

Approved: March 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 March 14, 2006, in Room 526-S of the Capitol.

All members were present except Representatives Landwehr, Bethell, Watkins, Colloton, and Kilpatrick.

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:

Richard Maxfield, Licensed Psychologist, Behavioral Sciences Regulatory Board Member
Sky Westerlund, Executive Director, Kansas Chapter, National Association of Social Workers
Mike Donnelly, Director of Policy and Outreach, Disability Rights Center of Kansas
Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board

Others attending:

See attached list (not available on electronic copy).

The Chair opened the hearing on **SB 469**.

Richard Maxfield, Licensed Psychologist and Behavioral Sciences Regulatory Board Member, testified as a proponent for the bill. (Attachment 1) He noted that the Kansas Psychological Association also supported the bill. He said the bill enables the Board to offer not only a punitive response to an impaired professional, but also to provide diversion into a treatment opportunity for any professional behavior that falls below acceptable practice. He commented on the balloon amendment provided by the Executive Director, Phyllis Gilmore, (Attachment 2) and suggested additional defining language regarding impairment--on page 1, section 2, line 25, following the word "safety," add the following: "The conduct may be attributed to a physical or mental condition or substance abuse or a combination of those preceding conditions." He recommended one other addition on page 1, line 42, striking the language in (1) and inserting "has a reasonable probability of causing harm to a client." He then commented on other recommended changes listed in the balloon amendment: inserting the word "person" and changing "treatment" to "evaluation." Responding to a question, he said the Board did not share the latest changes with Mr. Donnelly.

Sky Westerlund, Executive Director, Kansas Chapter, National Association of Social Workers, spoke in support of the bill. (Attachment 3) She said the Association was grateful for the concepts expressed in the bill to protect clients, but recommended deleting the insertion of "person," since the addition of person could create a conflict of interest for the Board if they contracted with an individual.

Mike Donnelly, Director of Policy and Outreach, Disability Rights Center of Kansas, spoke in opposition

to the bill, noting the inherent discrimination in the wording. (Attachment 4) He drew a distinction between a condition and conduct, saying the bill makes no discrimination between the two and thus violates the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability. He observed that a condition does not cause conduct; it is poor professional conduct that endangers a client, noting that the Board needs to find a better way to protect clients.

Committee members discussed the issues and the language addressed by conferees, asking questions to which conferees responded as follows: Mr. Donnelly said his point is that there needs to be a line drawn between a condition and conduct, a line ignored by the language of the bill. Mr. Maxfield replied that conduct is sometimes caused by a condition, that the evaluation is intended to determine such issues to help a person function better in his/her profession. He also commented that the addition of "person" to the bill would allow an impaired professional who is already seeing a physician to continue with treatment under that physician. A member suggested adding to the term *person* the words ". . . person not already licensed by the BSRB." Ms. Gilmore acknowledged a possible conflict of interest by inserting the word *person* but said the benefits outweigh the potential problem. Mr. Donnelly replied to another question that once a bill creates a separate class of licensees ("impaired professional"), the possible deleterious effects on the person could be hurtful. A member commented that the ADA deals primarily with employment issues, and the bill focuses on a diversion program. Ms. Gilmore replied to a question that the language was not important as long as the Board was given an alternative to punitive action. The Chair asked conferees to try to work out language that would be jointly acceptable.

A fiscal note was provided for members. (Attachment 5)

The hearing was closed

The minutes for March 13, 2006, were approved.

The Chair announced that the hearing on **SB 470** would be postponed until Wednesday, March 15. Subcommittee Chairman Hill reminded members of the sub-committee meeting on **HB 2820** following adjournment of the Health and Human Services Committee on Wednesday, March 15.

The meeting was adjourned at 3:00 p.m. The next meeting is scheduled for 1:30 p.m. on Wednesday, March 15.

**Testimony
Senate Bill #469**

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to testify in favor of passage of Senate Bill #469. I am Richard B. Maxfield. I am a licensed psychologist in independent practice in Topeka, Kansas. In addition, I am one of the psychology representatives on the Behavioral Sciences Regulatory Board.

As you know, Senate Bill #469 pertains to "impaired" professionals regulated by the Behavioral Sciences Board. In addition, the bill gives the Board authority to deal with such practitioners with a variety of methods.

Simply put, the bill allows the Behavioral Sciences Board to receive reports concerning impaired professionals. It specifies methods by which the alleged impairment can be evaluated, methods of reporting those evaluations to the Board. In addition, the Board itself can raise the issue of impairment based on a disciplinary complaint filed against a licensee.

Based on those evaluations and recommendations of professionals who have directly evaluated the licensee, the Board has authority to enter into an agreement with the licensee such that treatment can be undertaken in order to rehabilitate the licensee, if possible. There are stipulations for the ongoing receipt of information in regard to the licensee's compliance with treatment and his or her benefiting from that treatment. Thus, the Board under this legislation would be able to allow licensees to receive amelioration of their difficulties without of necessity going through disciplinary actions of the Board. The Board is free to limit or modify a licensee's practice in order to protect the public during this period of treatment.

I urge you to favor this legislation as it recognizes the reality that the Behavioral Science Board licensees are not immune from physical, mental, substance problems which might impair their practice. It allows for more humane treatment of such licensees and simultaneously protects the public, both through oversight of the licensee's professional functioning and, hopefully, rehabilitation of the licensee. The provisions of this bill closely parallel already existing legislation concerning other similar professions in terms of management of impaired providers. In addition, it makes available to the public more providers of professional services.

*Attachment 1
HHS 3-14-06*

As Amended by Senate Committee

Source of 2006

Phyllis Gilmore 1st
Balloon Amendment
March 10, 2006

SENATE BILL No. 469

By Committee on Public Health and Welfare

1-27

10 AN ACT concerning the behavioral sciences regulatory board; relating
11 to impaired licensees.
12

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

14 Section 1. (a) This section shall be known and may be cited as the
15 impaired licensee treatment behavioral sciences ~~licensing and pro-~~
16 ~~tection act.~~

intervention

17 (b) As used in this section:

18 (1) "Board" means the behavioral sciences regulatory board.

19 (2) ~~Impairment means a physical or mental condition, or both, that~~
20 ~~renders a licensee unable or unfit to practice with reasonable skill, safety~~
21 ~~or competence due to a physical or mental disability or incapacity, or~~
22 ~~both, including, but not limited to, deterioration through the aging pro-~~
23 ~~cess, loss of motor skill or abuse of drugs or alcohol licensee's conduct~~
24 ~~has resulted in the licensee being unable to practice the licensee's~~
25 ~~profession with reasonable skill and safety.~~

"Impaired behavior" means professional behavior that may be
the result of substance abuse, a physical or mental condition, or
a combination of the preceding conditions, that renders the
licensee unable to practice the licensee's profession with
reasonable skill and safety.

26 (3) "Licensee" means an individual licensed by the behavioral sci-
27 ences regulatory board.

28 (4) ~~Impaired licensee treatment provider means a board approved~~
29 ~~person, organization or program that evaluates, or causes to be evaluated,~~
30 ~~a licensee for impairment, and if warranted subsequently monitors the~~
31 ~~licensee for compliance with a course of treatment.~~ ~~Treatment~~
32 ~~contractor means a professional organization or professional program~~
33 ~~that has contracted with the board to evaluate or cause to be eval-~~
34 ~~uated a licensee for impairment and, if warranted, subsequently~~
35 ~~monitors the licensee for compliance with a course of treatment.~~

Evaluation

person,

36 (5) "Professional" means a board approved person licensed or reg-
37 istered by the behavioral sciences regulatory board, licensed by the board
38 of healing arts, or certified as a drug and alcohol treatment program
39 through the Kansas social and rehabilitation services, including an indi-
40 vidual treatment provider.

41 (5) "Reportable incident" means conduct by a licensee which
42 (1) ~~is or may be below the applicable standard of care~~ or (2) may
43 be grounds for disciplinary action by the board.

demonstrates impaired behavior that has a reasonable
probability of causing harm to a client

Attachment 2
HHS 3-14-06

1 (c) (1) ~~Any person may file a complaint or report with the board~~
 2 ~~concerning any information or reasonable suspicion such person may have~~
 3 ~~relating to an alleged impaired licensee. Additionally, any report or complaint~~
 4 ~~the board receives alleging a violation of a statute or regulation~~
 5 ~~under the board's jurisdiction may be preliminarily assessed for impairment~~
 6 ~~issues if impairment reasonably appears to be a factor related to~~
 7 ~~the reported conduct. Any person who has information relating to a~~
 8 ~~reportable incident may file a complaint or a report with the board.~~

9 (2) The board may investigate the report or complaint. In the alternative
 10 or additionally, if the board has reasonable cause to believe that a
 11 licensee is impaired, the board may require the licensee who is the subject
 12 of the report or complaint to obtain a mental or physical evaluation, or
 13 both, from a board approved impaired licensee treatment provider or a
 14 board approved professional for the purpose of determining whether the
 15 licensee is impaired. The impaired licensee treatment provider may refer
 16 the licensee to a physician or other licensed mental or physical health
 17 professional for a mental or physical evaluation, or both, for the purpose
 18 of determining whether the licensee is impaired. Any costs associated
 19 with a licensee obtaining such an evaluation or evaluations shall be borne
 20 by the licensee. ~~could be impaired, the board may refer the licensee~~
 21 ~~to the [treatment] contractor for assessment for possible impairment.~~
 22 ~~The [treatment] contractor may refer the licensee to a physician or~~
 23 ~~other licensed mental health or physical health professional for~~
 24 ~~evaluation for the purpose of determining a course of treatment and~~
 25 ~~monitoring schedule. Any cost associated with the licensee obtain-~~
 26 ~~ing such an evaluation or evaluations shall be borne by the licensee.~~

evaluation

27 (3) ~~If the board requires a licensee to submit to such an evaluation~~
 28 ~~or evaluations, the board shall receive and consider any other evaluation~~
 29 ~~from one or more professionals of the licensee's choice. If the board~~
 30 ~~refers the licensee to the [treatment] contractor, the board shall receive~~
 31 ~~and consider the conclusions of the evaluation or evaluations~~
 32 ~~from the [treatment] contractor. Any costs associated with a licensee~~
 33 ~~obtaining such an evaluation or evaluations shall be borne by the licensee.~~

evaluation

34 (4) The impaired licensee treatment provider or the board approved
 35 professional shall report the findings of the mental or physical evaluation,
 36 or both, to the board.

37 (d) (1) The board shall develop procedures for processing complaints
 38 or reports after receipt of the mental or physical evaluation, or both
 39 receiving the conclusions of the evaluation or evaluations from the
 40 [treatment] contractor. The procedures may vary depending on whether:

evaluation

41 (A) The initial complaint or report alleged a violation of a statute or
 42 regulation;

43 (B) an impairment is substantiated by the evaluation or evaluations;

1 (C) an impairment, if substantiated, is likely to improve with a course
2 of treatment; and

3 (D) the licensee can practice with reasonable skill, ~~safety and com-~~
4 ~~petence and safety~~ during a course of treatment for the impairment.

5 (2) If an impairment is substantiated, the board may, but is not re-
6 quired to, divert the matter from a disciplinary proceeding, and may take
7 any of the following actions ~~in accordance with the Kansas administrative~~
8 ~~procedure act.~~

9 (A) Authorize the licensee to continue practicing on specified con-
10 ditions, restrictions or limitations;

11 (B) suspend the license on specified conditions, restrictions or limi-
12 tations; ~~or~~

13 (C) cancel the license upon the licensee's voluntary surrender of the
14 license; ~~or~~

; or

15 ~~(D) place the licensee on inactive status either by voluntary request~~
16 ~~of the licensee or by order of the board without a voluntary request of~~
17 ~~the licensee.~~

(D) place the licensee on inactive status either by voluntary request
of the licensee or by order of the board without a voluntary request
of the licensee

18 (3) As an alternative to subsection (b), the board may take any au-
19 thorized disciplinary action if a licensee's impairment is substantiated by
20 clear and convincing evidence or if the licensee has violated any applicable
21 statute or regulation under the board's jurisdiction.

22 (4) Cost of any course of treatment required pursuant to subsection
23 (b) or (c) shall be borne by the licensee.

24 (5) If a licensee practices in violation of any action taken by the board
25 under subsection (d)(2) or if the board receives a report from the im-
26 paired licensee treatment provider pursuant to subsection (e)(2)(C) or
27 (e)(2)(D), the board may suspend or revoke the license after providing
28 notice and an opportunity to be heard in accordance with the Kansas
29 administrative procedure act.

30 (e) (1) The board shall have the authority to enter into an agreement
31 with ~~an impaired licensee, treatment provider or other professional or~~
32 ~~treatment contractor~~ to undertake those functions and responsibilities
33 specified in the agreement and to provide for payment of administrative
34 expenses from moneys appropriated to the agency for that purpose. Such
35 functions and responsibilities may include any or all of the following:

an evaluation

36 (A) Contracting with providers of treatment programs;

37 (B) receiving and evaluating reports of suspected impairment from
38 any source;

39 (C) intervening in cases of verified impairment;

40 (D) referring an impaired licensee to a treatment program or to a
41 licensed mental or physical health professional;

42 (E) monitoring the treatment and rehabilitation of impaired
43 licensees;

1 (F) providing post-treatment monitoring and support of rehabilitated
2 impaired licensees; and

3 (G) performing such other activities as agreed upon by the board and
4 the ~~impaired licensee treatment provider~~ ~~a treatment~~ ~~contractor~~.

evaluation

5 (2) The ~~impaired licensee treatment provider or other professional~~
6 ~~treatment~~ ~~contractor~~ shall develop procedures in consultation with the
7 board for:

evaluation

8 (A) Periodic reporting of statistical information regarding impaired
9 licensee program activity;

10 (B) periodic disclosure and joint review of such information as the
11 board considers appropriate regarding reports received, contacts, evalu-
12 ations or investigations made and the disposition of each report;

13 (C) immediate reporting to the board of the name and results of any
14 contact or investigation regarding any impaired licensee who is believed
15 to constitute an imminent danger to the public or to self;

16 (D) reporting to the board, in a timely fashion, any impaired licensee
17 who refuses to cooperate with the ~~impaired licensee treatment provider~~
18 ~~or other professional~~ ~~treatment~~ ~~contractor~~ or refuses to submit to treat-
19 ment, or whose impairment is not substantially alleviated through treat-
20 ment, and

evaluation

21 (E) informing each participant of the ~~impaired licensee treatment~~
22 ~~provider's or other professional~~ ~~treatment~~ ~~contractor's~~ plan of the proced-
23 ures, the responsibilities of participants and the possible consequences
24 of noncompliance.

evaluation

25 (3) Notwithstanding any other provision of law, any person making a
26 report or complaint to the board, ~~an impaired licensee treatment provider~~
27 ~~or any other professional~~ ~~or~~ ~~treatment~~ ~~contractor~~ shall not be liable to
28 any person for any acts, omissions or recommendations made in good
29 faith while acting within the scope of the authority granted or responsi-
30 bilities imposed pursuant to this act.

evaluation

31 (f) (1) The reports and records made pursuant to this act, and
32 amendments thereto, shall be confidential and privileged, including:

33 (A) Reports and records of the board or ~~an impaired licensee treat-~~
34 ~~ment provider or other professional~~ ~~treatment~~ ~~contractor~~; and

evaluation

35 (B) reports and records made pursuant to this act to or by any board
36 committee, employee or any consultant. Such reports and records shall
37 not be subject to discovery, subpoena or other means of legal compulsion
38 for their release to any person or entity and shall not be admissible in any
39 civil or administrative action other than a proceeding pursuant to subsec-
40 tion (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant
41 to subsection (d)(3).

42 (2) No person in attendance at any meeting of the board or board
43 committee engaged in the duties imposed by this act and amendments

24

1 thereto shall be compelled to testify in any civil, criminal or administrative
2 action, other than a proceeding pursuant to subsection (d)(2) or (d)(4) or
3 a disciplinary proceeding by the board pursuant to subsection (d)(3), as
4 to any board committee discussions or proceedings.

5 (3) ~~Nothing in this act shall limit the authority of the board to require~~
6 ~~an impaired licensee treatment provider or other professional to report~~
7 ~~to the board any mental or physical evaluation, action, recommendation~~
8 ~~or course of treatment of such impaired licensee treatment provider or~~
9 ~~other professional or to transfer to the board records and reports of such~~
10 ~~impaired licensee treatment provider's or other professional's proceed-~~
11 ~~ings or actions. Reports and records furnished to the board by any im-~~
12 ~~paired licensee treatment provider or other professional~~ evaluation
13 ~~contractor shall not be subject to discovery, subpoena or other means of~~
14 ~~legal compulsion for their release to any person or entity and shall not be~~
15 ~~admissible in evidence in any judicial or administrative proceeding other~~
16 ~~than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary~~
17 ~~proceeding by the board pursuant to subsection (d)(3).~~

18 (4) A board committee or employee may report to and discuss its
19 activities, information and findings with other committee members or
20 employees without waiver of confidentiality or the privilege provided un-
21 der this section, and the records of all such committees or employees
22 relating to such report shall be confidential and privileged as provided
23 under this section.

24 (5) Meetings of the board or a board committee in which a licensee's
25 impairment will be discussed may be conducted in a closed session.

26 (g) No person or entity which, in good faith, reports or provides in-
27 formation or investigates any licensee as authorized by this act, and
28 amendments thereto, shall be liable in a civil action for damages or other
29 relief arising from the reporting, providing of information or investigation
30 except upon clear and convincing evidence that the report or information
31 was completely false, or that the investigation was based on false infor-
32 mation, and that the falsity was actually known to the person making the
33 report, providing the information or conducting the investigation at the
34 time thereof.

35 (h) (1) No person or entity shall be subject to liability in a civil action
36 for failure to report as authorized by this act, and amendments thereto.

37 (2) In no event shall the board, a board committee, ~~an impaired li-~~ evaluation
38 ~~cence treatment provider or other professional or treatment contractor~~
39 ~~be liable in damages for the alleged failure to properly investigate, eval-~~
40 ~~uate or act upon any report or complaint made pursuant to this act and~~
41 ~~amendments thereto.~~

42 (i) *The board may deny, revoke, limit, condition or suspend any*
43 *license issued by the board in the event that the licensee, after being*

2-5

1 referred to a treatment contractor, has failed to comply with the an evaluation
2 course of treatment and monitoring schedule related to an impair-
3 ment that has reasonable probability of causing harm to a client or
4 may be grounds for disciplinary action by the board.
5 ~~(j)~~ (j) The board is authorized to adopt rules and regulations to im-
6 plement the provisions of this act.
7 Sec. 2. This act shall take effect and be in force from and after its
8 publication in the statute book.

2-6

Kansas Chapter, National Association of Social Workers

700 SW Jackson, Ste. 801

Topeka, Kansas 66603

785.354.4804

sky@knasw.com

March 14, 2006

Kansas House, Health and Human Services Committee

SB 469

Concerning the Behavioral Sciences Regulatory Board; relating to impaired licensees.

Good afternoon. My name is Sky Westerlund. I serve as the Executive Director of the Kansas Chapter, National Association of Social Workers (KNASW). KNASW works on behalf of the profession of social work in Kansas.

Social workers have been licensed to practice at three levels of expertise in Kansas since 1976. These are the baccalaureate (LBSW), the master (LMSW), and the clinical social worker (LSCSW). There are over 5500 social workers practicing and serving persons in Kansas. Social workers work in a wide variety of settings, such as community mental health centers, schools, juvenile justice system, private practice, military bases, hospitals, hospices, disaster events, community programs and more. Social workers perform a range of activity from casework to psychotherapy and specialize in a multitude of areas including everything from adoption to genetics to rehabilitation to family functioning, to substance abuse, to health crisis, mental illness, and other life circumstances.

Life can change in a second and social workers are there to help.

In the profession and practice of social work, there are practitioners who have life experience in the very crisis and vulnerability similar to the persons that they now serve as a professional social worker. In most situations, this life experience can add to the depth and ability to help another person. In other situations these life experiences or circumstances can manifest to the point that there is a personal impairment. Sometimes, it is possible that, if unaddressed, a personal impairment could cause potential harm to the client. The Behavioral Sciences Regulatory Board (BSRB) is the government agency charged with protecting the public through the licensure and regulation of social workers, as well as other disciplines. **KNASW supports the concept and goal of the BSRB to have some way to compel a licensee into treatment, if the licensee's condition is such that it has or is very likely to cause harm to a client.** SB 469 was created with this goal in mind. However, KNASW could not support the bill, as it had been originally introduced.

KNASW has worked closely with the BSRB to suggest and reach compromises to correct our concerns. **KNASW is satisfied at the progress and, as a result, we can support the Senate amended version of SB 469.** In addition, we can support the several minor changes BSRB is now requesting with the exception of the definition of "impairment." KNASW favors the compromise definition of impairment that was achieved within the Senate amended version.

Thank you.

Attachment 3
HHS 3-14-06



Disability Rights Center of Kansas
Michael Donnelly, Director of Policy & Outreach
635 SW Harrison, Ste 100 ♦ Topeka, KS 66603
785.273.9661 ♦ 877.776.1541 (Voice)
877.335.3725 (TDD) ♦ 785.273.9414 FAX
mike@drckansas.org ♦ Telephone Ext. #107

**Testimony to the
House Health & Human Services Committee
Testimony in Opposition to SB 469**

March 14, 2006

Chairman Morrison and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach of the Disability Rights Center of Kansas. The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws.

SB 469, as originally proposed, would have legalized discrimination against persons licensed by the Behavioral Sciences Regulatory Board (BSRB) who have disabilities. The Bill establishes a special / separate licensure for “impaired” social workers and other licensees focused solely on the disability of the person holding a license, not on their behavior or conduct. The Senate Committee recognized that flaw and accepted the amendments offered by the KNASW to focus instead on the behavior of the person.

Unfortunately SB 469 as amended continues to target individuals who have physical or mental disabilities, and potentially those with a history of those disabilities. Use of the term “impaired” is problematic. Common phrases like “impaired driver,” “physical impairment,” “mental

impairment” and others conjure up all sorts of stereotypes and stigmas that are inappropriate for state law. For example, SB 469 would empower the BSRB to “*refer the licensee to the treatment contractor for assessment for possible impairment. The treatment contractor may refer the licensee to a physician or other licensed mental health or physical health professional for evaluation for the purpose of determining a course of treatment and monitoring schedule.*” (Page 2, line 20-25) Is a need for physical or mental health “treatment” the only reason a licensee might be an “impaired” provider? Page 3, line 1 states, “*an impairment, if substantiated, is likely to improve with a course of treatment.*” SB 469, Page 3, line 4 refers to “*treatment for the impairment.*” The Bill goes on to require “*rehabilitation*” of the impaired licensee (page 3, line 42 and page 4, line 1). Further disciplinary action can be taken against a licensee “*whose impairment is not substantially alleviated through treatment.*” (page 4, line 18-20). Although the Senate Committee improved the definition of impairment the affect of SB 469 continues to target the mental or physical disabilities of a licensee not their conduct. The result is discriminatory.

DRC has reviewed the balloon amendment being considered by BSRB proposing a definition of “impaired behavior.” “*Impaired behavior means behavior that may be the result of a physical or mental condition, or both, . . .*” Again, this definition focuses on the “physical or mental condition” not the conduct that renders the licensee unfit to practice.

DRC does not disagree with the BSRB that the Board needs the ability to discipline, and hold licensees accountable who are “unable or unfit to practice with reasonable skill, safety or competence,” however there is no reason to target persons with disabilities specifically. A “diversion” or “intervention” program is not a bad concept to implement. Any person who is practicing and causing harm to their client, regardless of whether they have a disability must be held accountable. SB 469 needs more work in order to achieve that goal without discriminating against individual licensees who have disabilities.

A prime example is the recent case of Arlan Kaufman who abused clients in his care for more than 20 years. Finally, the BSRB suspended his license to practice. He was not a person with a “physical or mental condition, or both”, nor was he found to be “unable or unfit to practice with

reasonable skill, safety or competence due to a physical or mental disability or incapacity, or both, including, but not limited to, deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol,” but he was found to be unfit to practice social work.

This example demonstrates that the BSRB has the ability to hold licensees accountable for their work. To treat licensees who have disabilities differently than social workers without disabilities is plain and simple discrimination. Strengthen the accountability laws and regulations for the behavior of all BSRB licensees, but do not enact legislation that discriminates against any singular population.

February 9, 2006

The Honorable Jim Barnett, Chairperson
Senate Committee on Public Health and Welfare
Statehouse, Room 120-S
Topeka, Kansas 66612

Dear Senator Barnett:

SUBJECT: Fiscal Note for SB 469 by Senate Committee on Public Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note concerning SB 469 is respectfully submitted to your committee.

SB 469 would establish the Impaired Licensee Treatment Act under the authority of the Behavioral Sciences Regulatory Board. The Board may investigate any complaint about the competence or conduct of a licensed provider and require a mental or physical evaluation. Upon receiving the evaluation, the Board would develop procedures for processing any further complaints. The Board could take any of the following actions in accordance with the Kansas Administrative Procedure Act:

1. Authorize the licensee to continue practicing with specified limitations;
2. Suspend the license on specified conditions;
3. Cancel the license upon the licensee's voluntary surrender of the license;
4. Place the licensee on inactive status; or
5. Take authorized disciplinary action.

The cost of any course of treatment would be paid by the licensee. If a licensee violates an impaired provider agreement made by the Board, the Board could suspend or revoke the license. The licensee, however, must be given an opportunity to be heard in accordance with the Kansas Administrative Procedure Act. The Board could enter into an agreement with an impaired licensee treatment provider or another professional to undertake the responsibilities


Attachment 5
AHS 3-14-06

The Honorable Jim Barnett, Chairperson
February 9, 2006
Page 2—469

specified in the agreement and to pay administrative expenses from funds appropriated to the agency for that purpose. Any reports or records made regarding impaired providers would be considered confidential and privileged. No member of the Board or any Board committee would be required to testify in any civil or criminal trial or any administrative proceeding. Meetings held to discuss an impaired provider may be conducted in closed session. No person would be subject to liability in a civil action for failure to report an impaired provider. The Board would be required to adopt rules and regulations to implement the Impaired Licensee Treatment Act.

The Behavioral Sciences Regulatory Board indicates that passage of the bill would increase expenditures by \$200 for office supplies, postage, telephone, and printing. The agency could absorb the additional expenditures and comply with the requirements of the bill within existing resources.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Marsha Schrempp, Behavioral Sciences