

## MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Brenda Landwehr at 1:30 P.M. on March 1 in Room 526-S of the Capitol.

All members were present.

## 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:

Senator Vicki Schmidt  
Debra L. Billingsley, KS State Board of Pharmacy  
Julie Hein, representing Kansas Pharmacy Coalition  
Dan Morin, Kansas Medical Society  
Larry Buening, Board of Healing Arts  
Cindy Lash, Legislative Post Audit  
Mack Smith, KS State Board of Mortuary Arts

## Others Attending:

See Attached List.

Floor was opened to hear SB63 - Limitations on filling prescriptions and SB62 - Restrictions on prescribing, ordering, dispensing, administering, selling, supplying or giving certain amphetamine or sympathomietic amine controlled substances.

Testimony on SB62 - Restrictions on prescribing, ordering, dispensing, administering, selling, supplying or giving certain amphetamine or sympathomietic amine controlled substances.

Testifying as a proponent of **SB 62**, Senator **Vicki Schmidt** informed the committee that current law requires that prescribers indicate on a prescription in their own handwriting the purpose (or diagnosis) for the amphetamine or sympathomietic amine prescribed. Kansas is the only state that requires a diagnosis in prescriber's handwriting. This bill also eliminates a future problem since the professions of medicine and pharmacy are progressing to more electronic communications where a handwritten note cannot be accommodated. (Attachment 1)

**Debra Billingsley** of the Kansas State Board of Pharmacy testified as a proponent of **SB 62**, saying that the Board of Pharmacy supports this bill which will eliminate the hardship and inconvenience placed on patients under current law. She informed the committee that they promote electronic prescribing as a means of preventing medication errors, and that electronic prescriptions do not support handwritten signatures. (Attachment 2)

**Lawrence T. Buening, Jr.**, Executive Director of the Kansas Board of Healing Arts, said that the Board supports the proposed changes to K.S.A. 65-2837a which deletes the requirements that prescriptions for amphetamines and sympathomietic amines be in the physician's own handwriting and contain the purpose for which the drug was being prescribed. The Board has received letters from a number of physicians expressing concerns about the current statutory language and provided a sample letter for illustration. (Attachment 3 & 4)

Proponent **Julie Hein**, representing the Kansas Pharmacy Coalition explained that it is difficult in some situations for the pharmacist to obtain a hand written diagnosis from a physician for certain medications. **SB 62** eliminates the need for a physician to hand write the diagnosis code on prescriptions for amphetamines before the prescription can be filled. This will help make the delivery of certain medications easier and less cumbersome for patients and pharmacists alike. (Attachment 5)

CONTINUATION SHEET

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

**Dan Morin**, representing Kansas Medical Society, testified in support of **SB 62** saying that Kansas is the only state with such a requirement. This is an area of concern for out-of-state practitioners who are unaware of a requirement unique to Kansas. (Attachment 6)

Testimony on **SB63 - Limitations on filling prescriptions**

A proponent of **SB 63**, Senator **Vicki Schmidt** said that this bill places into statutes what currently occurs in the everyday practice of pharmacy. Often prescribers will indicate that a prescription may be refilled p.r.n. This is a Latin term, "pro re nata" which is an abbreviation for "when necessary.") To a practicing pharmacist, the term p.r.n. means the prescription may be refilled for a period of time of one year from the date the prescription was issued. The purpose of this change is to at least require contact between the pharmacist and prescriber once a year on a p.r.n. refill, and bring the statutes in line with the current practice. (Attachment 7)

Proponent **Debra Billingsley**, Executive Director of the Kansas State Board of Pharmacy said that **SB 63** amends K.S.A. 65-1637 and clarifies with specificity the refill limitations for non-controlled prescription drugs. This is a health and safety issue so that a patient will return to the practitioner for further review of their medical condition. Current language has always been confusing to most pharmacy practitioners, and is thus hard to regulate. (Attachment 8)

**Julie Hein**, representing the Kansas Pharmacy Coalition explained that **SB 63** clarifies an annual renewal requirement for p.r.n. prescriptions. The purpose of this change is to require contact between the pharmacist and prescriber on an annual basis on a p.r.n. refill. This is already the standard of care in pharmacy practice. (Attachment 9)

Proponent **Dan Morin**, representing the Kansas Medical Society said that this bill would help ensure that the therapy reflects the patient's current medical status and would bring statute in to line with current practice. (Attachment 10)

Written testimony was provided by Chip Whellen for the Association of Osteopathic Medicine. (Attachment 11)

Chair Landwehr closed hearings on **SB 62** and **SB 63**. She then asked the committee if there were objections to working **SB 63**. There were none.

Representative Hill motioned to pass **SB 63** favorably and to put on the consent calendar. Motion seconded by Representative Storm. Motion carried.

Chair Landwehr then asked the committee if there were objections to working **SB 62**. There were none. Representative Hill made a motion to pass **SB 62** favorably and to put on the consent calendar. Motion seconded by Representative Tietze. Motion carried.

Chair Landwehr then opened the floor to hear **SB72 - Concerning mortuary arts, defining funeral director; grounds for revocation, denial, suspension or conditioning of licenses.**

**Mack Smith**, executive secretary of the Kansas State Board of Mortuary Arts spoke as a proponent of **SB 72**. He said that the bill was introduced in the Senate at the Board's request and is a result of the annual review of statutes and regulations done by the Mortuary Arts Boards and staff. The intent is to update and better define language and definitions in K.S.A. 65-1713 and K.S.A. 65-1751. (Attachment 12)

Chair Landwehr closed hearings on **SB 72** and asked the committee if there were objections to working the bill. There were none.

Representative Storm moved to amend line 22 to cross out "burial or disposal" and replace with "disposition". Motion seconded by Representative Morrison. Representative Storm made a motion to pass **SB 72** favorably as amended. Motion seconded by Representative Morrison. Motion Carried.

CONTINUATION SHEET

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

Chair Landwehr opened the floor to work **SB 81 - Fingerprinting and criminal history background checks required by the board of healing arts.**

**Lawrence T. Buening, Jr.**, Executive Director of the Kansas Board of Healing Arts, testified as a proponent saying that this bill authorizes the State Board of Healing Arts to required certain individuals to be fingerprinted and submit to a national criminal history record check for the purpose of determining initial qualifications and suitability to obtain a license. He documented the authority to implement this bill based upon Public Law 92-544. In addition, he added that the Federation of State medical Boards recommended in 1998 that medical boards conduct criminal background checks on physicians applying for licenses. This policy was reaffirmed in 2001. The Board established a committee in December 2004 to study the issue. The committee recommended and the Board adopted a resolution to request introduction of a bill to allow these checks. The bill was introduced in the 2006 session but did not receive a hearing. Reintroduction of this bill was recommended by the Legislative Division of Post Audit in their October 2006 review of the Board.. This bill is another way to uphold the professionalism of the health care professions and to better ensure patient safety. (Attachment 13)

Written testimony was provided in support of **SB 81** by the Kansas Association of Osteopathic Medicine. (Attachment 14)

**Cindy Lash**, Audit Manager with the Legislative Division of Post Audit provided neutral testimony and affirmed that a recommendation to reintroduce a bill in the 2007 Session that would require applicants to be fingerprinted was made in the 2006 review of the Board. (Attachment 15) This recommendation was made for several reasons:

- Federation of State Medical Boards includes this procedure in their "recommended practices".
- State law allows the Board to obtain criminal background checks but does not give the Board the authority to collect fingerprints. Fingerprints are required for the FBI to conduct a national background search.
- Past criminal activity is one of the behaviors the Board attempts to identify in its application process. Currently they rely on the applicants to self-report.
- Doctors are not immune from brushes with the law.
- As auditors, we think it is always better to verify information, if feasible.

**Dan Morin**, representing the Kansas Medical Society said that the Society does not oppose giving the Board the authority to require that applicants for licensure submit fingerprints and be subject to a criminal background check. He said that if you are going to require this that certain professions shouldn't be singled out. The state should consider expanding fingerprinting and background checks for applicants for any kind of license that is issued by the state, but they believe that it would be expensive to mandate. (Attachment 16)

Vice-Chair Mast closed the hearing on **SB 81**. She then asked the committee to consider committee minutes for January 22, 24, 25, 30, 31, and February 1 and 5 for approval. Copies of the minutes were included in their packets. Motion made to approve minutes by Representative Morrison and seconded by Representative Trimmer. Motion carried.

Meeting was adjourned. Next meeting will be March 5 at 1:30 P.M.



**VICKI SCHMIDT**  
 SENATOR, 20TH DISTRICT  
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## SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

CHAIRMAN: JT. COMMITTEE ON ADMINISTRATIVE  
 RULES AND REGULATIONS  
 VICE-CHAIR: PUBLIC HEALTH AND WELFARE  
 MEMBER: CAPITOL AREA PLAZA AUTHORITY  
 FINANCIAL INSTITUTIONS AND  
 INSURANCE  
 HEALTH CARE STRATEGIES  
 JT. COMMITTEE ON INFORMATION  
 TECHNOLOGY  
 STATE ADVISORY COUNCIL ON AGING  
 TRANSPORTATION  
 WAYS AND MEANS

March 1, 2007

**TESTIMONY IN SUPPORT OF SB 62**

Chairperson Landwehr and Members of the Committee:

Thank you for the opportunity to testify in support of SB 62. The current law requires that prescribers indicate on the prescription **IN THEIR OWN HANDWRITING** the purpose (or diagnosis) for the amphetamine or sympathomimetic amine prescribed. Kansas is the **ONLY** state that requires this. While this law is under the Board of Healing Arts statutes, it is the pharmacist's responsibility to ensure that the diagnosis is on each and every one of these prescriptions. As a practicing pharmacist, I cannot tell you how many times I have had to have a patient return to the prescriber's office to have the diagnosis added. Additionally, since it must be in the prescriber's own handwriting, it may be days before the patient receives the medication.

Thankfully the profession of medicine and pharmacy are progressing to more electronic communication. This would include both e-prescribing and electronic medical records. The handwritten requirement cannot be accommodated as we move forward with better delivery systems. This bill will eliminate a future problem.

The statute restricts the purpose of these drugs and will continue to do so with this proposed legislation. The record keeping will be retained in the medical record of the patient, not on the actual prescription that the pharmacist fills.

This issue is particularly burdensome for the "border communities." Since Missouri, Oklahoma, Colorado and Nebraska do not have this law, their prescribers are oftentimes not aware of the requirement. In addition, students at post secondary institutions who arrive from out of state are often without medication for lengthy periods of time while their prescribers are asked to provide a new prescription with the additional information.

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*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 1

Thank you for your consideration of SB 62.

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# KANSAS

BOARD OF PHARMACY  
DEBRA L. BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

**Testimony re: SB 62**  
**House Public Health and Human Services Committee**  
**Presented by Debra L. Billingsley**  
**March 1, 2007**

Madam Chairperson and members of the committee:

My name is Debra Billingsley, and I am the Executive Director of the Kansas State Board of Pharmacy. The major purpose and focus of the Board of Pharmacy is to protect the public health, safety and welfare of the citizens of the State of Kansas through the licensure and regulation process. The Board also promotes the education and understanding of pharmacy related services.

SB 62 amends a Board of Healing Arts statute that requires physicians and mid-level practitioners to document on certain prescriptions the patient's diagnosis. The current law states that the diagnosis must be in the practitioner's own handwriting. The amendment will permit the diagnosis to be written by others or electronically written.

The Board of Pharmacy supports the amendment because of convenience to the patient. The change poses no health or safety risk. Currently, if the practitioner fails to write the diagnosis on the prescription, in his or her own handwriting, the pharmacy is forced to send the prescription back to the practitioner. This is inconvenient for the patient particularly those who may live in a different community than their practitioner. The Board of Pharmacy receives calls on a daily basis from pharmacies and from patients because the practitioner has left the diagnosis off of the prescription and it cannot be filled. The current form of the statute prevents a pharmacist from calling the practitioner to find out the diagnosis and then documenting the diagnosis and the phone call. It also prevents the practitioner from using any form of electronic technology because the diagnosis has to be in the practitioner's own handwriting. We are in an age when we are promoting electronic prescribing as a means of preventing medication errors. The requirement that the diagnosis be in the physician's own handwriting is unwarranted and unnecessary. It causes a hardship on the patient and the pharmacy when the practitioner forgets to document the diagnosis. The Board supports the continued documentation of the diagnosis on certain prescriptions but we would respectfully request that the statute be amended so that the diagnosis does not have to be in the practitioner's own handwriting.

Debra Billingsley  
Executive Secretary

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 2-1

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Regulatory laws should be written in a manner that clearly serves as notice to the professional how the law governs their daily activities. This law is not clear and does not provide guidance to the profession. Therefore, the Board would support the change to this statute.

Thank you very much for permitting me to testify. I would be happy to stand for any questions that you might have.

Respectfully submitted:

Debra Billingsley  
Executive Secretary

# KANSAS BOARD OF HEALING ARTS


LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## MEMO

**TO:** House Health and Human Services Committee

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

**DATE:** February 28, 2007

**RE:** S. B. No. 62

Thank you for the opportunity to provide information to the Committee on behalf of the Kansas State Board of Healing Arts in support of S.B. No. 62. In August, Senator Schmidt contacted the Board in office and advised that she was interested in amending K.S.A. 65-2837a to delete the requirements that prescriptions for amphetamines and sympathomimetic amines be in the physician's own handwriting and contain the purpose for which the drug was being prescribed. The Board reviewed these amendments at its meetings in August and December and expressed its support.

The Board has received letters from a number of physicians expressing concerns about the current statutory language. A letter from Bradley Marples, M.D. is attached and expresses substantial policy reasons for making the amendments proposed in S.B. No. 62 much better than I can. S.B. No. 62 was placed on the Consent Calendar in the Senate and passed the Senate 40-0.

I would be happy to respond to any questions.

**MEMBERS OF THE BOARD:**

CAROLINA M. SORIA, D.O., PRESIDENT  
Goddard

BETTY MCBRIDE., Public Member, VICE-PRESIDENT  
Columbus

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

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*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 3



May 31, 2006

It no longer seems logical to require that the purpose for which an amphetamine or sympathomimetic amine in schedule II, III, or IV is prescribed be hand written as set forth in KSA 65-2837a. The Statute states that the purpose for these drugs shall be restricted to narcolepsy, drug-induced brain dysfunction, hyperkinesia, the differential diagnosis of depression, depression unresponsive to other forms of treatment, clinical investigation (with prior approval by the Board), obesity, and any other disorder or disease where the drugs are scientifically found to be safe and effective (with prior approval for each condition by the Board). If I'm not mistaken this Statute dates back to 1984.

In this day and age of electronic prescribing including the diagnosis on a prescription is much better done on the computer itself rather than handwritten on a prescription after it is printed out of the computer. If the diagnosis is entered in the computer, on the prescription, there is a permanent record made in the electronic medical record. If it is handwritten on a printed prescription that is sent to a Pharmacy there is no record kept in the usual fashion without copying and scanning the final product into a secondary scanning software. This is an expensive and complicated burden.

The inclusion of a specific diagnosis on each prescription where it is required is not difficult in our EMR. One simply chooses the diagnosis from the patient's own Problem List for which the prescription is being written. The ICD-9 code is then embedded directly on the prescription and will remain there on any subsequent renewals of that prescription and can be seen in the medical record at any time. This has the added benefits of being perfectly legible, and in the event that the electronic prescription need to be printed, the ICD-9 code affords a degree of privacy to the diagnosis that spelling out the name of the diagnosis would not. This seems to be much more in keeping with the general privacy requirements.

In the near future all prescriptions may very likely be required to be fully electronic for very good reasons. Changing the Statute that requires a diagnosis be handwritten on any prescription would be a step in the right direction.

Bradley Wm Marples, MD  
Clinical Informatics  
Stormont-Vail HealthCare

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 4

**HEIN LAW FIRM, CHARTERED**

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*Ronald R. Hein*  
*Attorney-at-Law*  
Email: rhein@heinlaw.com

**Testimony re: SB 62**  
**House Health and Human Services Committee**  
**Presented by Julie J. Hein**  
**on behalf of**  
**Kansas Pharmacy Coalition**  
**March 1, 2007**

Madam Chairman, Members of the Committee:

My name is Julie Hein, and I am lobbyist for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

SB 62 eliminates the need for a physician to hand write the diagnosis code on prescriptions for amphetamines before the prescription can be filled. It is difficult to obtain a hand written diagnosis from a physician for certain medications. If pharmacists fill a prescription without that information, they would be in violation of the law and susceptible to action by the Board of Pharmacy. Without that information included on the prescription form, the pharmacist must turn the patient away to return to the prescriber's office for the additional information to be added to the prescription. Pharmacy relies on electronic communication, and the handwritten requirement creates many problems in this electronic world.

This will help make the delivery of certain medications easier and less cumbersome for patients and pharmacists alike.

KPC supports the bill and urges the committee to approve it.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 5



**To:** House Health and Human Services Committee

**From:** Dan Morin  
Director of Government Affairs

**Subject:** SB 62; Restrictions on prescribing, ordering, dispensing, administering, selling, supplying or giving certain amphetamine or sympathomimetic amine controlled substances

**Date:** February 28, 2007

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 62, which eliminates the requirement that the prescription order indicate in the prescriber's own handwriting the purpose for which the drug is being given. Kansas is seemingly the only state with such a requirement that a physician include a handwritten purpose on a prescription for amphetamine or sympathomimetic substances. K.S.A 65-2837a would still require adequate documentation in the patient's medical record outlining a purpose for the prescription.

Physicians and hospitals have been urged for years to implement information technologies to improve the quality of health care available to patients. Clinical systems such as computerized physician orders and prescription entry will eventually become common and necessary. By eliminating the handwriting requirement, Senate Bill 62 will prevent technology from leapfrogging statute.

In addition, the Kansas Medical Society concurs with previously expressed concerns of out-of-state practitioners being unaware of a requirement unique to Kansas. This may require a pharmacist to track down the prescriber to amend the prescription before it can be filled. Although this occurs infrequently, it takes extra time from the pharmacist and could lead to unnecessary delays filling prescriptions for a number of Kansas residents as well as out-of-state residents attending Kansas universities and members of the military and their dependents.

Thank you for the opportunity to offer these comments.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 6

**VICKI SCHMIDT**  
 SENATOR, 20TH DISTRICT  
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SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIRMAN: JT. COMMITTEE ON ADMINISTRATIVE  
 RULES AND REGULATIONS  
 VICE-CHAIR: PUBLIC HEALTH AND WELFARE  
 MEMBER: CAPITOL AREA PLAZA AUTHORITY  
 FINANCIAL INSTITUTIONS AND  
 INSURANCE  
 HEALTH CARE STRATEGIES  
 JT. COMMITTEE ON INFORMATION  
 TECHNOLOGY  
 STATE ADVISORY COUNCIL ON AGING  
 TRANSPORTATION  
 WAYS AND MEANS

March 1, 2007

**TESTIMONY IN SUPPORT OF SB 63**

Chairperson Landwehr and Members of the Committee:

Thank you for the opportunity to testify in support of SB 63. This bill is a very simple one that places into statutes what currently occurs in the everyday practice of pharmacy. Often prescribers will indicate that a prescription may be refilled *p.r.n.* This is a Latin term, "pro re nata", which is an abbreviation for "when necessary." To a practicing pharmacist, the term *p.r.n.* means the prescription may be refilled for a period of time of one year from the date the prescription was issued. The current law allows for the refill after the one year period of time with some further clarification. The prescriber does not indicate on the prescription that it may be refilled "forever." The pharmacist will contact the prescriber after the one year date for the refill authorization. This would be the current standard of care model, and in fact all third party payors require it. Certainly the prescriber can renew the prescription without seeing or contacting the patient. This bill does not change this. The purpose of this change is to at least require contact between the pharmacist and prescriber once a year on a *p.r.n.* refill and bring the statutes in line with the current practice.

Thank you for your consideration of SB 63. I am happy to answer any questions or concerns that you may have.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 7

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# KANSAS

BOARD OF PHARMACY  
DEBRA L. BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

**Testimony re: SB 63**  
**House Health and Human Services Committee**  
**Presented by Debra L. Billingsley**  
**March 1, 2007**

Madam Chairperson and members of the committee:

My name is Debra Billingsley, and I am the Executive Director of the Kansas State Board of Pharmacy. The Board of Pharmacy consists of six members, five of whom are licensed pharmacists, and one who is a representative of the general public. The major purpose and focus of the Board of Pharmacy is to protect the public health, safety and welfare of the citizens of the State of Kansas through the licensure and regulation process. The Board also promotes the education and understanding of pharmacy related services.

SB 63 amends K.S.A. 65-1637 and clarifies with specificity the refill limitations for a noncontrolled prescription drug. State law dictates that a prescription for a noncontrolled substance expires one-year from the date of issuance. It is the standard in almost every state that a prescription expires after one year of the date it is written. This is a health and safety issue so that a patient will return to the practitioner for further review of their medical condition. It is necessary for a practitioner to follow-up with the patient to determine whether the current medications continue to be necessary.

The Board supports the amendment to the Pharmacy Act. First, the language is ambiguous and thus hard to regulate. It is impossible to know that the physician has determined that there is no risk to the patient and that the prescription should be continued without making contact with the physician. If contact is going to be made it would logically follow that the patient could get a new prescription. This does not necessitate a visit to the physician. Secondly, in 2006 the legislature added language to the Pharmacy Act that would permit a pharmacist to continue a maintenance medication after the prescription has expired. They are permitted to give enough medication until the patient is able to get a new prescription. Therefore, it would seem that the current language is no longer needed. There is no risk that the patient will go without his or her maintenance medications until the practitioner can see him.

The current language in the statute has always been confusing to most pharmacy practitioners in Kansas. Most pharmacy students preparing to take their Kansas law test have had problems with understanding the current status of the law and what the consequences are for continuing to fill a prescription that has technically expired.

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**Testimony re: SB 63**  
**House Health and Human Services Committee**  
**Presented by Julie J. Hein**  
**on behalf of**  
**Kansas Pharmacy Coalition**  
**March 1, 2007**

Madam Chairman, Members of the Committee:

My name is Julie Hein, and I am lobbyist for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

SB 63 simply clarifies that all prescriptions need to be renewed at least on an annual basis. When a prescriber indicates that a prescription may be refilled "p.r.n." that means "when necessary". In current practice, the pharmacist will contact the prescriber after the one year date for the refill authorization. In many cases, the prescriber renews the prescription without seeing or contacting the patient. The purpose of this change is to require contact between the pharmacist and prescriber at least on an annual basis on a p.r.n. refill. This is already the standard of care in pharmacy practice.

KPC supports the bill and urges this committee to approve it.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 9



**To:** House Health and Human Services Committee

**From:** Dan Morin  
Director of Government Affairs

**Subject:** SB 63; An act concerning filling prescriptions

**Date:** February 28, 2007

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 63, which would amend Kansas law currently allowing the practice of refilling prescriptions “as necessary” (i.e., after one year from issuance).

In most states, the law requires patients to request a new prescription from a health care provider if the original prescription is more than 1 year old (This period may be shorter for certain drugs. Certain controlled medications have shorter limitations). This helps ensure that the therapy reflects the patient's current medical status. Specifying the therapeutic duration of a prescription may compel patients to comply with follow-up appointments and also prevents them from accumulating old medications. The majority of third party payers operating in Kansas currently require pharmacists to contact the prescriber for continued authorization one year from issuance. SB 63 would simply amend statute to mirror current practice.

Thank you for the opportunity to offer these comments.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 10



Statement on **Senate Bill 62**  
House Health and Human Services Committee  
March 1, 2007  
By Charles L. Wheelen

The Kansas Association of Osteopathic Medicine supports SB62 because it would remove a barrier to implementation of electronic medical records. The provision in K.S.A. 65-2837a requiring that an explanation be in the prescriber's "own handwriting" is archaic and should be deleted from the law.

Medical practices throughout the State of Kansas are installing software applications that allow the physician and his or her staff to improve the efficiency and transportability of patient information. The use of electronic medical records and development of health information technology may also improve patient safety by reducing the likelihood of errors.

The Committee may wish to consider repealing K.S.A. 65-2837a entirely. It appears that this section of the Healing Arts Act was enacted at a time when amphetamines were sometimes prescribed for treatment of obesity. During the ensuing two decades there have been new pharmaceutical products and surgical procedures developed that would be considered more appropriate for the treatment of obesity. In other words, the standard of care has evolved.

Existing provisions of the Healing Arts Act make it unacceptable for a physician to prescribe a controlled substance for other than a legitimate medical purpose [subsection (p) of K.S.A. 65-2836]. Other provisions of the Act require that adequate medical records be maintained by the treating physician [item (25) of subsection (b) of K.S.A. 65-2837]. Furthermore, one of the Board of Healing Arts regulations imposes elaborate minimum requirements for patient records.

Thank you for reviewing our comments. We respectfully request that you recommend SB62 for passage.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT //





**The Kansas State  
Board of Mortuary Arts**

Created August 1, 1907

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E-Mail: [boma1@ksbma.kansas.gov](mailto:boma1@ksbma.kansas.gov)  
Web Site: <http://www.Kansas.gov/ksbma/>

**MEMBERS OF THE BOARD**

Mr. Barry W. Bedene, Licensee, President  
Mr. Fred G. Holroyd, Licensee, Vice President  
Mr. Charles R. Smith, Consumer  
Ms. Melissa A. Wangemann, Consumer  
Mr. Bill Young, Licensee

**ADMINISTRATIVE STAFF**

Mr. Mack Smith, Executive Secretary  
Mr. Francis F. Mills, Inspector  
Ms. Mary J. Kirkham, Administrative Specialist

Thursday, March 1, 2007

House Health and Human Services Committee  
Room 526-S, State Capitol  
Topeka, Kansas

Chair Landwehr, Committee Members and Staff:

Thank you for the opportunity to appear before you today and ask for your support of Senate Bill 72. My name is Mack Smith, and I'm the executive secretary of the Kansas State Board of Mortuary Arts (KSBMA.)

Senate Bill 72 was introduced by the Senate Public Health and Welfare Committee at my request. The bill is a result of the annual review of statutes and regulations done by the Mortuary Arts Board and is simply meant to update and better define language and definitions in KSA 65-1713 and KSA 65-1751. The review is done by Mortuary Arts board members and administrative staff—including the assistant attorney generals assigned to the board for representation and litigation purposes.

Section one concerns KSA 65-1713 which involves the definition, responsibility and duties of a Kansas funeral director. Besides the grammatical changes, the wording of "burial and disposal" has been changed to "disposition." Language involving "meeting with families for the purpose of making at-need funeral arrangements" has been added and "funeral establishment, branch funeral establishment or crematory" has been added replacing "place for the preparation or the disposition or the care of dead human bodies."

Section two concerns KSA 65-1751 which is the statute that allows the board to take action against licensees or applicants for licensure. Besides the grammatical

changes, sub (3) has added the language "or any other crime which reflects on the licensee's fitness to practice." Sub (20) has added "including the federal trade commission's funeral rule." Sub (22) has added "liable for or" along with "by a court of competent jurisdiction"

Again, I thank the committee for the opportunity to testify today, and I ask for your support of Senate Bill 72. I'll do my best to answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mack Smith", written in a cursive style.

Mack Smith, Executive Secretary  
Kansas State Board of Mortuary Arts

MS

\\Admin\_specilais\bomadata\Mack\Legislature\72 Senate Testimony (House) .wpd & a:\SB 72 Senate Testimony (House) .wpd-2007 Kansas Legislative Session disk

# KANSAS BOARD OF HEALING ARTS


LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## MEMORANDUM

**TO:** House Health and Human Services Committee

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

**DATE:** February 28, 2007

**RE:** Senate Bill No. 81

Thank you for the opportunity to appear before you on behalf of the State Board of Healing Arts in support of S.B. No. 81. The Board requested introduction of this bill through the Senate Public Health and Welfare Committee. Simply stated, the bill authorizes the State Board of Healing Arts to require certain individuals to be fingerprinted and submit to a national criminal history record check for the purpose of determining initial qualifications and suitability to obtain a license. Those persons include applicants for any original credential issued by the Board and those already licensed who are the subject of an investigation.

The Senate amended the bill by adding the word "original" on Line 14 to clarify that the bill is not authorizing fingerprints and criminal background checks of existing licensees unless it is in connection with an investigation. The Board supported the addition of this one word. The bill passed the Senate 40-0.

As this is my first time before this Committee this Session, the following is a brief overview of the Board. The Board was created in 1957 by combining the three separate boards that regulated medical doctors, osteopathic doctors and chiropractors. The Board currently consists of 15 members appointed by the Governor. The Board regulates over 21,000 individuals in 13 different health care professions. The number of individuals regulated in each profession is attached as "Exhibit 1". Under the Healing Arts Act (K.S.A. 65-2801 et seq.), the Board regulates medical doctors, osteopathic doctors and chiropractors. The Board also regulates physician assistants (K.S.A. 65-28a01 et seq.),

**MEMBERS OF THE BOARD:**

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Goddard

BETTY MCBRIDE., Public Member, VICE-PRESIDENT  
Columbus

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  
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235 S. Topeka Boulevard, Topeka, Kansas 66603-3068  
Voice: (785) 296-7413 Toll Free: (888) 886-7205 Fax: (785) 296-0852 Website: [www.ksbha.org](http://www.ksbha.org)

House Health and Human Services

DATE: 3-1-08

ATTACHMENT 13-1

physical therapists and physical therapist assistants (K.S.A. 65-2901 et seq.), podiatrists (K.S.A. 65-2001 et seq.), occupational therapists and occupational therapy assistants (K.S.A. 65-5401 et seq.), respiratory therapists (K.S.A. 65-5501 et seq.), athletic trainers (K.S.A. 65-6901 et seq.), naturopaths (K.S.A. 65-7201 et seq.), and radiologic technologists (K.S.A. 65-7301 et seq.).

Within each of the practice acts, there is authority to issue different types of permits, licenses or certificates. For instance, the Healing Arts Act has provisions for temporary permits (K.S.A. 65-2811(a)), postgraduate permits (K.S.A. 65-2811(b) through (d)), special permits (K.S.A. 65-2811a), institutional licenses (K.S.A. 65-2895), certification of licensed dentists to administer anesthetics (K.S.A. 65-2899), temporary license for visiting professor (K.S.A. 65-28,100) as well as additional types of licenses under K.S.A. 65-28,123, 65-28,124 and 65-28,125.

The authority for the Federal Bureau of Investigation to conduct a criminal record check for a noncriminal justice licensing purpose is based upon Public Law 92-544. Pursuant to that law, the FBI is empowered to exchange identification records with officials of state government for purposes of licensing if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General has delegated this approval authority to the FBI. Attached as "Exhibit 2" is a copy of an e-mail from the Assistant Director of the Kansas Bureau of Investigation advising that the FBI has pre-approved the language of S.B. No. 81.

In 1998, the Federation of State Medical Boards (FSMB) recommended that medical boards conduct criminal background checks on physicians applying for licenses. FSMB reaffirmed this policy in April 2001 and has continued to encourage all state medical boards to require any applicant with a criminal history report to appear before the board for questioning to evaluate the applicant's degree of risk to the public if granted a license.

The Board has been considering the issue of criminal background checks for more than two years. In December 2004, a Committee was formed to study the issue. The Committee recommended and the Board adopted a resolution to request introduction of a bill. S.B. No. 523 was introduced last session, but did not receive a hearing. Since that time, we have worked with the KBI and the Board of Nursing. S.B. No. 107 was introduced by the Board of Nursing and is substantially the same as S.B. No. 81.

The November 23, 2001 issue of *AMNews* reported that, at that time, seven states required physicians to submit fingerprints as part of criminal background checks for medical licensure. The FSMB Legislative Services Report advised that as of January 31, 2005, 13 states had the authority to require state and federal criminal background checks. According to the e-mail attached as "Exhibit 3", as of January 22, 2007, 34 states now have the authority to do criminal background checks, with 28 of these requiring fingerprints and a national FBI check. Kansas is one of the six states that have the authority to do a state background check---K.S.A. 65-2339a(c). This statute is not broad enough to meet the FBI requirements for statutory authorization required by Public Law 92-544 in order for the criminal background check to be performed by that organization.

Starting in June 2006, the Legislative Division of Post Audit conducted a performance audit of the Board resulting in a Performance Audit Report being issued in October 2006. Several recommendations were made for improving the Board's performance, including the following:

“1. To ensure that the Board has all recommended information pertaining to applicants coming from other states-both professional and personal-Board staff should re-introduce a bill this session which would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.”

The Board has also received letters from the Medical Society of Sedgwick County and the Kansas Association Medical Staff Services supporting the authority of the Board to perform criminal background checks. In the 2005 Session, the Legislature enacted K.S.A. 2006 Supp.7-127 authorizing the Supreme Court to require applicants for admission to practice law in Kansas to be fingerprinted and submit to a national criminal history record check.

In conclusion, the Board urges your favorable consideration of S.B. No. 81, as it was amended by the Senate. Nationwide there has been increasing interest in performing criminal background checks. This is in response to a desire from the public that there be accountability of the health care professions. Health care providers should not view the process as degrading, as an indignity, or as an affront to their integrity. Rather, it should be seen as another way to uphold the professionalism of the health care professions and to better ensure patient safety.

Thank you for allowing me to appear before you. I would be happy to respond to any questions.

① OUR MISSION	② PUBLIC INFORMATION	③ STATISTICS	④ AGENCY CONTACTS
⑤ THE BOARD	⑥ LICENSURE INFORMATION	⑦ VERIFICATIONS	⑧ LINKS
⑨ STAFF DIRECTORY	⑩ DISCIPLINARY PROCEDURE	⑪ STATUTES	⑫ FORMS
⑬ CONTACTS	⑭ BOARD ACTIONS	⑮ RULES & REGS	⑯ HOME

# STATISTICS

## County Breakdown

### Licensee / Registrant Statistics Updated January 16, 2007

LICENSEES	Active	Exempt	Federal	Inactive	Military	TOTAL
Medical Doctors	6,377	836	239	1,698	229	9,379
Osteopathic Doctors	676	53	25	148	15	917
Chiropractic Doctors	880	30	1	165	7	1,083
Podiatric Doctors	114	3	3	16	1	137
Physician Assistants	668	0	31	30	5	734
Respiratory Therapists	1,654	0	0	0	1	1,655
Occupational Therapists	1,240	0	0	0	0	1,240
Occupational Therapy Assistants	325	0	0	0	0	325
Physical Therapists	1,821	0	0	78	2	1,901
Athletic Trainers	302	0	0	12	0	314
Radiologic Technologist	2,692	0	0	0	0	2,692
<b>Total Licensees</b>	<b>16,749</b>	<b>922</b>	<b>299</b>	<b>2,147</b>	<b>260</b>	<b>20,377</b>
REGISTRANTS	Active	Exempt	Federal	Inactive	Military	TOTAL
Physical Therapist Assistants	1,062	0	0	0	0	1,062
Naturopathic Doctors	19	0	0	0	0	19
Contact Lens Distributors	4	0	0	0	0	4
<b>Total Registrants</b>	<b>1,085</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,085</b>

[Our Mission](#) | [The Board](#) | [Staff Directory](#) | [Statistics](#) | [Public Information](#) | [Licensure Information](#)  
[Disciplinary Procedure](#) | [Board Actions](#) | [Rules & Regs](#) | [Statutes](#) | [Verifications](#) |  
[Forms](#) | [Agency Contacts](#) | [Database](#) | [Contacts](#) | [Links](#) | [Site Map](#) | [Home](#)

**Kansas State Board of Healing Arts**  
 235 S. Topeka Boulevard - Topeka, KS 66603-3068  
 Phone: (785) 296-7413 - Toll Free: 1-888-886-7205 - Fax: (785) 296-0852  
[Disclaimer](#) |  
[Accessibility Policy](#) |  
[State of Kansas Web Site](#)

*EXHIBIT 1*

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**From:** Lawrence T. Buening [mailto:lbuening@ink.org]  
**Sent:** Monday, January 22, 2007 2:46 PM  
**To:** Dave Sim  
**Cc:** 'Mary Blubaugh'  
**Subject:** RE: Criminal Background Bill

Just to let you know that the bill is now S.B. No. 81 and will have a hearing in the Senate Judiciary Committee at 9:30 a.m. this Thursday, January 25 in Room 123-S

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
785-296-3680

---

**From:** Dave Sim [mailto:Dave.Sim@kbi.state.ks.us]  
**Sent:** Friday, January 12, 2007 1:09 PM  
**To:** Lawrence T. Buening  
**Subject:** RE: Criminal Background Bill

Larry –

The FBI has reviewed and your bill is pre-approved.

That means that if the language of the final, enrolled bill is the same as the draft that they reviewed, we will be given access to the national database. If, however, there are changes to the pertinent portions describing that national check, we should repeat the process and ask for another review.

Please keep me apprised of your progress on this.

Dave

David G. Sim  
Assistant Director  
Kansas Bureau of Investigation  
(785) 296-8265

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**From:** Lawrence T. Buening [mailto:lbuening@ink.org]  
**Sent:** Monday, January 08, 2007 1:07 PM  
**To:** Dave Sim  
**Subject:** FW: Criminal Background Bill

Agent Sim: Attached is a draft of a proposed bill the Kansas State Board of Healing Arts will be asking to be introduced in the 2007 Legislature. I would very much appreciate it if you would review the bill and also have it reviewed by the FBI for approval of language. For your information, the State Board of Healing Arts licenses or otherwise regulates individuals in 13 health care professions—medical doctor, osteopathic doctor, chiropractor, podiatrist, physical therapist, physical therapist assistant, physician assistant, occupational therapist, occupational therapy assistant, respiratory therapist, naturopathic doctor, athletic trainer and radiologic technologist. Please advise if you have any questions. Thank you for your assistance.

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
785-296-3680

“ EXHIBIT 2 ”

## Lawrence T. Buening

---

**From:** Robin Ayers (FSMB) [RAyers@fsmb.org]  
**Sent:** Monday, January 22, 2007 4:33 PM  
**To:** Lawrence Buening; James Rawson (FSMB); JHofferer@fsmb.org  
**Subject:** RE: Kansas Senate Bill No. 81

Larry- I am sorry I am chiming in late on this- I am out on maternity leave and just saw this email. . Here are the most recent numbers we have. 34 Boards run CBC's with 28 running both state and federal and 6 running state only.

NCIC

1. Arkansas
2. California-
3. California-O
4. Delaware
5. Florida
6. Florida-O
7. Georgia
8. Idaho
9. Illinois
10. Iowa
11. Kentucky
12. Louisiana
13. Michigan
14. Michigan-O
15. Nebraska
16. Nevada
17. Nevada-O
18. New Jersey
19. New Mexico
20. North Carolina
21. North Dakota
22. Oklahoma
23. Oregon
24. South Carolina
25. Tennessee
26. Tennessee-O
27. Texas
28. Wisconsin

State Only

1. Kansas
2. Maine
3. Massachusetts
4. Oklahoma-O
5. Virginia
6. Washington

-----Original Message-----

From: Lawrence Buening  
Sent: Mon 1/22/2007 3:20 PM  
To: James Rawson (FSMB); Robin Ayers (FSMB); JHofferer@fsmb.org  
Cc:  
Subject: Kansas Senate Bill No. 81

Our bill for authority to obtain fingerprints and have an FBI criminal background check done will be heard in the Senate Judiciary Committee this Thursday. Is

1  
"EXHIBIT 3"

13-6





Statement on **Senate Bill 81**  
House Health and Human Services Committee  
March 1, 2007  
By Charles L. Wheelen

The Kansas Association of Osteopathic Medicine supports SB81 as **amended** by Senate Committee. The supplemental note on this bill reflects that we expressed opposition to SB81 as introduced. We requested the addition of one word which clarifies legislative intent to assure that resources are not expended on fingerprinting and background investigations of established licensees who submit an application for renewal of a license. Our amendment was adopted.

The version of SB81 passed by the Senate would allow the Board of Healing Arts to require fingerprinting and criminal background investigations of: (1) applicants for a first license, (2) licensees who are under investigation by the Board, and (3) former licensees who apply for reinstatement of a license. Over time, the Board will eventually have fingerprints and a background check for every licensee.

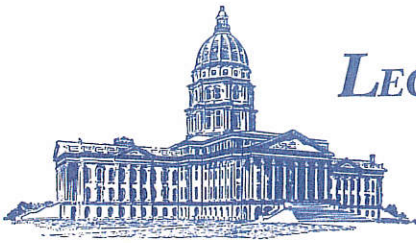
It is noteworthy that this legislation does not pertain exclusively to the three branches of the healing arts; it applies to all professions licensed by the Board. Fingerprinting and investigating all existing licensees would impose a significant burden on local law enforcement agencies as well as the state agency, and would incur unnecessary expense to the licensees.

Thank you for considering our position on this bill.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 14



LEGISLATURE OF KANSAS  
**LEGISLATIVE DIVISION OF POST AUDIT**

800 SOUTHWEST JACKSON STREET, SUITE 1200  
TOPEKA, KANSAS 66612-2212  
TELEPHONE (785) 296-3792  
FAX (785) 296-4482  
E-MAIL: [lpa@lpa.state.ks.us](mailto:lpa@lpa.state.ks.us)  
[www.kslegislature.org/postaudit](http://www.kslegislature.org/postaudit)

**Information for the House Health and Human Services Committee Regarding SB 81**

Cindy Lash, Audit Manager

March 1, 2007

Madam Chair and members of the Committee, thank you for allowing me to appear before you to provide information from our October 2006 audit on the Board of Healing Arts. Question 2 of that audit, which dealt with the Board's background investigations of potential licensees, is attached.

One of the recommendations we made regarding background investigations was that the Board re-introduce a bill in the 2007 Session that would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.

Here's why we made that recommendation:

- The Federation of State Medical Boards has identified recommended practices for conducting background checks for medical licensure. One of those recommended practices is that the applicant should pass a criminal background check.
- State law allows the Board of Healing Arts to obtain criminal background checks on applicants from the KBI, but doesn't give the Board the authority to collect fingerprints, which the FBI must have to conduct a national background search.

*According to the Federation of State Medical Boards, 19 state medical boards are authorized to check federal and state criminal records, while 8 (including Kansas) can check only state criminal records.*

- Past criminal activity is one of the behaviors the Board of Healing Arts attempts to identify in its application process. Currently, it relies on applicants to self-report that information, and investigates any such behavior reported. With the ability to request a criminal background check, the Board would be less dependent on applicants to self-report incidents that could negatively affect their ability to receive a license to practice.
- Doctors are not immune from brushes with the law. In a sample of 44 out-of-State doctors we reviewed who applied for a license in Kansas, 4 doctors answered "yes" to the question "Have you ever been arrested, fined, charged with or convicted of a crime, indicted, imprisoned or placed on probation?"

Finally, as auditors, we think its always better to verify information, if feasible, than to rely on self-reported data.

*House Health and Human Services*

DATE: 3-1-07

ATTACHMENT 15 -1



# **PERFORMANCE AUDIT REPORT**

## **Board of Healing Arts: Reviewing Issues Related to Complaint Investigations, Background Investigations, and Composition of the Board**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
October 2006**

**Question 2: Does the Board Conduct Background Investigations That Would Enable It To Know Whether Physicians Applying for Licensure Have Had Malpractice or Negligence Problems in Other Jurisdictions Before Being Licensed in Kansas?**

**ANSWER IN BRIEF:** *This question focuses only on the four professions considered to be “physicians” according to Board staff: medical doctors, chiropractors, podiatrists and osteopaths. The Board obtains generally thorough background information from all applicants, and independently verifies much of that information for medical doctors and osteopaths, although it only recently began to collect national data on malpractice payments. Board staff don’t verify all they could for chiropractors, and have chosen not to obtain national malpractice reports for chiropractors and podiatrists.*

*Finally, the Board isn’t authorized to conduct FBI criminal history checks, which is the only way to obtain criminal history data for out-of-State applicants. For the applicant files we reviewed, the Board followed its process for checking backgrounds, and made reasonable decisions on licensing out-of-State applicants. In the last three years, the Board has licensed only one doctor whose license had been revoked in another state. That state had set aside the revocation and instead put the doctor on probation about two years before the doctor applied to Kansas, and the Board knew of all this when granting a Kansas license.*

***Although It Has No Formal Policies and Procedures for Doing So, The Board Obtains Generally Adequate Background Information About Most Out-of-State Applicants***

This question is focused on background investigations for out-of-State applicants, however the practices the Board follows are the same regardless of where the applicant is from. Typically, Kansan’s applying for a license will be new doctors, while out-of-State applicants might be either new or experienced doctors.

The Federation of State Medical Boards has identified recommended practices for conducting background checks for medical licensure. We concluded that following these practices should identify significant problems with malpractice, negligence, or other areas of concern during the application process. According to those recommendations:

the applicant should:

- provide a list of other jurisdictions where he or she has been licensed
- identify any jurisdictions where he or she has been denied or surrendered a license
- report all sanctions, judgments, awards, and convictions
- be physically and mentally capable
- not have been found guilty of conduct that would be grounds for disciplinary action
- pass a criminal background check

the medical licensure board should:

- verify the applicants' credentials with national and professional databases and other 3rd party sources

**The Board has no written policies or procedures for conducting background investigations.** This is a problem because written procedures and assignment of duties help reduce errors, misunderstandings, omitted procedures, duplicative efforts, and the like. Written policies and procedures also help ensure that all applicants are treated consistently, and that records are properly maintained.

Board licensing clerks have a checklist showing all the items that must be received for an application to be complete (such as transcripts, reports from the appropriate professional association and from all states where the doctor has previously been licensed, and documentation of disciplinary issues), but there is no written guidance on what to do with this information, how to interpret it, when it must be passed to the supervisor or Executive Director for review, and so on.

**In practice, the Board requests appropriate information from applicants, but doesn't verify as much of that information as it could.** The information requested directly from applicants is consistent with the information suggested by the Federation of State Medical Boards, with the exception of passing a criminal background check. For example, the Board asks applicants to provide a list of other jurisdictions where they have been licensed, to identify any jurisdictions where they have been denied or surrendered a license, and to report all sanctions, judgments, awards, and convictions.

As *Figure 2-1* shows, the Board independently verifies a great deal of the information provided by medical and osteopathic doctors, but verifies far less of the information provided by chiropractors and podiatrists. We found that information on chiropractors is readily available from the Federation of Chiropractic Licensing Boards, which has an "Official Actions Database" with information about education, states of licensure, board actions, and federal sanctions. Board staff told us they were aware this database was being developed, but were not aware it was available for use.

In addition, the Board has not made it a priority to verify malpractice payments made on behalf of applicants. Although the National Practitioner Databank has compiled this information for medical doctors and osteopaths for 16 years, the Board only

**Figure 2-1  
Information Checked by the Board of Healing Arts  
For Physicians Applying for a License in Kansas**

Type of Information Reviewed:	Medical Doctors	Osteopaths	Chiropractors	Podiatrists
American Medical Association / American Osteopathic Association / American Podiatric Medicine Association reports showing:				
Education	X	X		X
States of Licensure	X	X		n/a
Federal Sanctions	X	X		n/a
Federation of State Medical Boards' / Federation of Podiatric Medicine Boards' Disciplinary Data	X	X		X
Reports received directly from other state licensing agencies verifying license status and discipline	X	X	X	X
Self-reported responses by the applicant to 21 disciplinary questions on the application	X	X	X	X
National databases of malpractice reports (The Board just began doing this in June)	X	X		
n/a - not included in Association report Source: Board staff and LPA review of the above listed documents				

began to request it in June 2006 because staff think it may now have sufficient information. Board staff have chosen not to pursue similar information for chiropractors and podiatrists from another databank which has been in existence for nine years. Staff said they have accessed the information on an ad hoc basis for legal purposes, but found the information is not always reliable, and not all applicants are in the database.

**Although criminal background checks are a recommended practice, the Board currently can't conduct FBI checks, and it doesn't conduct KBI checks on applicants.** According to the Federation of State Medical Boards, 27 state medical boards are authorized to conduct criminal background checks – 19 can check federal and state criminal records, while eight can check only state criminal records. Kansas is one of the eight states that has statutory authority to conduct State-level criminal background checks. However, the Board doesn't have the authority to collect fingerprints, which the FBI must have to conduct a national background search.

Agency officials said they don't run a KBI check on applicants because it seems unfair to conduct a criminal background checks on applicants who are Kansans, when they can't conduct a similarly focused check on applicants from another state. While it may be preferable to have thorough criminal background checks on all applicants, the inability to do so doesn't seem like a good reason not to conduct the criminal background checks authorized by statute.

The Board has pursued authorization for fingerprints; for example, it requested introduction of a bill in 2006 allowing it to require applicants to be fingerprinted, which would have made FBI background searches possible. That bill did not pass. Even within the Board, there are differences of opinion on fingerprinting. A Board committee reviewing the issue cited a number of arguments against criminal background checks, including cost, delays in the application process, expectation of few positive results, and the likelihood that health care providers might perceive being fingerprinted as demeaning.

***Staff Followed Agency Practices for Background Checks, and Given the Available Information, Made Reasonable Recommendations For Licensing Out-of-State Applicants***

We reviewed the Board’s background checks for a sample of 44 out-of-State doctors who applied for a license in Kansas between December 2004 and June 2006. For each applicant we reviewed files and found the following:

- the Board’s checklist for background review had been completed, and all required documentation, including reports from other states where the applicant had been licensed, had been received
- all “yes” answers to disciplinary questions on the application (which indicate some type of past problem) were appropriately pursued by staff, and the subsequent decision on whether to recommend the applicant for licensure appeared to be reasonable. **Appendix C** contains the full list of 21 disciplinary questions.

**Although about one-third of applicants reported some type of past disciplinary issue, it appeared to us that Board staff reviewed sufficient information and were justified in recommending licensure.** Fifteen of the 44 applicants we reviewed (34%) answered yes to one or more disciplinary questions, and their applications were further evaluated by Board staff. The questions they most frequently answered “yes” to include:

# of “yes” Responses	Question
9	Have you ever been a defendant in a legal action involving professional liability (Malpractice) or had a professional liability claim paid in your behalf or paid such a claim yourself?
4	Have you ever been arrested, fined, charged with or convicted of a crime, indicted, imprisoned or placed on probation?

Positive responses to these questions could indicate problems that might cause the Board to deny or limit a license, but our review showed that the actual behavior documented didn’t rise to that level, and often wasn’t related to medical knowledge or experience. Some of the events reported include:

- an arrest for shoplifting 35 years before the application
- indecent exposure (a college prank)
- a cattle-branding offense
- failure to appear for an auto emission offense
- the clinic where the doctor was a resident was a defendant in a lawsuit. The plaintiff received \$2.4 million.
- the doctor was a defendant in a lawsuit involving a medication error resulting in the patient's death. The lawsuit was dismissed with prejudice, which means it can't be re-filed.
- the doctor was involved in four malpractice cases. One was dismissed and three were withdrawn.

**There's no way the Board can ensure it's aware of all adverse information that might be available about an applicant.** The Board asks applicants to self-report negative incidents through a variety of questions on the application form. But it has no assurance that all incidents have been reported. If the behavior resulted in a medical licensing board in another state taking disciplinary action, or in a malpractice award to a plaintiff, that information will have been independently reported to the Board of Healing Arts. However, the Board has no way to know if applicants have fully disclosed behaviors that didn't result in official action against a license, or arrests and convictions in other states. Within the limits of a reasonable background investigation, licensing agencies must focus on information that's already collected, compiled, or readily available.

**In the last three years, the Board has licensed only one medical doctor whose license had been revoked by another state.** One of the concerns behind this audit was whether the Board was licensing doctors whose license had been revoked elsewhere, either knowingly or because they hadn't identified the revocation.

We asked the Federation of State Medical Boards, a national not-for-profit organization which maintains a physician data center, including disciplinary histories, to run the list of doctors licensed in Kansas since June 2003 against their database. The Federation has data only on medical doctors and osteopaths. Although we have no way to verify the accuracy of this data, we reviewed the Federation's methodology and it seemed sound.

The Federation identified one doctor licensed in Kansas since June 2003 who had a license previously revoked by another state. Because of alcoholism, this doctor had surrendered his medical license in Colorado in 1993, which automatically caused a review of his license status in New York. Officials there chose to revoke his license in 1993. The doctor then participated in the Monitored Treatment Program in New Mexico from 1993 to 1999 with restrictions on his New Mexico license. He completed the program, and those



restrictions were removed in 1999, making his New Mexico license fully active. The State of Maryland licensed him in 2000. The State of New York set aside the revocation in January 2002 but put him on a 3-year probation with restrictions on his license. The doctor applied for a license in Kansas in October 2003.

The application file showed that Board staff in Kansas were aware of the previous New York revocation – the doctor self-reported it, and the Federation report of the doctor’s disciplinary history also identified the revocation. Staff recommended the application be approved because the alcoholism issues had been addressed, and the doctor subsequently had been practicing in New Mexico for almost 10 years with no reported problems with alcohol. The Kansas application was approved in April 2004.

**CONCLUSION**

Although the Board conducts thorough background checks of medical and osteopathic doctors who have been licensed in another state before applying to Kansas, the Board could do more to check and verify information about chiropractors and podiatrists. The application requirements include proof of residency completion, answers to a series of professional conduct questions, and verifications from other states and organizations detailing issues the doctor has had in the past. Based on the application requirements, the Board should know all past actions taken against a doctor by a licensing authority, and any malpractice claims made against a doctor. In the last three years, only one doctor who was previously revoked by another state subsequently applied to Kansas. The Board can’t be positive of an applicant’s criminal history because it doesn’t have the authority to do FBI criminal background checks.

**RECOMMENDATIONS**

1. To ensure that the Board has all recommended information pertaining to applicants coming from other states– both professional and personal– Board staff should re-introduce a bill this session which would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.
2. The Board should continue to pursue readily available information on podiatrists and chiropractors applying for licensure in Kansas.
3. To ensure that all applicants are treated consistently, that records are maintained properly, and that errors and duplicative efforts are reduced, the Board should develop written policies and procedures for conducting background investigations of both in-State and out-of-State applicants.

## APPENDIX C

### 21 Disciplinary Questions Asked on Application for Licensure For Medical Doctors, Osteopaths, Chiropractors and Podiatrists

The Board of Healing Arts asks 21 Yes/No disciplinary questions on the application for the above listed professions. Documentation must be provided for all yes answers. The questions are as follows:

1. Have you ever been rejected for membership or notified by or requested to appear before any medical, osteopathic or chiropractic society?
2. Have you ever been denied the privilege of taking an examination administered by a licensing agency?
3. Have you ever been denied a license to practice the healing arts or other health care profession?
4. Have you ever been denied staff membership with any licensed hospital, nursing home, clinic or other hospital care facility?
5. Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended, been put on probation, or ever been requested to withdraw from any licensed hospital, nursing home, clinic or other hospital care facility in which you have trained, been a staff member, been a partner or held hospital privileges?
6. Have you ever been requested to resign, withdraw or otherwise terminate your position with a partnership, professional association, corporation, or other practice organization, either public or private?
7. Have you ever, for any reason, lost American Board certification?
8. Has any licensing disciplinary agency limited, restricted, suspended, or revoked a license you have held?
9. Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary agency?
10. Have you ever been notified or requested to appear before any licensing or disciplinary agency?
11. Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?
12. Within the last 2 years have you used any alcohol, narcotic, barbiturate, other drug affecting the central nervous system, or other drug which may cause physical or psychological dependence, either to which you were addicted or upon which you were dependent?
13. Within the last 2 years have you been diagnosed or treated for any physical, emotional or mental illness or disease, including drug addiction or alcohol dependency, which limited your ability to practice the healing arts with reasonable skill and safety?
14. Within the last 2 years have you used controlled substances which were obtained illegally or which were not obtained pursuant to a valid prescription order or which were not taken following the direction of a licensed health care provider?
15. Have you ever engaged in the practice of the healing arts while any physical or mental disability, loss of motor skill or use of drugs or alcohol, impaired your ability to practice with reasonable skill and safety?
16. have you ever been denied a Drug Enforcement Administration (DEA) or state bureau of narcotics or controlled substances registration certificate or been called before or warned by any such agency or other lawful authority concerned with controlled substances?
17. Have you ever surrendered your state or federal controlled substances registration or had it restricted in any way?
18. have you ever been arrested, fined, charged with or convicted of a crime, indicted, imprisoned or placed on probation?
19. have you ever been a defendant in a legal action involving professional liability (Malpractice) or had a professional liability claim paid in your behalf or paid such a claim yourself?
20. have you ever been denied provider participation in any State Medicaid or Federal Medicare Programs?
21. Have you ever [been] terminated, sanctioned, penalized, or had to repay money to any State Medicaid or Federal Medicare Program?



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**To:** House Health and Human Services Committee

**From:** Dan Morin  
Director of Government Affairs

**Subject:** SB 81; concerning the state board of healing arts; fingerprinting and criminal history record checks.

**Date:** February 28, 2007

The Kansas Medical Society appreciates the opportunity to submit the following comments on SB 81, which authorizes the Board of Healing Arts to obtain fingerprints and conduct national background checks on new licensees, and those former licensees applying for reinstatement. The board would then have the ability to identify those with a criminal history and evaluate the applicant's degree of risk to the public in determining fitness for licensure.

Fingerprinting has long been a procedure reserved for the criminal element of our society or for identification purposes for those in dangerous jobs and civil background checks for those who serve our most vulnerable residents. Civil fingerprint checks are submitted to the FBI based upon a specific federal law authorizing a national fingerprint background check, or based upon a state statute or a municipal ordinance, if authorized by a state statute, authorizing a national background check in compliance with Public Law 92-544. The FBI currently has two fingerprint holdings – criminal and civil. The civil fingerprint file predominantly contains the fingerprints of individuals who have served or are serving in the U.S. military or have been or are employed by the federal government. Criminal background checks are becoming increasingly common in the general employment hiring and health care licensing process. In addition to the fingerprint check, all civil submissions undergo a name-based search of the subject against the wanted person file and the terrorist watch list located within the national crime information center.

We do not oppose giving the Healing Arts Board the authority to require that applicants for licensure submit fingerprints and be subject to a criminal background check. In fact, the State of Kansas should consider expanding fingerprinting and background checks for applicants for any kind of license that is issued by the state. Public Law (Pub. L.) 92-544 is broad and allows the FBI to exchange criminal history record information with officials of state and local governments for employment, licensing, which includes volunteers, and other similar noncriminal justice purposes, if authorized by a state statute.

Thank you for the opportunity to offer these comments.

*House Health and Human Services*

DATE: 3-1-07

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