeka Blvd.
Topeka, KS 66603-3068**

KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS
GOVERNOR

MEMORANDUM

TO: House Health and Human Services Committee

FROM: Mark A. McCune, M.D.
Member of the Board

RE: H.B. No. 2829

DATE: February 13, 2006

Mr. Chairman and committee members:

I am writing to express my concerns and opposition to House Bill No. 2829. I have a special position of expertise that I would like to present to the committee.

I am a practicing physician in Overland Park, Kansas. My specialty is dermatology and dermasurgery. I graduated from the University of Kansas in 1974 and from the University of Kansas School of Medicine in 1977. I completed a one-year internship in internal medicine and a 3-year residency in dermatology at the Mayo Graduate School of Medicine in Rochester, Minnesota in 1981. I entered practice in Overland Park in 1981 and have practiced there ever since.

I am an Assistant Professor of Dermatology at the University of Kansas School of Medicine. I have been the interim Chief of Dermatologic Surgery within the dermatology residency program under the chairmanship of James Kalivas, M.D. I am currently the Chief of Laser Surgery for the dermatology residency at KU. I have been involved in the dermasurgical education of the KU dermatology residents for the last 10 years or more.

My dermasurgical practice is 100% office based. I perform a wide array of surgical procedures including liposuction and laser procedures under local and tumescent local anesthesia. Additionally, intravenous conscious sedation is available through the interdependent services of a certified registered nurse anesthetist. General anesthesia is not performed in my office.

MEMBERS OF THE BOARD:

ROGER D. WARREN, M.D., PRESIDENT
Hanover

CAROLINA M. SORIA, D.O., VICE-PRESIDENT
Wichita

VINTON K. ARNETT, D.C., Hays
MICHAEL J. BEEZLEY, M.D., Lenexa
RAY N. CONLEY, D.C., Overland Park
GARY L. COUNSELMAN, D.C., Topeka
FRANK K. GALBRAITH, D.P.M., Wichita
MERLE J. "BOO" HODGES, M.D., Salina

SUE ICE, PUBLIC MEMBER, Newton
BETTY McBRIDE, PUBLIC MEMBER, Columbus
MARK A. McCUNE, M.D., Overland Park
CAROL SADER, PUBLIC MEMBER, Prairie Village
NANCY J. WELSH, M.D., Topeka
JOHN P. WHITE, D.O., Pittsburg
RONALD N. WHITMER, D.O., Ellsworth

235 S. Topeka Boulevard, Topeka, Kansas 66603-3068
Voice: 785-296-7413 Toll Free: 888-886-7205 Fax: 785-296-0852 www.ksbha.org

Attachment 7
HHS 2-14-06

I participated in the Kansas Medical Society task force along with numerous other physician colleagues from multiple specialties that drafted the office-based guidelines that eventually became the template for the office-based surgery rules and regulations under K.A.R. 100-25-1 through 5 adopted by the Kansas State Board of Healing Arts on February 11, 2006.

I am a member of the Board of Healing Arts having been appointed by Governor Graves in 2001. I was reappointed by Governor Sebelius in 2005. I am a member of the Board's office-based surgery committee that drafted the rules and regulations that were adopted as K.A.R. 100-25-1 through 5.

I am giving this written testimony as a physician and dermasurgeon who has performed office-based surgery on a daily basis for over 25 years. I am also testifying as an appointed member of the Kansas Board of Healing Arts which is assigned the responsibility of protecting the safety and welfare of the citizens of Kansas. Finally, I am testifying as one who is intimately involved in office-based surgery and has actively participated in the deliberation and creation of the office-based surgery guidelines, rules and regulations that now govern how office-based surgery is performed in Kansas.

House Bill No. 2829 assigns the responsibility of regulation of offices in which office-based surgery is performed to the Kansas Department of Health and Environment. In my opinion, the rules and regulations already in effect under K.A.R. 100-25-1 through 5 already provide for everything delineated in H.B. No. 2829, Section 2. This bill is redundant and duplicative, and it will add nothing except confusion to the practitioners of the state if adopted. It goes without saying that H.B. No. 2829 will also cost the citizens of Kansas more in tax dollars for the additional and unnecessary layer of administrative function than if K.A.R. 100-25-1 through 5 remain the sole rules and regulations for office-based surgery.

Sections 3 through 6 create the authority and procedures to be followed by the KDHE to inspect, regulate, and discipline practitioners who violate the regulations proposed under H.B. No. 2829. In my opinion, the most logical administrative and regulatory body to inspect office-based surgical facilities, determine violations, direct remedies for said violations, and discipline through financial and other punitive measures is the Kansas Board of Healing Arts. We are the only organization that can truly provide a peer-reviewed and peer-supervised oversight of office-based surgery. Many Board members are also health care providers providing office-based surgical services in private medical offices. We understand the process involved better than anyone else. Our Board has carefully and thoughtfully drafted the language that has become K.A.R. 100-25-1 through 5. Our template was a document (the KMS Office-Based Surgery Guidelines) created by the task force of physicians and surgeons that practice office-based surgery with regularity. H.B. No. 2829 if enacted will take away the next logical step in the process – the creation and implementation by the Board of Healing Arts of the policies and procedures that will define inspections, correction of violations, and the appropriate discipline for uncorrected or egregious violations. The Board of Healing Arts has already started this process and should be allowed to continue its work to create a logical,

efficient, cost-effective, and vertically integrated investigative, corrective, and disciplinary organizational approach to the oversight and regulation of office-based surgery in Kansas.

I personally and individually do not believe that automatic office inspections of a select group of physicians based solely upon the specific procedures they perform are appropriate unless deemed necessary due to the presence of an immediate danger to patients receiving services in those facilities.

Finally, I personally and individually would present to you that it is inappropriate to have the KDHE inspect an office-based facility and then send the bill for the inspection to the Kansas Board of Healing Arts to pay [Section 6(a)]. This forces the Board of Healing Arts to pay for services over which it has no control.

In summary, I am opposed to House Bill No. 2829 for the reasons I have outlined. I would respectfully request that the committee not take action on this bill and allow it to die in committee. That is in the best interest of both your constituents that undergo office-based surgery and the physicians that offer those services.

I am grateful for the opportunity to present this written testimony.

Respectfully,
Mark A. McCune, M.D.

February 14, 2006

The Honorable Jim Morrison, Chairperson
House Committee on Health and Human Services
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Representative Morrison:

SUBJECT: Fiscal Note for HB 2829 by House Committee on Health and Human Services

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2829 is respectfully submitted to your committee.

HB 2829 would establish standards for medical procedures at any health care facility in the state, including clinics and other locations where office-based surgery or special procedures are performed. The Secretary of the Department of Health and Environment (KDHE) would consider guidelines adopted by the Kansas Medical Society when establishing the standards. HB 2829 would define "office-based surgery" as surgery performed by a physician in a setting other than a medical care facility and a "special procedure" as a medical procedure that is not necessarily performed by a physician. The bill would also give KDHE the authority to issue correction and non-compliance orders as well as prohibit further medical procedures for clinics or facilities with non-compliance issues.

The bill would also require that the Secretary conduct unannounced inspections of any clinic or facility in which abortions are performed. Upon receiving a complaint, the Secretary would conduct an inspection in a timely manner. The Secretary would be required to certify to the Board of Healing Arts the cost of these inspections, and the Board would pay for the inspections from the Healing Arts Fee Fund. The Board of Healing Arts and the Board of Nursing would be required to forward the results of all inspections to the Secretary of Health and Environment.

Attachment 8
HHS 2-14-06

Estimated State Fiscal Effect				
	FY 2006 SGF	FY 2006 All Funds	FY 2007 SGF	FY 2007 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$2,009,155	\$2,009,155
FTE Pos.	--	--	--	18.00

The Board of Healing Arts indicates that the bill could be implemented within current staffing levels; however, the agency could not absorb the cost of surveys and inspections that the bill would require.

KDHE indicates that the passage of HB 2829 would increase expenditures by \$2.0 million from the State General Fund and add 18.00 FTE positions to the Department. The bill would apply to approximately 2,300 physician offices. Since the bill authorizes a five-year survey cycle, 20.0 percent, or 460, of the physician offices would be surveyed each year. The Department assumes that 25.0 percent, or 115, of the inspections would require a second visit within the same year, and that 25.0 percent of all facilities would have a complaint filed against them.

In the first year, the Department estimates \$980,151 in salaries that are detailed in the table below, as well as a six-month contract with a full-time surgical physician to establish standards and interact with the Board of Healing Arts. The first year cost of the contract would be \$156,000, and out-year costs would be \$14,400 per year for consultation fees at eight hours per month. Although the bill requires the Board of Healing Arts to reimburse KDHE from the Healing Arts Fee Fund for expenses, the State General Fund needs to be identified as the source of funding for this bill, because it is unlikely the Healing Arts Fee Fund would be able to finance an additional \$2.0 million in expenditures.

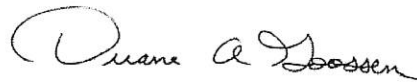
The amount of survey time needed to comply with the bill was calculated on the basis of the time it takes to perform a survey at an ambulatory surgical center. Survey staff would perform the inspections and investigate complaints.

A Public Service Administrator, with the help of a Senior Administrative Assistant would write regulations, track locations covered by the law, and maintain basic office functions. The Department would also need 1.00 Attorney II, 1.00 Legal Assistant, and 1.00 Senior Administrative Assistant to interpret legal issues, 1.00 Database Administrator III, 11.00 Health Facility Surveyor I positions, and 1.00 Health Facility Surveyor II. Office space and operating expenditures of \$705,574 and a 10.0 percent contingency amount of \$167,430 are also included in the cost estimate.

The Honorable Jim Morrison, Chairperson
February 14, 2006
Page 3—2829

<u>Salaries and Wages</u>	<u>Amount</u>
Health Surveyor II (1)	64,158
Health Surveyor I (11)	620,312
Public Service Administrator III (1)	64,158
Attorney II (1)	62,828
Legal Assistant (1)	38,079
Database Administrator III (1)	62,828
Sr. Administrative Assistant (2)	67,788
Subtotal Salaries and Wages	\$980,151
Communications	42,120
Printing	6,300
Overhead, including Rent	167,430
Travel	309,396
Contingency	167,430
Physician Contract	156,000
Office and Other Supplies	86,328
Capital Outlay	94,000
Total Expenditures	\$2,009,155

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Aaron Dunkel, KDHE
Cathy Brown, Healing Arts