

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:30 P.M. on January 24, 2008 in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Sara Zafar, Kansas Legislative Research Department
Nobuko Folmsbee, Revisor of Statutes
Renae Jefferies, Revisor of Statutes
Jan Lunn, Committee Secretary

Conferees appearing before the committee:

Kathy Damron, President, Strategic Communications of Kansas
Mark Stafford, General Counsel, Kansas Board of Healing Arts
Richard Morrissey, Interim Director, Division of Health, Kansas Department of Health and Environment

Others attending:

In addition to the attached list, there were approximately nine other individuals attending.

The Chairman called for bill introductions.

Kathy Damron, President, Strategic Communications of Kansas, representing Sanofi-Pasteur who manufactures various vaccines, requested the introduction of a bill that includes educational information about meningococcal meningitis disease and its vaccine if, at the beginning of a school year, a board of education for a local school district provides information on immunizations, infectious disease, medications, or other school health issues to parents and guardians of students in grades six (6) through twelve (12). Senator Brungardt moved the introduction, seconded by Senator Wagle. The motion carried. (See Attachment 1)

Mark Stafford, General Counsel of the Kansas State Board of Healing Arts, requested the introduction of a bill to define the term "surgery" to include surgical processes and services used solely for aesthetic purposes as being within the practice of medicine and surgery and therefore, licensure and competence are required. To prevent the definition from conflicting with other statutes, he requested amendment to K.S.A. 65-2872 to clarify that the definition excludes lawful services by a licensed electrologist, permanent color technician, or tattoo artist. Senator Vicki Schmidt moved the introduction; Senator Wagle seconded the motion. The motion carried. (Attachment 2)

Senator James Barnett requested the introduction of a bill to require the Kansas Health Policy Authority study obesity as a disease; to evaluate surgical risks, benefits and costs; to evaluate patient criteria for surgical intervention; to evaluate surgeon requirements for performing surgery; and to evaluate potential insurance coverage for weight-loss surgical procedures. The Kansas Health Policy Authority will report back to the Committee on Health Policy Oversight on or before November 1, 2008. Senator Vicki Schmidt moved the introduction; Senator Brungardt seconded. The motion carried.

Follow-Up Information:

Chairman Barnett called committee member attention to a handout (Attachment 3) from U. S. Attorney Eric F. Melgren addressed to Senator Wagle regarding a question raised related to a delay of action by the Board of Healing Arts and interaction with the United States Department of Justice. Senator Wagle added that discussion would continue within the Senate Health Care Strategies Committee.

Informational Briefing on Emergency Services as They Relate to Public Health Preparedness

Chairman Barnett introduced Richard Morrissey, Interim Director of the Division of Health, Kansas Department of Health and Environment who spoke regarding the recent reports published by the "Trust for

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on January 24, 2008 in Room 136-N of the Capitol.

America's Health (TFAH) Report on Public Health Preparedness." Mr. Morrissey, in his testimony (See Attachment 4) clarified that the focus of the report deals with emergency preparedness more than emergency services, although relational areas and overlap do exist. Mr. Morrissey delivered a clear, detailed report of all ten indicators included within the TFAH report including criteria in compliance and those determined to be out of compliance by TFAH.

Questions by Senators Schmidt and Barnett were heard related to KDHE's scoring projections for next year's TFAH report, and differences in the KDHE analysis as opposed to media reports and whether the media had requested response from KDHE. Mr. Morrissey responded that KDHE is prepared and will score higher in 2008. Mr. Morrissey reported that KDHE did issue a Press Release following media release of the TFAH report.

Senator Barnett adjourned the meeting at 2:05pm.

The next meeting is scheduled for Wednesday, January 30, 2008.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: January 24, 2008

NAME	REPRESENTING
Mark Stafford	BHA
LARRY BUENINGA.	BHA
Mindel Reel	KDHE
Dick Morrissey	KDHE
Robert Walker	KBEMS
STEVE SUTTON	KBEMS
Dylan Meyer	Pinger, Smith
Bob Moser	KATP - Doctor - of - Day
Ed Kwapp	KACP / KPOP
Richard Smurigo	Kentucky Bass Co.
Jeanne Dawd	KFL
Nicholas Parden	Sen. Dennis Kyle
Sarah Green	KHI News Service
Becky Bahr	KSFm
Bob Williams	Ks. Assoc. Osteopathic Medicine
Michelle Peterson	Capital Strategies
Reagan Cussimanno	KHPA

Kathy Damron

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800 SW JACKSON STREET, SUITE 1100

Topeka, Kansas 66612-2205

Mr. Chairman:

My name is Kathy Damron, and I am representing Sanofi-Pasteur, a manufacturer of various vaccines.

We have been working with a number with a number of meningitis advocacy organizations and KDHE to increase awareness of meningitis immunizations.

We request permission to introduce a committee bill (attached) to increase awareness among parents of middle and high school children. It is not a mandate for the vaccine, rather it is an education proposal.

KANSAS

If, at the beginning of a school year, a board of education for a local school district provides information on immunizations, infectious disease, medications, or other school health issues to parents and guardians of students in grades six (6) through twelve (12), then the following information about meningococcal meningitis disease and its vaccine shall be included:

- (a) A description of causes, symptoms, and means of transmission;
- (b) A list of sources for additional information; and
- (c) Related recommendations issued by the National Centers for Disease Control and Prevention.

SENATE PUBLIC HEALTH AND WELFARE
DATE: 01/24/08
ATTACHMENT: 1



KANSAS

KATHLEEN SEBELIUS
GOVERNOR

STATE BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

January 23, 2008

The Hon. Jim Barnett
Chairman
Senate Committee on Public
Health and Welfare
Room 120 South
Capitol

Re: Requested Bill to Define "Surgery"

Dear Senator Barnett:

Thank you for the opportunity to appear before the Committee on Public Health and Welfare on behalf of the State Board of Healing Arts. The Board requests a Committee bill to define the term "surgery".

The Board is aware of consumer-driven practices using surgical processes and devices but for purposes other than the "diagnosis, cure, or relief of wounds, fractures, bodily injury infirmity, disease, illness, or psychological disorder," as stated at K.S.A. 65-2869(b). Examples of these practices include body imaging procedures called scarification in which skin layers are purposefully removed, implanting devices and shapes, and the more commonly accepted "face lifts". When the purpose for any of these procedures is solely aesthetic, questions arise whether the service may be performed by an unlicensed person. The Board believes that these surgical practices inherently present a threat to the public unless performed by competent persons within professional standards.

A proposed definition of surgery is attached, and is consistent with professional, lay and judicial understandings of the term. To prevent the definition from conflicting with other statutes, K.S.A. 65-2872 should be amended to clarify that the definition does not apply to lawful services by a licensed electrologist, permanent color technician, or tattoo artist. Also, that statute should reflect that services in the situations described do constitute the practice of the healing arts as defined by the healing arts act, but that the act does not require licensure. Finally, subsection (g), which provides that services do not require licensure if performed by order or referral from a licensee, should be amended to strike "referral" as that language commonly is given much broader meaning than its original context.

BOARD MEMBERS: BETTY McBRIDE, Public Member, PRESIDENT, Columbus - VINTON K. ARNETT, D.C., VICE PRESIDENT, 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 - M. MYRON LEINWETTER, D.O., Rossville - MARK A. McCUNE, M.D., Overland Park - CAROL SADER, Public Member, Prairie Village
CAROLINA M. SORIA, D.O., Wichita - ROGER D. WARREN, M.D., Hanover - NANCY J. WELSH, M.D., Topeka - RONALD N. WHITMER, D.O., Ellsworth

235 SW TOPEKA BLVD., TOPEKA
Voice: 785-296-7413 Toll Free: 888-886-7205 Fax: 785-

SENATE PUBLIC HEALTH AND WELFARE
DATE: 01/24/08
ATTACHMENT: 2

January 23, 2008

Page 2

Once again, thank you for the opportunity to appear before you to request this legislation. We look forward to presenting testimony and materials in support of the bill.

Respectfully,



Mark W. Stafford,
General Counsel

Section 1. (a) For the purpose of the healing arts act, "surgery" shall mean the use of any device, procedure or method to sever, remove, destroy, or structurally alter body tissue or implant any device, object or tissue into the body of human beings for any purpose, including an aesthetic, reconstructive or cosmetic purpose. Surgery shall not be construed to mean manipulation for adjustment of misplaced tissue or acupuncture.

(b) The practice of medicine and surgery or osteopathic medicine and surgery shall include performing any surgery or prescribing, recommending or furnishing a drug, as defined at K.S.A. 65-656 and amendments thereto, for an aesthetic purpose.

Section 2. K.S.A. 2007 Supp. 65-2872 is hereby amended to read as follows: K.S.A. 65-2872. ~~The practice of the healing arts shall not be construed to include the following persons~~ *The healing arts act and amendments thereto shall not be construed to require licensure for the following:*

(a) Persons rendering gratuitous services in the case of an emergency.

(b) Persons gratuitously administering ordinary household remedies.

(c) The members of any church practicing their religious tenets provided they shall not be exempt from complying with all public health regulations of the state.

(d) Students while in actual classroom attendance in an accredited healing arts school who after completing one year's study treat diseases under the supervision of a licensed instructor.

(e) Students upon the completion of at least three years study in an accredited healing arts school and who, as a part of their academic requirements for a degree, serve a preceptorship not to exceed 180 days under the supervision of a licensed practitioner.

(f) Persons who massage for the purpose of relaxation, muscle conditioning, or figure improvement, provided no drugs are used and such persons do not hold themselves out to be physicians or healers.

(g) Persons whose professional services are performed under the supervision or by order of ~~or referral from~~ a practitioner who is licensed under this act.

(h) Persons in the general fields of psychology, education and social work, dealing with the social, psychological and moral well-being of individuals and/or groups provided they do not use drugs and do not hold themselves out to be the physicians, surgeons, osteopathic physicians or chiropractors.

(i) Practitioners of the healing arts in the United States army, navy, air force, public health service, and coast guard or other military service when acting in the line of duty in this state.

(j) Practitioners of the healing arts licensed in another state when and while incidentally called into this state in consultation with practitioners licensed in this state.

(k) Dentists practicing their professions, when licensed and practicing in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(l) Optometrists practicing their professions, when licensed and practicing under and in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(m) Nurses practicing their profession when licensed and practicing under and in accordance with the provisions of article 11 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(n) Podiatrists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(o) Every act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof.

(p) Pharmacists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 16 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(q) A dentist licensed in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated who administers general and local anesthetics to facilitate medical procedures conducted by a person licensed to practice medicine and surgery if such dentist is certified by the board of healing arts under K.S.A. 65-2899, and amendments thereto, to administer such general and local anesthetics.

(r) Practitioners of the healing arts duly licensed under the laws of another state who do not open an office or maintain or appoint a place to regularly meet patients or to receive calls within this state, but who order services which are performed in this state in accordance with rules and regulations of the board. The board shall adopt rules and regulations identifying circumstances in which professional services may be performed in this state based upon an order by a practitioner of the healing arts licensed under the laws of another state.

(s) *Electrologists, licensed permanent color technicians and tattoo artists, persons licensed to perform body piercing, or tanning facilities, when licensed by the state board of cosmetology and acting in accordance with the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated.*



U.S. Department of Justice

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District of Kansas

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January 22, 2008

Hon. Susan Wagle
Kansas Senator
Chairman, Health Care Strategies Committee
Room 120-S
Kansas State Capitol
Topeka, Kansas 66612-1504

Dear Senator Wagle,

I am responding to your letter dated January 17, 2008, wherein you inquire whether or not my office requested the Kansas Board of Healing Arts delay a recommendation, cease an investigation, or step back in any way from its review, in order to facilitate our investigation of Dr. Stephen Schneider.

In response to your inquiry, I have asked my staff to make a complete review of our files, records and logs regarding our contacts with the KBHA concerning Dr. Schneider. At no time did my office request the KBHA to defer its investigation in the interests of our federal investigation. We were aware of its investigation at all times, through phone calls and meetings between their staff and mine, and through a cooperative exchange of discovery to the extent that each of our guidelines permitted. Additionally, we were aware of the KBHA filing its initial petition on May 30, 2006; its First Amended Petition on September 1, 2006, and its Second Amended Petition on November 13, 2007. We raised no objections to these actions, and had none.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eric F. Melgren".

Eric F. Melgren
United States Attorney

State of Kansas

Senate Chamber



Susan Wagle

Topeka, January 17, 2007

The Honorable Eric Melgren:
301 N. Main Street, Suite 1200
Wichita, KS 67202

The Honorable Eric Melgren:

A number of news articles have been printed in the past few weeks regarding the Federal charges that have been filed against Dr. Stephen Schneider by your office. In more than one article, the Attorney for the Kansas Board of Healing Arts communicated that "federal investigators asked the board to delay the case so federal prosecutors could proceed with theirs." Two news articles with this reference are attached.

As Chair of Health Care Strategies Committee in the Kansas Senate, I am very interested in determining if in fact State actions were delayed or hindered in response to a communication from your office. Would you please verify for me whether or not your office asked the Kansas Board of Healing Arts to delay a recommendation, cease an investigation, or step back in any way in order to facilitate your federal investigation.

I know you and I agree that when regulatory agencies and law enforcement work together at the State and Federal level, the quality of the life for all Kansans improves. One would think that an investigation and the convening a grand jury to review evidence and press changes could work in conjunction with the Board taking action to suspend or pull a license to practice medicine. Any communication that would have kept the Board of Healing Arts from acting on a license to practice medicine would appear to be counterproductive to the goals of both agencies, and more important, to the health of the patients who were seeking services.

Any clarification as to the role of your office in this matter would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Wagle".

SUSAN WAGLE
Senator, District 30

SW:mlc

32



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Division of Health

**Trust for America's Health
Annual Report on Public Health Preparedness
Presented to
Senate Public Health and Welfare Committee
By Richard Morrissey
Interim Director, Division of Health
Kansas Department of Health and Environment**

January 24, 2008

Introduction

Chairman Barnett and other members of the Committee, thank you for the opportunity to provide you with an overview of the state's score on the most recent Trust for America's Health Report on Public Health Preparedness. My name is Richard Morrissey. I am the Interim Director of the Division of Health for the Kansas Department of Health and Environment (KDHE).

Background

The Center for Public Health Preparedness, located within the agency's Division of Health, works to build public health and healthcare capacity in order to prepare for and respond to public health emergency situations, including acts of terrorism, infectious disease outbreaks, and natural disasters such as ice storms and floods. This all-hazards approach to preparedness and response serves the state well in assuring plans are developed and tested for a variety of situations.

KDHE's preparedness and response activities are guided by the general public health authority contained in KSA 65-100, et seq. In an emergency response situation, the agency works in collaboration with the Adjutant General's Department, which has the primary statutory authority in disaster emergencies.

The Trust for America's Health (TFAH) is a national non-profit organization that studies and evaluates health readiness and response capabilities in all 50 states, using a changing set of indicators from year-to-year.

Trust for America's Health Annual report on Public Health Preparedness

Recently, Kansas met seven out of 10 criteria for public health emergency preparedness in a report released on December 18, 2007 by TFAH. The full report, "Ready or Not? – Protecting

the Public's Health from Diseases, Disasters, and Bioterrorism," can be found on the Web at www.healthymamericans.org.

Kansas scored nine out of 10 on last year's report. The indicator that Kansas missed last year, "achieve green status for Strategic National Stockpile (SNS) delivery," was accomplished in 2007 and is reflected in this year's report. State and local agencies completed Kansas HEAT in August 2006, a statewide exercise designed to test their ability to distribute and dispense supplies from the SNS. The exercise was the last requirement to meet the green status, the highest SNS rating the state can receive.

One of the three areas for improvement noted in this year's report is an Electronic Disease Surveillance System (EDSS) that is compatible with the CDC's national system, including integrating data from multiple sources, using electronic lab reporting, and using an Internet browser.

In November, KDHE launched the Kansas EDSS. The system is compatible with the CDC's EDSS, with the exception of electronic lab reporting, which will be integrated into the system in 2008. Once electronic lab reporting is integrated, Kansas will meet the standards for this measure.

According to the report, Kansas also failed to meet the two laboratory indicators for 24/7 coverage to analyze samples and the ability to test for biological threats. TFAH based these findings on KDHE responses to an Association of Public Health Laboratories survey that have since been revised. Unfortunately, the TFAH report was released before these revisions were made. Kansas Health and Environmental Laboratories staff members are on call at all times and have ample capability to test for biological threats.

A breakdown of each of the 2007 TFAH indicators and the status of Kansas in meeting them, along with some comparisons to the 2006 report follows:

Indicator #1

Achieved 'green' status for Strategic National Stockpile (SNS) delivery. Kansas met this indicator for the first time in 2007, after being evaluated by CDC for successfully completing the 'Kansas HEAT' exercise. CDC's annual site visit to Kansas to review the SNS Program resulted in a score of 93 out of 100 points, putting Kansas among the top states in the country as far as its preparedness to receive and distribute the contents of the SNS. Additionally, all of the state's local health departments have a plan to dispense the contents of the SNS to the state's citizens.

Indicator #2

Has purchased a portion of its share of federally subsidized or unsubsidized antivirals to use during pandemic flu. This is a new indicator in the 2007 report. Kansas has purchased antiviral medications for this purpose, which were received in December 2007 and are being stored in a secure, undisclosed location. The state-based antiviral cache contains 286,084 courses, which were purchased through an emergency supplemental award of \$4.2 million in state general funds. Between the state-based cache and the antivirals purchased and maintained by the Department of

Health and Human Services (HHS), KDHE has access to enough antivirals to treat 25 percent of the state's population in the case of an influenza pandemic.

Indicator #3

Has sufficient laboratory capabilities to test for biological threats. Kansas was one of the first states to upgrade its laboratories to Bio-Safety Level 3 (BSL-3) standards. A variant of this indicator was used last year when TFAH evaluated the sufficiency of BSL-3 laboratories to meet bioterrorism preparedness needs outlined in the state's emergency response plan.

Indicator #4

Can provide 24/7 laboratory coverage to analyze samples. State laboratory staff members are on call on a 24/7/365 basis. This indicator varies from the one used in 2006 in which states were assessed on the number of scientists available to test for anthrax and plague.

Indicator #5

Uses a surveillance system compatible with the CDC's National Electronic Disease Surveillance system. This state has recently upgraded its system. When electronic lab reporting is integrated as planned in 2008, Kansas will meet this indicator.

Indicator #6

Has laws that extend liability shields to healthcare volunteers in a public health emergency. Kansas has laws of this kind to ensure that healthcare workers are able to respond effectively. This is a new indicator used in the 2007 report.

Indicator #7

Held emergency preparedness exercises in 2007 with health department officials and the National Guard. KDHE routinely conducts exercises along with the Kansas National Guard. The 'Move It!' RSS Antiviral Distribution Exercise held in August 2007 was an example of this cooperation.

Indicator #8

Has at least 14 Medical Reserve Corps volunteers per 100,000 citizens. Kansas has an adequate number of Medical Reserve Corps volunteers to meet this indicator, which is new in the 2007 report. In 2006, TFAH instead evaluated the nursing workforce. All Kansas healthcare volunteers will be tracked using the new Kansas System for the Early Registration of Volunteers (K-SERV).

Indicator #9

Increased or maintained seasonal flu vaccination rate of adults age 65 and older. In 2006, 72.5 percent of adults 65 and older in Kansas received an influenza vaccination within the 12 months prior to the survey. Seasonal flu clinics help to prepare the health system to rapidly distribute

and administer the vaccines. Kansas also met this indicator in the 2006 report when it measured the vaccination rate for 2005.

Indicator #10

Increased or maintained level of funding for public health services from FY 2005-06 to FY 2006-07. In 2007, funding for public health services in Kansas increased by roughly 13 percent. Kansas also met this indicator when it was used in 2006.

Conclusion

Despite this year's lower score, KDHE leadership believes that Kansas is as prepared, if not more prepared than last year, for the reasons just described. KDHE is continuously improving its ability to protect public health through readiness and response. This remains a top priority of KDHE and our preparedness partners.

Thank you for the opportunity to provide testimony on this topic. I will now stand for questions.