

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Vice-Chair Peggy Mast at 1:30 P.M. on February 1, 2007 in Room 526-S of the Capitol.

All members were present except:

Don Hill- excused

Tom Holland- excused

Committee staff present:

Norman Furse, Revisor's Office

Melissa Calderwood, Legislative Research

Mary Galligan, Legislative Research

Patti Magathan, Committee Assistant

Conferees appearing before the committee:

Chad Austin - KS Hospital Association

Ron Gaches - on behalf of KS Dental Hygienists

Phyllis Gilmore Executive Director of KS Behavior Sciences Regulatory Board (B.S.R.B.)

Dr. Richard Maxfield - Psychologist in Private Practice and B.S.R.B. Board member

Sky Westerland - KS Chapter of National Association of Social Workers

Others Attending:

See Attached List.

Vice-Chair Mast opened the floor for bill introductions.

Representative Mast motioned to introduce a committee bill related to K.D.H.E. background checks. Motion seconded by Representative Keigerl. Motion carried.

Representative Mast made a motion related to prescription drug usage monitoring. Motion was seconded by Representative Neighbor. Motion passed.

Phyllis Gilmore, Executive Director of KS Behavior Sciences Regulatory Board, asked to have a technical bill to reinstate lost language from the 1998 session, which allows members to treat drug and alcohol treatment without state certification. Motion made by Representative Morrison and seconded by Representative Kiegerl. Motion carried.

Chair Landwehr motioned a resolution stating that the University of Kansas Medical Center would need to involve the legislature before establishing an affiliation with another hospital. Motion seconded by Representative Mast. Motion carried.

Chad Austin representing the Kansas Hospital Association, requested a bill defining a General Hospital. Motion made by Representative Landwehr and seconded by Representative Flaharty. Motion passed.

Ron Gaches, on behalf of the Kansas Dental Hygienists Association, asked for a bill which clarifys appointments to the Kansas Dental Board to rebalance the makeup. Motion made by Representative Storm and seconded by Representative Landwehr. Motion carried.

Chair Landwehr opened the floor for hearings on HB 2180 - Behavioral sciences regulatory Board's rules and regulations authority concerning impaired licensees.

Phyllis Gilmore, Executive Director of KS Behavior Sciences Regulatory Board, provided history on this bill. She stated that **HB 2180** adds the authority to the Behavior Sciences Regulatory Board to implement **SB 469** which was passed last year. **SB 469** omitted language to allow the board to deal with licensee infractions in a manner other than disciplinary action. (Attachment 1)

Dr. Richard Maxfield, a member of the B.S.R. Board and a psychiatrist in private practice said that **HB 2180**

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on February 1, 2007 in Room 526-S of the Capitol.

allows the regulatory board to enter into diversionary agreements with a member whose practice has fallen below acceptable standards. A very serious infraction would not be eligible for diversion and the license would be revoked. Minor infractions caused by psychological problems or drug and alcohol abuse can be dealt with using diversionary programs after enactment of this law. (Attachment 2)

Opponent **Sky Westerland**, KS Chapter of National Association of Social Workers (N.A.S.W.), said that the N.A.S.W supports the concept of a mechanism in which to address an impairment issue, but they cannot support the bill with current language. The bill needs to contain elements to provide an impaired provider program, the program must be defined by law, and the language must incorporate the peer component. There can be no opportunity for a dual relationship between the regulatory board and the professional offering the treatment to the licensee. The program must be structured in such a way that licensees can request help through self-referral without involving the Board. There must be consistency to the current law defining impaired provider programs for health care providers. B.S.R.B. authority for addressing impairment problems must occur within the context of regulatory duties and as part of normal disciplinary procedures and agreements. Confidentiality of treatment for impairment must be fully protected. (Attachment 3)

Written opposition was provided by the Kansas Psychological Association. (Attachment 4)

Chair Landwehr closed hearings on **HB 2180** and opened hearings on **HB 2181 - Hours of continuing education required for reinstatement of social work license.**

Proponent **Phyllis Gilmore**, Executive Director of KS Behavior Sciences Regulatory Board, stated that **HB 2181** brings statute in compliance with rules and regulations. (Attachment 5)

Sky Westerland, KS Chapter of National Association of Social Workers stated that the N.A.S.W. is in support of this bill. (Attachment 6)

Chair Landwehr closed hearing on **HB 2181** and opened hearings on **HB 2182 - Temporary permits to practice from the behavioral sciences regulatory board for out-of-state licensees.**

Dr. Richard Maxfield, a member of the B.S.R. Board and a psychiatrist in private practice said that currently practitioners from out of state can practice for a short time, citing the psychiatrists who came into Kansas to evaluate the "BTK" serial killer. This legislation requires that practitioners apply for a 15-day license and agree to comply with Kansas rules and regulations. (Attachment 7)

Chair Landwehr closed hearings on **HB 2182** and polled the committee for objections to working **HB 2181** and **HB 2182**. Committee did not object.

Chair Landwehr opened the floor to work **HB 2181**. Representative Morrison made a motion that the bill be recommended favorably for passage. Motion seconded by Representative Neighbor. Motion carried.

Chair Landwehr opened the floor to work **HB 2182**. Representative Neighbor motioned that the bill be recommended favorably for passage. Motion seconded by Representative Storm. Motion carried.

Representative Mast asked that both **HB 2181** and **HB 2182** be put on consent calendar which was agreed to by the committee.

Revisor Norman Furse explained a proposed bill dealing with pharmaceutical integrity act. Motion made by Chair Landwehr and seconded by Representative Mast. Motion carried.

The next meeting is Monday, February 5 at 1:30 P.M.

State of Kansas
Behavioral Sciences Regulatory Board



KATHLEEN SEBELIUS
Governor

PHYLLIS GILMORE
Executive Director

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HOUSE TESTIMONY
HEALTH AND HUMAN SERVICES COMMITTEE
February 1, 2007

HB 2180

Madam Chair and Committee Members:

Thank you for the opportunity to testify today in support of HB 2180. I am Phyllis Gilmore the Executive Director of the Kansas Behavioral Sciences Regulatory Board (BSRB).

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

I would like to briefly give you some of the history of HB 2180 and then introduce Dr. Richard Maxfield, a BSRB board member and psychologist in private practice here in Topeka, to further testify in support of HB 2180.

By way of disclosure, Dr. Maxfield is a member and a past president of the Kansas Psychological Association (KPA) and I am a licensed clinical social worker and member of the Kansas Chapter of the National Association of Social Work (KNASW).

Last session the BSRB introduced SB 469. This bill proposed a detailed impaired provider program. While it passed the Senate 40-0, it was objected to by the Disability Rights Center of Kansas (DRC) because of "impairment language". KNASW also had objection related to the program design. Both groups testified that they did not object to the concept of an impaired provider program for our licensees.

Chairman Morrison requested that we try to resolve these differences. After discussion, we essentially came to agreement with KNASW on the program design, but were not able to get language to which the DRC would agree. It was their suggestion to go forward with language similar to HB 2180. That language became substitute for SB 469 to which the DRC, KNASW and BSRB all agreed. At that point it was the end of the session and the bill was not worked.

HB 2180 continues where we left the substitute bill last April and I would like to introduce Dr. Maxfield who will speak directly to HB 2180.

I will be happy to stand for questions.

House Health and Human Services

DATE: **2-1-07**

ATTACHMENT **1**

**Richard B. Maxfield, Ph.D.
Licensed Psychologist**

**Testimony on House Bill 2180
February 1, 2007**

Chairwoman, Landwehr, and members of the committee, thank you for the opportunity to testify in favor of H.B. 2180, a bill relating to the powers of the Behavioral Sciences Regulatory Board. I am Richard B. Maxfield, a licensed psychologist in independent practice in Topeka, Kansas and a member of the Behavioral Sciences Regulatory Board.

The purpose of the proposed changes contained in H.B. 2180 are simply to give the Behavioral Sciences Regulatory Board the authority to divert practitioners who are purported to have practiced below appropriate standards of care from the disciplinary process to a rehabilitative process. Clearly, methods of protection of the public as well as protection of the rights of persons regulated by the Behavioral Sciences Regulatory Board will need to be developed through rules and regulations. If diversion were available to practitioners whose professional behavior comes before the Board, it would apply to perhaps a handful of professionals per year.

In my two years on the Board, I have had the opportunity to review perhaps a dozen cases in which a licensee's behavior has been deemed to be substantially inappropriate. Those colleagues have been appropriately, in my view, disciplined; their licenses have been restricted in some fashion which we believe protects the public. They have also, at least on occasion, been required to fulfill some sort of treatment obligation, with the Board receiving reports of that treatment, all in hopes of protecting the public and rehabilitating the practitioner. Unfortunately, under current Board definition, we are required to report the practitioner to the National Provider Data Bank and, as a result, we believe practitioners are unreasonably penalized, losing their ability to provide services under certain insurance contracts and risking further negative consequences in their ability to provide services to the public.

It is my understanding that the Kansas Chapter of the National Association of Social Workers as well as the Kansas Psychological Association, of which I am a member and a past president, are opposed to this legislation. I am dumbfounded by their opposition, as the purpose of this legislation is to protect providers from unnecessary discipline when alternatives are available which protect the public and do not unnecessarily harm the practitioner. I suspect that their opposition comes from what I believe to be an unwarranted suspicion of the Behavioral Sciences Regulatory Board. In my brief tenure on the Board, I find such suspicion to be unjustified. The Board is certainly more than capable of developing rules and regulations which simultaneously protect the public and respect the rights of the practitioners.

I will be happy to answer any questions.

House Health and Human Services

DATE: 2-1-07

ATTACHMENT 2

Health and Human Services**February 1, 2007****House Bill 2180****Concerning the behavioral sciences regulatory board; relating to rules and regulations***Sky Westerlund, LMSW**Executive Director, Kansas Chapter, National Association of Social Workers (KNASW)*

KNASW is the professional association working on behalf of the profession and practice of social work in Kansas. Social workers have been licensed to practice at three levels of expertise 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 thousands of persons in Kansas every day. Social work is a broad and inclusive profession which allows social workers to provide services and care in a wide variety of settings, such as child welfare, juvenile justice, private practice, military bases, hospitals, hospices, disaster events, domestic violence, aged care, substance abuse, community mental health centers, schools, public health organizations, community programs and many more.

The licensees of the Behavioral Sciences Regulatory Board (BSRB) are not yet included in the risk management legislation that is the foundation for addressing impaired providers licensed by the other health oriented regulatory boards, such as Board of Healing Arts and Board of Nursing (KSA 65-4921 through 65-4929). KNASW supports the concept of the BSRB to have a mechanism in which to address an impairment issue as part of their regulatory duties to protect the public.

However, KNASW cannot support HB 2180.

HB 2180 seeks to create an undefined "alternative" to the regular disciplinary process to address impairment problems. BSRB appears to want to divert a licensee from appropriate discipline. Using an impaired provider program to address a complaint must be as part of the disciplinary resolution, not instead of. Diverting a licensee from discipline is not in the interest of the public protection.

Specifically, KNASW has concluded that the following elements must be part of legislation that creates a way to address impairment problems of a licensee. These are:

- New legislative authority to handle impaired providers must go hand in hand with an impaired provider program.
- The impaired provider program must be defined by the law, not administrative rules and regulations.
- It must incorporate the peer component.

*House Health and Human Services*DATE: **2-1-07**ATTACHMENT **3-1**

- There can be no opportunity for a dual relationship between the regulatory board and the professional offering the treatment to the licensee.
- The program must be structured in such a way that licensees can request help through self-referral but not necessarily involving the BSRB.
- There must be consistency to the current law defining impaired provider programs for health care providers.
- BSRB authority for addressing impairment problems must occur within the context of regulatory duties and as part of normal disciplinary procedures and agreements.
- Confidentiality of treatment for impairment must be fully protected.

HB 2180 does not have any of these basic elements. Without these basic building blocks, the public does not get protected and the licensee does not have protection when addressing impairment issues.

KNASW asks that this legislation not proceed until these major concerns are addressed and resolved.

Thank you for your consideration.

Email correction: skv@knasw.com



K P A

KANSAS PSYCHOLOGICAL ASSOCIATION

SUBMITTED TESTIMONY

**TO: The Honorable Brenda Landwehr
And Members Of The
House Health and Human Services Committee**

**FROM: Kansas Psychological Association
Contact Person: Whitney Damron, Government Relations Counsel
(785) 354-1354 – Topeka, Kansas**

**RE: HB 2180 – Behavioral sciences regulatory board's rules and
regulations authority concerning impaired licensees.**

DATE: February 1, 2007

Madam Chair Landwehr and Members of the Committee:

The Kansas Psychological Association represents the doctorate-level psychologists in our state and would like to offer this testimony for your consideration.

While KPA strongly supports the concept of a program of diversion and treatment for impaired mental health professionals, we object to this legislation in its current form.

This bill authorizes the construction of “alternatives” to sanction without specifying the nature of the diversion. There exists the possibility that the BSRB could construct a program that does not provide for independent monitoring of licensees. We would prefer to see a program that specifically provides for a structural separation between the Board and the treader of the licensee.

That separation can be accomplished by a formal monitoring program structured according to statute. This structural separation between the licensing/oversight/sanctioning function (reserved for the Board) and the referral/monitoring/advocating function (reserved for the “Program”) averts a dual relationship.

Moreover, an effective impaired professional program should be able to receive referrals from the Board, from licensees, and/or from a concerned colleague or family member. Involvement with the program can be confidential and may not involve the Board or, under certain conditions (to be defined), an automatic referral to the Board may be required. This feature enables the licensee to seek help before possibly harming the public.

House Health and Human Services

DATE: **2-1-07**

ATTACHMENT **4 -1**

PO Box 3326 Lawrence, KS 66046 (785) 856-9572

HB 2180
House Health and Human Services Committee
Page Two of Two
February 1, 2007

KPA recommends that the BSRB use the same successful, already validated, models for intervening upon mental healthcare professionals as is done for other licensed professions such as physicians. Given the abundance of successful programs across the country that can serve as models for the BSRB, as well as the models within the state of Kansas, we strongly recommend that this bill not be favorably considered until changes can be addressed that satisfy the concerns of those licensed by the BSRB.

On behalf of the Kansas Psychological Association, we thank you for your consideration of HB 2180 and our request for amendment.

State of Kansas
Behavioral Sciences Regulatory Board



KATHLEEN SEBELIUS
Governor

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Executive Director

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HOUSE TESTIMONY
HEALTH AND HUMAN SERVICES COMMITTEE
February 1, 2007

HB 2181

Madam Chair and Committee Members:

Thank you for the opportunity to testify today in support of HB 2181. I am Phyllis Gilmore the Executive Director of the Kansas Behavioral Sciences Regulatory Board (BSRB).

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

In 2003 the BSRB reduced the number of continuing education hours required for licensure renewal for all of our licensees. This past year we realized that the continuing education requirement is also in statute for social work.

Therefore, HB 2181 brings statute into compliance with the regulation change that has been in effect for 3½ years.

I will be happy to stand for questions.

House Health and Human Services

DATE: 2-1-07

ATTACHMENT 5

Health and Human Services**February 1, 2007****House Bill 2181****Concerning number of CE requirements for social work licensure reinstatement***Sky Westerlund, LMSW**Executive Director, Kansas Chapter, National Association of Social Workers (KNASW)*

KNASW is the professional association working on behalf of the profession and practice of social work in Kansas. Social workers have been licensed to practice at three levels of expertise 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 thousands of persons in Kansas every day. Social work is a broad and inclusive profession which allows social workers to provide services and care in a wide variety of settings, such as child welfare, juvenile justice, private practice, military bases, hospitals, hospices, disaster events, domestic violence, aged care, substance abuse, cancer care, community mental health centers, schools, public health organizations, community programs and many more.

Sometimes a social worker may not renew his or her license. Months or years later, that individual desires to obtain the license to practice social work again. This legislation makes it so a social worker can 'reinstate' their license (not take the national test again) by submitting forty (40) hours of Continuing Education, including ethics for all social workers and diagnosis and treatment for LMSW and LSCSW practitioners.

KNASW supports this bill.

Email correction: skyv@knasw.com

House Health and Human Services

DATE: 2-1-07

ATTACHMENT 6

**Richard B. Maxfield, Ph.D.
Licensed Psychologist**

**Testimony on House Bill 2182
February 1, 2007**

Chairwoman Landwehr and members of the House Health and Human Services Committee, thank you for the opportunity to testify in favor of H.B. 2182. I am Richard B. Maxfield, a licensed psychologist in independent practice in Topeka, Kansas and I am a member of the Behavioral Sciences Regulatory Board.

As you know, H.B. 2182 would allow the Behavioral Sciences Regulatory Board to issue a temporary permit for fifteen days to practice their profession in the state of Kansas to persons licensed in other jurisdictions in the professions of counseling, social work, psychology, marriage and family therapy and master's level psychology, as long as they are licensed at the independent practice level. The temporary permit could be extended for an additional fifteen days per calendar year on application of the practitioner and payment of an appropriate fee, not to exceed \$200.

By applying for a temporary permit, the applicant would be deemed to have agreed to the jurisdiction of the Behavioral Sciences Regulatory Board and to the statutes, rules and regulations governing their particular profession. The act would able the Behavioral Sciences Regulatory Board to take appropriate disciplinary action against professionals who are temporarily within the state of Kansas and whose practice falls below regulatory standards.

This proposed legislation grows out of frustration on the part of a number of psychologists who contacted the Board following two Massachusetts psychologists evaluation of Dennis Rader, also known as BTK. The perception, which may or may not be accurate, of those psychologists is that the professionals from Massachusetts who evaluated Mr. Rader may have practiced unethically in revealing information, I believe videotapes of the evaluation, to a national news organization. I am not intending to imply that those suspicions on the part of Kansas psychologists are accurate.

The upshot of those questions by Kansas professionals was that the Board recognized that we had no authority over professionals practicing within our borders temporarily. House Bill 2182 corrects that problem for all of the professions regulated by the Behavioral Sciences Regulatory Board.

I will be happy to answer any questions.

House Health and Human Services

DATE: 2-1-07

ATTACHMENT 7