

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

February 9, 2007
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative John Faber
Representative Jan Pauls
Representative Arlen Siegfried
Representative Josh Svaty
Representative Mark Treaster

Members Absent

Senator Donald Betts
Senator Chris Steineger
Representative Lance Kinzer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Judy Glasgow, Committee Secretary

Others Present

Jeff Vogel, Kansas Department of Agriculture
Dale Lambley, Kansas Department of Agriculture
Deb Billingsley, Board of Pharmacy
Cheryl Magathan, Kansas Real Estate Appraisal Board
Chris Tymeson, Kansas Department of Wildlife and Parks
Fred Phelps, Jr., Kansas Department of Corrections
Deletria Nash, Kansas Insurance Department
Dan Morin, Kansas Medical Society
Jerry Slaughter, Kansas Medical Society
Mary Blubaugh, Kansas State Board of Nursing
Terri Roberts, Kansas State Nurses Association
Jane Nohr, Assistant Attorney General

Julie Ehler, Department of Agriculture
Wayne Bollig, Kansas Commission of Veterans' Affairs

The meeting was called to order by Representative Carl Holmes, Chairperson, at 1:00 p.m. on Friday, February 9, 2007.

The Chairperson recognized Cheryl Magathan, Kansas Real Estate Appraisal Board, to speak to the proposed rules and regulations noticed for hearing by the Kansas Real Estate Appraisal Board. KAR 117-3-2a, general classification; experience supervision requirements; and KAR 117-4-2a, residential classification; experience supervision requirements.

There were no questions from Committee members concerning these two rules and regulations. Ms. Magathan continued with her explanation of the proposed rules and regulations noticed for hearing by the Kansas Real Estate Appraisal Board. KAR 117-1-1, definitions; KAR 117-2-1, licensed classification; education requirements; KAR 117-2-2, licensed classification; appraisal experience requirement; KAR 117-2-3, licensed classification; examination requirement; KAR 117-2-4, licensed classification; scope of practice; KAR 117-3-1, general classification; education requirements; KAR 117-3-2, general classification; appraisal experience requirement; KAR 117-3-4, general classification; scope of practice; KAR 117-4-1; residential classification; education requirements; KAR 117-4-2, residential classification; appraisal experience requirement; KAR 117-4-3, residential classification; examination requirement; KAR 117-4-4, residential classification; scope of practice; KAR 117-6-1, continuing education; renewal requirements; and KAR 117-6-2, continuing education; approval of courses; requirements.

Ms. Magathan gave a brief overview of the current rules and regulations and explained these rules and regulations will set in place the 2008 criteria changes as established by the Appraisal Standards Board, an independent board of the Appraisal Foundation; which under the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) establishes the minimum education, experience, and examination requirements for real property appraisers to obtain a state certification.

Staff suggested that in KAR 117-2-1, page 3,(2), a statement be added to the effect that "the board will accept as meeting the Kansas requirements those that have been approved by". Staff noted that this addition is needed in KAR 117-3-2; 117-4-1 and 117-6-2. A Committee member also suggested that in paragraph (3) (c) on page 4 that the phrase "that approves the course" be looked at for clarification as used in this context. In KAR 117-4-4, (B), the reference to "residential units for one to four-families" the term "one to four family residential unit" would more accurately state the intent. Ms. Magathan responded to general questions from the Committee members. The Committee suggested that colleges be contacted about the increased educational requirements necessary to qualify for real estate appraisal licensing to allow them to develop courses, since only Wichita State offers courses at this time. The Chairperson thanked Ms. Magathan for her appearance before the Committee.

Chairperson Holmes recognized Debra Billingsley, Executive Secretary, to address the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-20-17, order forms.

Ms. Billingsley stated that this rule and regulation is being updated to incorporate federal requirements allowing electronic transfers of forms. Staff noted that if it was the Board's intention to reference 21 CFR part 1311, then it should be adopted by reference by a date certain. There being no other questions, Ms. Billingsley was thanked for her presentation before the Committee.

The Chairperson requested action on the minutes of the Committee for January 5, 2007. *Senator Vicki Schmidt moved to approve the minutes as presented, Senator Ostmeyer seconded the motion. Motion carried.*

Chris Tymeson, General Counsel, was recognized by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Wildlife and Parks Commission. KAR 115-4-4, big game; legal equipment and taking methods; KAR 115-4-4a, wild turkey; legal equipment and taking methods.

Mr. Tymeson stated these proposed rules and regulations were being amended to allow the use of illuminated nocks. There were no questions from the Committee.

Mr. Tymeson continued his explanation of proposed exempt rule and regulation by the Kansas Wildlife and Parks Commission. KAR 115-25-5, turkey; fall season, bag limit, and permits. Chairperson Holmes thanked Mr. Tymeson for appearing before the Committee.

Chairperson Holmes recognized Julie Ehler to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-8-14a, definitions of herbicides approved for cost share; KAR 4-8-27, adoption of musk thistle control program; KAR 4-8-28, adoption of johnsongrass control program; KAR 4-8-29, adoption of field bindweed control program; KAR 4-8-30, adoption of hoary cress control program; KAR 4-8-31, adoption of Russian knapweed control program; KAR 4-8-33, adoption of Canada thistle control program; KAR 4-8-34, adoption of leafy spurge control program; KAR 4-8-35, adoption of quackgrass control program; KAR 4-8-39, adoption of multiflora rose control program; and KAR 4-8-42, adoption of bull thistle control program.

She responded to questions of a general nature from Committee and staff. The Chairperson thanked Ms. Ehler for her presentation before the Committee.

Ms. Nohr, Assistant Attorney General, was introduced by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Bureau of Investigation. KAR 10-20-1, definitions; KAR 10-20-2, procedures and forms for reporting any missing person; KAR 10-20-2a, procedures and forms for reporting any unidentified person; and KAR 10-20-4, dissemination.

Ms. Nohr stated that these proposed rules and regulations were the result of HB 2626 passed during the 2006 Legislative Session. She noted that the last paragraph in KAR 10-20-1, page 1, (e) has been stricken by the agency.

Committee members requested that the definitions in KAR 10-20-1 be listed in alphabetical order. In KAR 10-20-2, page 1, (b), second line, the staff noted that the phrase "from receiving the report" be added to the sentence to determine the start of the two-hour time frame for the entry of the information into the National Crime Information Center (NCIC). In KAR 10-20-2a (b), line 2, staff also noted that a statement should be added to designate what triggers the start of the 24-hour period that information needs to be entered into NCIC as prescribed. Upon answering questions of a general nature, Ms. Nohr was thanked for her presentation before the Committee.

Chairperson Holmes recognized Deletria Nash, Staff Attorney, to address the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-3-55, fire and casualty insurance; certain premium surcharges prohibited; and KAR 40-7-25, agencies; termination of contract; certification.

The Chairperson noted that written testimony opposing the proposed rules and regulations (KAR 40-3-55) had been received from William W. Sneed, Legislative Counsel, the State Farm Insurance Companies, and was distributed for the Committee's review (Attachment 2).

The question was raised by staff as to whether or not the agency had the authority in statute to regulate the surcharge proposed in KAR 40-3-55. The Committee favorably received the intent of the proposed change, but questioned whether legislative action might be needed.

After a discussion by the Committee concerning KAR 40-3-55, and reviewing the written testimony received from the State Farm Insurance Company, the Committee reached a consensus that it would be appropriate to request that the Attorney General make a determination as to whether the Kansas Insurance Department does have authority to regulate surcharges. If they do have authority, then the Department should clarify what constitutes the \$1,000.00 damage. Deletria Nash proposed an amendment to the rule and regulation by the agency that if the insurance company did not make a payout, then it would not be counted as a payout for surcharge purposes. Chairperson Holmes thanked Ms. Nash for appearing before the Committee.

Chairperson Holmes recognized Fred W. Phelps, Jr., Legal Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Corrections (Attachment 3). KAR 44-6-101, definitions; KAR 44-6-125, good time forfeitures not restored; exceptions; limits; parole; guidelines release date; KAR 44-6-136, delinquent time lost on postincarceration supervision (DTLOPIS); KAR 44-11-111, definitions; KAR 44-11-113, comprehensive plan; comprehensive plan review; KAR 44-11-123, changes in the comprehensive plan, budget, agency outcomes, and out-year report; KAR 44-15-101a, grievance procedure distribution; orientation; applicability; remedies; advisory Committee; investigation; KAR 44-15-102, procedure; KAR 44-15-104, reprisals prohibited; and KAR 44-16-104a, inmate claims for personal injury.

The Committee noted that in KAR 44-6-101, that the definitions should be alphabetized for easier reference. In KAR 44-11-111, staff noted that the history section needs to be reviewed and updated. There being no further questions of Mr. Phelps, the Chairperson thanked him for his presentation before the Committee.

Chairperson Holmes recognized Mary Blubaugh, Executive Administrator, to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Nursing (Attachment 4). KAR 60-11-101, definition of expanded role; limitations; restrictions; KAR 60-11-102, categories of advanced registered nurse practitioners; KAR 60-11-103, qualifications of advanced registered nurse practitioners; KAR 60-11-104, functions of the advanced registered nurse practitioner in the category of nurse practitioner; KAR 60-11-105, functions of the advanced registered nurse practitioner in the category of nurse-midwife; KAR 60-11-107, functions of the advanced registered nurse practitioner in the category of clinical nurse specialist; KAR 60-17-102, requirements for initial approval; KAR 60-17-103, reapproval requirements; KAR 60-17-104, faculty and preceptor qualifications; KAR 60-17-105, curriculum requirements; KAR 60-17-107, educational facilities; KAR 60-17-108, student policies; and KAR 60-17-110, discontinuing an advanced registered nurse practitioner program.

Ms. Blubaugh gave the Committee a brief history behind the proposed rules and regulations which goes back to 1982. She stated that this particular set of rules and regulations began in 2002 and have gone through ten drafts. Ms. Blubaugh stated that there has been concern raised about the use of the term "medical aspects of patient care" in the rules and regulations. She stated that the goal was to define advanced registered nurse practitioner (ARNP) practice within statutory authority with the appropriate language to protect the public from individuals practicing beyond the scope of their education, training and experience.

In response to a question from the Committee, Ms. Blubaugh stated that the State Board of Nursing does not keep a copy of the individual protocols; these are kept by the ARNP and must be signed by both the ARNP and the physician. The Committee noted that the "principal place of practice" where the protocols are to be kept should be more clearly defined in KAR 60-11-101, page 2 (e). Ms. Blubaugh responded to numerous questions concerning the protocols and if these would limit or

broaden the responsibilities of those affected. Ms. Blubaugh stated that the protocols were more general in nature and remove the more specific lists of tasks that are currently used.

Ms. Blubaugh continued the review of proposed rules and regulations noticed for hearing by the Board of Nursing. KAR 60-4-101, payment of fees; KAR 60-7-106, unprofessional conduct; KAR 60-8-101, payment of fees; KAR 60-9-106, continuing nursing education for license renewal; and KAR 60-11-119, payment of fees.

The Committee had no questions concerning these proposed rules and regulations. The Chairperson thanked Ms. Blubaugh for her presentation before the Committee.

Chairperson Holmes recognized Terri Roberts, Executive Director, Kansas State Nurses Association (KSNA), to speak to the proposed rule and regulation, KAR 60-11-101 (Attachment 5). Ms. Roberts stated that there is one definition in the proposed rules and regulations that the KSNA finds problematic. The term "protocol" has been added and KSNA feels that the proposed regulation exceeds the statutory authority. At this time the only required protocol relates to drug prescriptions. The proposed rule and regulation adds a new requirement to have a written protocol for all medical aspects of patient care.

Jerry Slaughter, Kansas Medical Society, addressed the Committee concerning its ongoing dialogue with the Kansas State Nurses Association and the Medical Society's position regarding protocols.

After listening to comments from the Kansas State Nurses Association, the Kansas Medical Society, and the Kansas State Board of Nursing, it was the consensus of the Committee that the Attorney General be consulted to determine if the Kansas Board of Nursing does have statutory authority for the proposed protocol requirement. The Chairperson thanked everyone for coming and explaining their positions.

Chairperson Holmes called on Wayne Bollig to speak to the proposed rules and regulations noticed for hearing by the Kansas Commission on Veterans' Affairs. KAR 97-6-1, definitions; KAR 97-6-2, intent to participate; review; KAR 97-6-4, VSO services, staff, training, and other support; KAR 97-6-5, claims processing requirements; KAR 97-6-6, grant agreement requirements; KAR 97-6-7, responsibilities of parties to the grant agreements; KAR 97-6-8, duration of grants; insurance requirements; KAR 97-6-9, format and frequency of reports; KAR 97-6-10, quality assurance; and KAR 97-6-11, director's duties.

Mr. Bollig stated that the proposed rules and regulations noticed for hearing were the result of SB 396 passed by the 2006 Legislature which establishes procedures for the service grant program for participating veterans organizations.

The staff noted that the e-mail address needs to be included in the public notice to allow comments by e-mail; the website also should be included. Staff noted that in KAR 97-6-1, paragraph 1, the last line needs to be clarified to identify the term "secretary." Mr. Bollig stated that this refers to the Secretary of the U. S. Department of Veterans Affairs and the Commission would make this change. A Committee member commented that in KAR 97-6-4, CFR Part 14 should be adopted by reference by a certain date. In KAR 97-6-8, staff suggested that they may want to check the Kansas Act for Judicial Review of Agency Actions concerning their appeal procedure. Chairperson Holmes thanked Mr. Bollig for appearing before the Committee.

Written response from the Kansas Board of Regents regarding the questions concerning "qualified admissions" that was requested by the Committee at a previous meeting was distributed to Committee members (Attachment 6).

The Committee discussed the date for the next meeting, and a tentative date was set for March 27, 2007.

The Chairperson adjourned the meeting at 4:45 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Commission on Veterans' Affairs. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; intent to participate, review; VSO services, staff, training, and other support; claims processing requirements; grant agreement requirements; responsibilities of parties to the grant agreements; duration of grants, insurance requirements; format and frequency of reports; quality assurance; and director's duties and had the following comments.

KAR 97-6-1. The Committee requests that the agency clarify which secretary is responsible for the administration in subsection (a).

KAR 97-6-4. In subsection (d), the Committee suggests the inclusion of both language adopting the referenced portion on the CFR's by reference and a date to clarify the proper version to reference.

KAR 97-6-8. The Committee suggests review of this regulation for possible amendment to include a proper appeals process as provided for in the Kansas Act for Judicial Review of Agency Actions.

General Comment. Please include in your notice an agency website where the proposed regulations may be accessed and provide an e-mail address where public comments may be made to become a part of the public record.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general classification, experience supervision requirements; residential classification, experience supervision requirements and definitions; licensed classification, education requirements; licensed classification, appraisal experience requirement; licensed classification, examination requirement; licensed classification, scope of practice; general classification, education requirements; general classification, appraisal experience requirement; general classification, scope of practice; residential classification, education requirements; residential classification, appraisal experience requirement; residential classification, examination requirement; residential classification, scope of practice; continuing education, renewal requirements; and continuing education, approval of courses, requirements and had the following comments.

KAR 117-2-1. In subsection (c)(3)(C) and in subsequent subsections in this set of regulations, it is unclear who approves the course design. It appears that some other entity other than the Kansas Board approves the course design. The Committee suggests appropriate clarification.

KAR 117-2-4. In subsection (a)(2)(A), the term "atypical conditions" is used. The Committee suggests clarification of what is meant by the term.

KAR 117-4-4. The phrase "residential units for one to four families" is used in the regulation and others. The Committee believes this term is unclear and requests documentation of the use of the term in other similar venues.

Kansas State Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning order forms and had the following comment.

KAR 68-20-17. The Committee believes that there is a need to adopt the federal regulations as of a date certain.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning big game, legal equipment and taking methods; and wild turkey, legal equipment and taking methods and had no comment.

Kansas Bureau of Investigation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; procedures and forms for reporting any missing person; procedures and forms for reporting any unidentified person; and dissemination and had the following comments.

KAR 10-20-1. The Committee agrees with your staff that the definition of "emancipated minor" need to be stricken from this regulation. The Committee also suggests that the definitions be placed in alphabetical order.

KAR 10-20-2. The Committee believes that there needs to be clarification in subsection (b) indicating when the two-hour requirement is to begin.

KAR 10-20-2a. The Committee believes that there needs to be clarification in subsection (b) indicating when the 24-hour requirement is to begin.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions of herbicides approved for cost share; adoption of musk thistle control program; adoption of johnsongrass control program; adoption of field bindweed control program; adoption of hoary cress control program; adoption of Russian knapweed control program; adoption of Canada thistle control program; adoption of leafy spurge control program; adoption of quackgrass control program; adoption of multiflora rose control program; and adoption of bull thistle control program and had the following comment.

Request. The Committee requests that the agency furnish the Committee the date on which the Secretary held an open public meeting to adopt the official control program for each of the various species of noxious weeds.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning agencies, termination of contract, certification and fire and casualty insurance, certain premium surcharges prohibited and had the following comment.

KAR 40-3-55. The Committee requests that the agency provide references to other regulations where the agency has regulated surcharges. In addition, the Committee requests that the agency provide to the Committee, by February 27, 2007, an explanation of the authority the agency believes it has to promulgate this regulation. The Committee is interested in the specific statutory authority to implement these types of standards upon insurance companies.

Kansas Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; good time forfeitures not restored, exceptions, limits, parole, guidelines release date; delinquent time lost on postincarceration supervision (DTLOPIS); definitions; comprehensive plan, comprehensive plan review; changes in the comprehensive plan, budget, agency outcomes, and out-year report; grievance procedure distribution, orientation, applicability, remedies, advisory Committee, investigation; procedure; reprisals prohibited; and inmate claims for personal injury and had the following comment.

KAR 44-6-101. The Committee requests that the definitions be in alphabetical order.

Kansas State Board of Nursing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definition of expanded role, limitations, restrictions; categories of advanced registered nurse practitioners; qualifications of advanced registered nurse practitioners; functions of the advanced registered nurse practitioner in the category of nurse practitioner; functions of the advanced registered nurse practitioner in the category of nurse-midwife; functions of the advanced nurse practitioner in the category of clinical nurse specialist; requirements for initial approval; reapproval requirements; faculty and preceptor qualifications; curriculum requirements; educational facilities; student policies; and discontinuing an advanced registered nurse practitioner program and payment of fees; unprofessional conduct; payment of fees; continuing nursing education for license renewal; and payment of fees and had the following comments.

KAR 60-9-106. The Committee questions the use of participation on a board of directors of a nursing organization as adequate continuing education.

KAR 60-11-101. In subsection (e), the Committee is unclear where the "principal place of practice" would be. Please review this issue.

KAR 60-11-104. In this regulation and in others reviewed at this time, the phrase "for which competency has been established and maintained." The Committee questions whether the agency has the ability to determine whether competency has either been established or maintained by a practitioner. Please review this issue and respond accordingly.

Request. The Committee is concerned with the authority of the Board to establish "protocol" as defined in this set of regulations. The Committee requests that the agency review its statutory authority and explain in detail where and how it believes that statutory authority exists beyond the written protocol for the prescription of drugs. The Committee is particularly concerned with the phrase "medical aspects of patient care." The Committee expects a response to these concerns to the Committee by February 27, 2007, in order for there to be sufficient time for the Legislature to respond accordingly.

General Comment. The Committee is concerned about the establishment of different protocols for the mid-level practitioners, the physician's assistants, and the advanced registered nurse practitioners that would be created by the adoption of these regulations.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

April 4, 2007

Date