

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 1, 2007 in Room 313-S of the Capitol.

All members were present except:  
Delia Garcia- excused

Committee staff present:  
Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Duston Slinkard, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:  
Jane Hrabik, Clerk of District Court, Rice County  
Alice Adams, Clerk of District Court, Geary County  
Jerry Slaughter, Kansas Medical Society  
Kirk Scott, Kansas Medical Mutual Insurance Company  
Tom Bell, Kansas Hospital Association  
Sarah Tidwell, Kansas Nurses Association  
Ann Kindling, Kansas Association of Defense Counsel  
Greg Dennis, Kansas Veterinary Medical Association  
Mike Hodge, Attorney at Law  
Chan Townsley, Attorney at Law  
Russell Hazzlewood, Attorney at Law  
Rick Guinn, Criminal Division, Office of Attorney General  
Marian Bonura, Citizen of the State of Missouri  
Shannon Shuler, Citizen of the State of Kansas  
Minh Peng, Citizen of the State of Kansas

The hearing on **SB 54 - criminal procedure; signing arrest warrants**, was opened.

Jane Hrabik, Clerk of District Court, appeared before the committee in support of the proposed bill. She stated that the clerks do not want to be placed in the position of determining probable cause in order to sign a warrant for arrest. The bill would strike that requirement and place it decision as to probable cause on judges. (Attachment 1)

The hearing on **SB 54** was closed.

The hearing on **SB 52 - regulating traffic; speed limit violations**, open records, was opened.

Alice Adams, Clerk of District Court, appeared as a proponent to the bill. She explained that it would clarify that a violation for speeding not more than 10 miles per hour in excess of the maximum speed would not be report by the Division of Motor Vehicles. (Attachment 2)

The hearing on **SB 52** was closed.

The hearing on **HB 2530 - the Kansas Consumer Protection Act does not apply to professional services by health care providers**, was opened.

Jerry Slaughter, Kansas Medical Society, appeared before the committee as a proponent of the bill. He explained that it would exempt certain "professional services" provided by physicians and other health care providers from falling under the Kansas Consumer Protection Act (KCPA). "Professional services" would be defined as those related to the practice of medicine and surgery. It would not, however, exempt acts such as improper billing.

Mr. Slaughter explained that the bill was proposed in response to a recent Kansas Supreme Court decision in *Williamson v. Amrani*. The case was originally filed as a medical malpractice case and a KCPA action.

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However, because the plaintiff was unable to obtain an expert who would testify that Dr. Amrani deviated from the standard of care, the malpractice action was dropped.

The KCPA case continued on the complaint that Dr. Amrani committed deceptive and unconscionable acts and practices by misleading the plaintiff about the benefits of the procedure and for willfully failing to disclose material facts about the success rate of the surgery. Unfortunately, the outcome of the surgery did not produce the desired results, and because no expert could be obtained, the patient pressed a claim under the KCPA.

The Court determined that a physician providing care and treatment to a patient is subject to the provisions of the KCPA, when it relates to deceptive acts and practices and to unconscionable acts and practices. The Court opined that the physician-patient relationship is subject to KCPA because the legislature did not specifically exempt them when the law was enacted in 1973. ([Attachment 3](#))

Mr. Slaughter reminded the committee that physicians are licensed, regulated, and disciplined through the Kansas Board of Healing Arts Act (KBHAA). In conjunction with filing a medical malpractice claim, there are up to 60 grounds in the KBHAA that can trigger a lawsuit and action by the Board. The State also requires medical doctors to carry professional liability insurance. The Legislature also established the Health Care Stabilization Fund to assure that individuals injured by a physician or other health care provider's negligence would be compensated.

By allowing individuals to bring medical malpractice type suits under the KCPA creates an exemption to the tort reforms the Kansas legislature has crafted over the years to try and balance the rights of individuals with the public's need to have access to quality health services.

Mr. Slaughter commented that billing procedures would still be covered under the KCPA and that the KBHAA has the ability to pull ones license for repeated acts and/or unconscionable acts.

Kirk Scott, Kansas Medical Mutual Insurance, stated that KCPA cases would not be covered under the physician's medical malpractice insurance policy. He believes that a majority of claims for medical malpractice will be amended to include a KCPA claim. The result will be increased litigation, increased cost of defending these actions and increased insurance expenses and therefore, increase the cost of medical care in Kansas.

Tom Bell, Kansas Hospital Association testified in support of the proposed bill. They are concerned that the Court's decision undermines the medical malpractice tort system that has been in place in Kansas for many years. He reiterated that Kansas already has in place the Kansas Board of Healing Arts which regulates licenses, and disciplines physicians and therefore should continue to be treated differently from supplier-consumer transactions. ([Attachment 4](#))

Sarah Tidwell, Kansas State Nurses Association, appeared as a proponent to the bill. She was concerned that the medical profession reinforces the mental and physical health of their patients but that not all respond to a treatment the same way. She noted that the proposed bill is narrowly drafted to exempt only "professional services" performed by a licensed physician or health care professional.

Ms. Tidwell also pointed out that registered nurses and ARNP's are regulated by the Kansas Board of Nursing, which has its own rules, regulations, and disciplinary process for those whose competency has been brought into question. ([Attachment 5](#))

Ann Kindling, Kansas Association of Defense Counsel, informed the committee that the reason a case is brought under the KCPA is because it allows for attorneys to recover their attorney fees, which can't be recovered under a medical malpractice case.

The KCPA was enacted for the purpose of protecting consumers who had not been afforded protection under common law. Whereas, patients are already protected from unconscionable or deceptive acts by the availability of medical malpractice remedy which encompasses claims not only for medical negligence by also for informed consent claims. ([Attachment 6](#))

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Greg Dennis, Kansas Veterinary Medical Association, requested that the committee include their profession under the bill. They are held accountable for standards of professional conduct and subject to disciplinary action for unprofessional conduct under a number of Kansas and federal statutes. ([Attachment 7](#))

The Kansas Psychological Association, Kansas Academy of Physician Assistants, National Association of Social Workers, Kansas Optometric Association, Mental Health Credentialing Coalition, Specialty Physicians Alliance, Kansas Dental Association, Kansas Association of Osteopathic Medicine, Kansas Pharmacy Coalition, and Kansas Society of Radiologic Technologists, did not appear before the committee but requested their written testimony in support of the bill be included in the committee minutes. ([Attachments 8- 17](#))

Michael Hodges, Attorney at Law, appeared as an opponent of the bill. While he believes that doctor's in Kansas are generally honest, there are some who are deceptive and that they should be allowed to be sued under the KCPA. The act simply applies to those who are "dishonest in attempting to sell a service."

Mr. Hodges stated that he didn't believe that doctors would not be covered under a insurance policy, that insurance cost would increase, nor that the cost of medical services would increase, simply because claims are now being filed under the KCPA. ([Attachment 18](#))

Chan Townsley, Kansas Trial Lawyers Association appeared before the committee as an opponent of the bill. He suggested that passing it would weaken the KCPA by creating an exception for physicians and health care providers that most Kansas businesses must obey. He voiced his concern that the word "physician" was defined in Kansas statute several ways to confuse one as to who is actually covered. ([Attachment 19](#))

Russell Hazzlewood, Attorney at Law, appeared as an opponent of the bill but agreed that medical malpractice suits should not be filed under the KCPA. He believes that all professionals should be covered under the KCPA, especially when it comes to billing practices. ([Attachment 20](#))

Rick Guinn, Criminal Division, Office of Attorney General, appeared before the committee in opposition of the bill. He worried about which profession would be exempt next if physicians were exempted out. He commented that their office received 5-7 complaints each week about billing practices. ([Attachment 21](#))

Mr Guinn stated in his written testimony that the "*Kansas Board of Healing Arts regulates a subset of health care providers. The Board is only responsible for licensing functions. The Board has no authority to investigate or prosecute deceptive or unconscionable acts.*" However, under questioning from the committee he agreed that the KBHA did regulate and have authority over physicians such as they can assess fines, and can request that the Attorney General prosecute.

Marian Bonura, Missouri, relayed her story about her husband receiving a surgery that was different than the one the doctor stated he would perform. ([Attachment 22](#))

Shannon Suhler, Derby, Kansas, relayed her story about billing practices by Wesley Medical Center. ([Attachment 23](#))

Minh Peng, Wichita, Kansas relayed her story about helping individuals who do not speak English with understanding billing procedures and instances where billings are not accurate. ([Attachment 24](#))

AARP, Dennis Essen, John & Brenda Kuhn, Teresa Culp, Theresa Allman, Lori Robles, William Kelly, Darrell Hicks, Stephen Dickerson, Carla Thomas, John Parker, Alice Souigny did not appear before the committee but requested their written testimony in opposition to the bill be included in the minutes. ([Attachments 25 – 36](#))

The committee meeting adjourned at 5:20. The next meeting was scheduled for March 5, 2007.

The hearing on **HB 2530** was closed.

The committee meeting was adjourned at 5:30 p.m. The next meeting was scheduled for March 5, 2007.