

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 25, 2005
Room 526-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Dennis Wilson, Vice-Chairman
Senator Karin Brownlee
Representative Jerry Henry
Representative Lance Kinzer
Representative Jan Pauls
Representative Sharon Schwartz

Members Absent

Senator Don Betts
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative Candy Ruff
Representative Scott Schwab

Staff Present

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

Others Present

Rod Bieker, Kansas State Department of Education
Susan Helbert, Kansas State Department of Education
Nialson Lee, Kansas Department of Social and Rehabilitation Services
Richard Harper, Kansas Department of Health and Environment
Mike Cochran, Kansas Department of Health and Environment
Mike Dealy, Groundwater Management District #2, Halstead
Sandy McAdam, Kansas Department of Health and Environment
Gene Lueger, Kansas Department of Health and Environment
Larry Buening, Kansas State Board of Healing Arts
Rob Mealy, Hein Law Firm
Mary Blubaugh, Kansas State Board of Nursing

Patty Brown, Kansas State Board of Nursing
Marla Rhoden, Kansas Department of Health and Environment
Janet Neff, Kansas Department of Health and Environment
Charles Hunt, Kansas Department of Health and Environment
Sue M. Lai, Kansas Cancer Registry, Kansas University Medical Center
Martha L. Cooper, Kansas Department of Health and Environment
Paula Marmet, Kansas Department of Health and Environment
Chris Tymeson, Kansas Department of Wildlife and Parks
Janet Chubb, Secretary of State's Office
Terry Tracy, Kansas Department of Labor
Anne Haught, Kansas Department of Labor
Dan Riley, Kansas Department of Agriculture

Morning Session

Chairman Holmes called the meeting to order at 10:40 a.m. He recognized Nialson Lee, Kansas Department of Social and Rehabilitation Services (SRS), who addressed the proposed rules and regulations noticed for hearing on prior authorization by the Department of Social and Rehabilitation Services. KAR 30-5-64, prior authorization.

Mr. Lee stated that anticholinergic urinary drug; trospium chloride; intranasal corticosteroids: Bausch & Lomb's flunisolide; inhaled corticosteroids: Flunisolide-menthol; beclomethasone; QVAR; triamcinolone; budesonide inhalation powder; budesonide inhaled suspension; have been added to the list of prior authorization drugs. The Committee noted that the economic impact statement needs to be corrected as it does not correspond to the noticed rules and regulations. Mr. Lee stated that this would be done before the public hearing. Chairman Holmes reminded Mr. Lee that the next meeting would be at *Sine Die* and he should check with the staff of the Legislative Research Department for interim dates because of the 30-day notice of hearing on these matters. The Chairman thanked Mr. Lee for appearing before the Committee.

Chairman Holmes asked for action on minutes of the Committee for March 4 and March 29, 2005. It was noted on the March 4 minutes on page 7, KAR 18-18-1, should be changed to KAR 28-18-1. *Senator Wilson moved that the March 4 minutes be approved as corrected and the March 29 minutes be approved as presented. Senator Brownlee seconded the motion. The motion carried.* Chairman Holmes stated that during the March 29 meeting, the Department of Health and Environment noted that there was no way to determine from the Surface Water Register whether or when a stream segment has had a Use Attainability Analysis (UAA) conducted on it. However, Representative Holmes reviewed a copy of a publication from the Sierra Club that contained this information. It was the consensus of the Committee that a follow up on this matter be made by staff.

Chairman Holmes recognized Rod Bieker, General Counsel from the Kansas State Department of Education, to speak to the proposed rules and regulations noticed for hearing by the Department of Education. KAR 91-1-203, licensure requirements; KAR 91-1-213, revoked; KAR 91-1-220, technical education certificate; and KAR 91-1-221, technical education special needs certificate.

Mr. Bieker stated that these proposed rules and regulations were needed to issue certificates to persons who have knowledge, skills, and experience in technical or vocational areas, but who do not have college degrees. The members of the Committee had some questions concerning KAR 91-1-203 (1) (3) regarding the minimum 2.50 cumulative GPA. It was suggested that it be clarified by adding "based on a 4.0 GPA system." A Committee member noted that the language on page

4(b)(3)(A) also should be added on page 2(a)(2)(H). Mr. Bieker responded to general questions concerning the proposed rules and regulations. Chairman Holmes thanked Mr. Bieker for appearing before the Committee.

Mike Cochran, Chief of the Geology Section, Bureau of Water, Kansas Department of Health and Environment (KDHE), was recognized by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment concerning Groundwater Management District (GMD) No. 2 (Attachment 1). KAR 28-30-200, definitions; KAR 28-30-201, plugging operations; notification; report; KAR 28-30-202, plugging operations for an abandoned water well or borehole; responsibility; KAR 28-30-203, annular space grouting procedures; KAR 28-30-204, inactive well; application; construction and extension; KAR 28-30-205, disinfection of an abandoned water well or borehole; KAR 28-30-206, administrative appeal to the board; and KAR 28-30-207, variance; extension of time.

Mr. Cochran introduced Richard Harper, Water Well Program Unit Chief, and Mike Dealy, manager of the Equus Beds Groundwater Management District No. 2, to answer questions and concerns the Committee might have regarding the proposed rules and regulations. Mr. Cochran explained that KDHE already had rules and regulations in place covering these proposals, but that GMD No. 2 has proposed these rules and regulations to cover only its district.

The Committee noted that some of the definitions in KAR 28-30-200 may need to be included in KDHE's rules and regulations, so that they are consistent. In response to questions raised by the Committee concerning the need to go beyond the KDHE's rules and regulations, Mr. Dealy stated that since 1990 there has been a need in GMD No. 2 to have a representative from the agency on site to witness the plugging of a well and to act as an advisor. A concern was raised by the Committee about assessing a penalty against an owner of a well in a contaminated area who is not aware of the contamination. Mr. Cochran stated that there is no penalty imposed against the owner in a situation like this. Staff suggested that language be added to the regulations to protect owners who are not aware of a contamination site. A question was raised concerning KAR 28-30-206 when an order issued by the district may be appealed by requesting a hearing with the Board. Staff noted that clarifying language may be needed since it states the Board will issue a final order, however that order may be appealed to the state agency. It was noted by staff that in the history section of the proposed rules and regulations, the references to KSA Supp. 82a-1208 in the hearing notice and economic impact statement should be changed to KSA Supp. 82a-1028.

After answering general questions from Committee members, the Chairman thanked Mr. Cochran, Mr. Dealy, and Mr. Harper for appearing before the Committee.

Chairman Holmes introduced Larry Buening, Executive Director, Kansas State Board of Healing Arts, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts. KAR 100-27-1, supervision of light-based medical treatment.

There were no questions for Mr. Buening concerning this rule and regulation from the Committee.

Mr. Buening then spoke to proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts concerning radiologic technologists. KAR 100-73-1, fees; KAR 100-73-2, application; KAR 100-73-3, criteria for approval of programs in nuclear medicine technology, radiation therapy, and radiography; KAR 100-73-4, examinations; KAR 100-73-5, expiration of license; and KAR 100-73-6, unprofessional conduct; defined.

After explaining the proposed rules and regulations, the Committee had no questions for Mr. Buening. The Committee did state that they appreciated the detailed economic statement provided by the agency.

Mr. Buening addressed the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts concerning physician assistants and naturopathy. KAR 100-28a-14, different practice location; KAR 100-28a-17, limitation on number of physician assistants supervised; KAR 100-28a-18, physician assistant; ownership of corporation or company; and KAR 100-72-6, professional liability insurance.

Mr. Buening stated that KAR 100-28a-17 was the result of a change by the Legislature last year to clarify the exact number of physician assistants supervised by a physician. He noted that KAR 100-28a-18 is the result of legislation passed this year. Committee members questioned Mr. Buening about KAR 100-28-14 (1) and the addition of "licensed in this state" and asked that Mr. Buening check into how this might relate to Ft. Riley's hospital and its having physicians from other states stationed there. In response to a question from a Committee member, Mr. Buening reported that there are ten licensed naturopathy doctors in the State of Kansas.

Mr. Buening then addressed the proposed rule and regulation noticed for hearing by the Kansas State Board of Healing Arts. KAR 100-22-5, diagnostic or therapeutic services performed in an office for the practice of the healing arts.

Mr. Buening explained that this regulations covers physicians who perform surgical or specialized procedures outside of a hospital or ambulatory surgical center when administering anesthesia levels greater than those specified in the regulation and the physicians would be responsible for performing the service in a location that meets the standards.

In response to questions from Committee members, Mr. Buening said that his agency had received comments from offices concerning the costs physicians would incur to bring their facilities up to standards, but these costs would vary depending upon what equipment already exists in the offices. The Committee questioned how other states were regulating these services and what standards they were using. Mr. Buening stated he did not know at this time but that he would find out and provide the Committee with his findings. Committee members questioned whether abortion clinics currently were covered under these rules and regulations. Mr. Buening stated that he could only answer for two clinics, one in Kansas City and the other in Wichita, and that they were not covered at this time.

Afternoon Session

Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Nursing. KAR 60-3-106a, temporary permit; KAR 60-3-107, expiration dates of applications; KAR 60-3-108, license expiration and renewal; KAR 60-3-112, exempt license; KAR 60-11-113, certificate renewal; KAR 60-11-120, expiration dates of certificates; applications; KAR 60-11-121, exempt certificate; KAR 60-13-112, authorization renewal; KAR 60-15-101, definitions and functions; KAR 60-15-104, medication administration in a school setting; KAR 60-16-103, course approval procedure; KAR 60-16-104, standards for course; competency examination; recordkeeping; and KAR 60-17-111, requirements for advanced registered nurse practitioner refresher course.

Ms. Blubaugh stated that the reason for the proposed rules and regulations was to clarify language and to clarify the expiration date of a license. A question was raised from a Committee member concerning changes in KAR 60-3-112, (B) and also KAR 60-11-121 from "jurisdiction" to "state or territory" and how this phrase is being used. Ms. Blubaugh stated she would check on this. After answering questions of a general nature from Committee members, Ms. Blubaugh was thanked for her appearance before the Committee.

Chairman Holmes introduced Paula Marmet, Director, Office of Health Promotion, to address the proposed rules and regulations noticed for hearing by the Department of Health and Environment. KAR 28-70-1, definitions; KAR 28-70-2, reporting requirements; and KAR 28-70-3, use and access.

Ms. Marmet stated that these rules and regulations were promulgated to update the regulations adopted in 1998 as a result of legislation passed in the 2004 Legislative Session, KSA 65-1,168 and KSA 65-1,169. Staff noted that in KAR 28-70-2, paragraph one, (a), a cross reference to the definitions for hospital, an ambulatory surgery center, a radiology oncology center or a pathology laboratory would be helpful in determining requirements. In response to a question concerning whether this register is done in other states, Sue M. Lai, Director, Kansas Cancer Registry, Kansas University Medical Center, stated that in order to be in compliance with federal law and receive federal funds, this reporting is required by all states. In response to a question by the Committee as to whether or not any clusters had been discovered within the state, Ms. Lai stated that none had been found.

Chairman Holmes thanked Ms. Marmet and the staff from Kansas Department of Health and Environment for their appearance before the Committee.

Marla Rhoden, Director, Health Occupation Credentialing, was recognized by the Chairman to speak to the proposed rules and regulations noticed for hearing by the Department of Health and Environment concerning speech language pathologists and audiologists. KAR 28-61-1, definitions.

After responding to general questions from the Committee, Ms. Rhoden was thanked by Chairman Holmes for her presentation before the Committee.

Chairman Holmes introduced Chris Tymeson to address the proposed rules and regulations noticed for hearing by the Wildlife and Parks Commission. KAR 115-9-9, electronic licenses, permits, stamps, tags, and other issues of the department; other requirements.

The Committee had no questions concerning the proposed rule and regulation. Mr. Tymeson then proceeded to describe the exempt rules and regulations noticed for hearing by Wildlife and Parks, KAR 115-25-1, prairie chickens; open seasons, bag limits, and possession limits; KAR 115-25-1a, quail; open seasons, bag limits, and possession limits; and KAR 115-25-1b, pheasants; open seasons, bag limits, and possession limits.

Mr. Tymeson explained that the purpose of the rules and regulations was to separate prairie chickens, quail, and pheasants into individual rules and regulations. This is being done to stagger the opening day for each species. Mr. Tymeson stated that this would bring more hunters and revenue into the State of Kansas. Chairman Holmes thanked Chris Tymeson for his presentation before the Committee.

Janet Chubb, Assistant Secretary of State, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Secretary of State. KAR 7-41-1, definitions; KAR 7-41-14, state agency; compliance; KAR 7-41-15, registration authority and local registration authority; compliance; KAR 7-41-16, registration authority and local registration authority; general responsibilities; KAR 7-41-17, registration authority and local registration authority; notification, certification, protection, and restriction; KAR 7-41-18, registration authority and local registration authority; information confidentiality, access, classification, verification, correction, and revision; KAR 7-41-19, registration authority and local registration authority; security procedures; KAR 7-41-20, registration authority and local registration authority; equipment security and physical access; KAR 7-41-21, registration authority and local registration authority personnel; qualifications and requirements; KAR 7-41-22, registration authority and local registration authority; private key archiving; KAR 7-41-23, registration authority's local registration authority's private key use; restrictions; KAR 7-41-24, identification and authentication; initial registration; KAR 7-41-25,

identification and authentication; types of names; KAR 7-41-26, identification and authentication; meaningful name required; KAR 7-41-27, identification and authentication; name interpretation and subordination; KAR 7-41-28, identification and authentication; recognition and authentication of trademarks; KAR 7-41-29, identification and authentication; procedures; KAR 7-41-30, identification and authentication; certificate security levels; KAR 7-41-31, certificate renewal, updating, and routine rekeying; KAR 7-41-32, agreements; registration authority; local registration authority; subscriber; and KAR 7-41-33, picture identification credentials.

Ms. Chubb explained that the Office of the Secretary of State was the agency designated to secure standards and govern the use of digital signatures by state agencies and that is the reason for these proposed rules and regulations.

Staff noted that in KAR 7-41-1, that the ITEC policy should be adopted by reference and the five different standards listed in the rules and regulations also should be adopted by reference by date. Also in KAR 7-41-15, (b) the I and A should be cross referenced to the proper regulation for easier location of the criteria. Staff also questioned whether legislative action would be needed to the open records law to create an exception to disclosure of public information. A Committee member suggested that "CA" should be included in the definition section even though there are none in Kansas since the term is used in the proposed rules and regulations. This could be done by a cross reference. In KAR 7-41-28, a question was raised concerning the term "meaningful name" and suggested that the regulation include what would be acceptable as a meaningful name. A concern was raised by the Committee as to whether or not the Kansas state drivers' licenses, as issued, would meet the requirements as set forth in KAR 7-41-33. Ms. Chubb was asked to check on this. Ms. Chubb responded to general questions concerning the rules and regulations from Committee members. Chairman Holmes thanked Ms. Chubb for her presentation before the Committee.

Chairman Holmes introduced Dan Riley, General Counsel, Kansas Department of Agriculture, to provide information concerning the civil penalty matrix for violations of the Kansas Pesticide Act (Attachments 2 and 3). Mr. Riley stated that the federal government has the original jurisdiction and authority for pesticide enforcement through the Environmental Protection Agency (EPA). Mr. Riley explained that the civil penalty matrix or the enforcement matrix is a record of past responses to pesticide enforcement and is used by the agency to ensure consistency. Mr. Riley noted that the penalties for pesticide violations are clearly set out in the statutes. He explained that this is not a normal record kept by the agency, but is used as a case history to look at different factors in determining the fines to assess, rather than a matrix as used in courts to set fines.

Committee members raised questions about the fact that the agency had denied an open record request for the matrix and whether this information is available for public viewing. Mr. Riley stated that the party requesting a copy of the penalty matrix had been offered the opportunity to review the document and could have appealed both the denial under the open records request and the administrative law order, but did not. A Committee member asked whether this would be available under the federal Freedom of Information Act if a person requested it from the EPA. Mr. Riley stated he could not answer that question.

Chairman Holmes recognized Anne Haught, Department of Labor, to address questions raised by a Committee member at the last meeting on the pharmacy fee schedule under workers compensation (Attachments 4 and 5). Ms. Haught also furnished the Committee with a copy of *Kansas Workers Compensation, Schedule of Medical Fees*, dated December 1, 2003. This copy is located in the Kansas Legislative Research Department. Chairman Holmes explained that the Committee member who had raised the questions at the last meeting was not present, but that the information would be provided to him and if he had further questions, staff would contact Ms. Haught. The Chairman thanked Ms. Haught for appearing before the Committee.

Chairman Holmes announced that the next meeting of the Committee will be held on *Sine Die*. There being no further business, the Committee was adjourned.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization and had the following comment.

Request. The Committee requests that the agency provide a copy of the corrected economic statement.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning licensure requirements; revocation; technical education certificate; and technical education special needs certificate, and had the following comment.

KAR 91-1-203. The Committee suggests clarifying language to establish the scale upon which the GPA requirements are based.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervision of light-based medical treatment; fees; application; criteria for approval of programs in nuclear medicine technology, radiation therapy, and radiography; examinations; expiration of license; unprofessional conduct, defined; different practice location; limitation on number of physician assistants supervised; physician assistant, ownership of corporation or company; professional liability insurance; and diagnostic or therapeutic services performed in an office for the practice of the healing arts, and had the following comments.

KAR 100-73-2. In (b)(1)(C), the Committee questions the authority of a notarial officer to certify the copy of the applicant's diploma.

KAR 100-28a-14. The Committee questions the impact of the requirement of oversight by doctors licensed in Kansas for physician assistants particularly in certain border and rural areas. The Committee also expressed the same concern about military doctors.

KAR 100-27-1. The Committee suggests that the Board explore the establishment of a protocol for those individuals not licensed under the Healing Arts Act who are involved with providing treatments using light-based medicine.

Comment. The Committee is concerned about the Economic Impact Statement for KAR 100-22-5. It appears to be inconsistent with respect to third party payors and the costs of cash-basis services.

Kansas Board of Nursing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning temporary permit; expiration dates of applications; license expiration and renewal; exempt license; certificate renewal; expiration dates of

certificates, applications; exempt certificate; authorization renewal; definitions and functions; medication administration in a school setting; course approval procedure; standards for course, competency examination, recordkeeping; and requirements for advanced registered nurse practitioner refresher course, and had the following comment.

General Comment. The Committee suggests the agency consider the use of alternative language with respect to the use of the word "territory" found in KAR 60-3-112 and KAR 60-11-121. The Committee believes the term may not be consistent with other regulations addressing this same type of issue.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning electronic licenses, permits, stamps, tags, and other issues of the department, other requirements; and exempt regulations, and had the following comment.

KAR 115-25-1 (exempt). The Committee continues to be concerned about the establishment of a season for a species which is close to being placed on the endangered species list.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; plugging operations, notification, report; plugging operations for an abandoned water well or borehole, responsibility; annular space grouting procedures; inactive well, application, construction and extension; disinfection of an abandoned water well or borehole; administrative appeal to the board; and variance, extension of time, and had the following comments.

KAR 28-30-203. The Committee suggests that the language with respect to the requirements for plugging in a contaminated area include a provision whereby a violation would occur only when the responsible party "knowingly" fails to comply with the requirements.

KAR 28-30-206. The Committee suggests that the agency review the proposed appeals process to determine if the process is appropriate and consistent with the appeals process used by the Division of Water Resources of the Department of Agriculture in its regulations promulgated on behalf of groundwater management districts.

General Comment. The Committee is concerned that the Economic Impact Statement does not fully reflect the total cost of the regulations and specifically, the capital and annual costs of compliance.

The Joint Committee on Administrative Rules and Regulations also reviewed for public comment rules and regulations concerning definitions; reporting requirements; and use and access (cancer registry) and definitions (licensure of speech language pathologists and audiologists), and had no comment.

Kansas Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; state agency, compliance; registration authority and local registration authority, compliance; registration authority and local registration authority, general responsibilities; registration authority and local registration authority, notification, certification, protection, and restriction; registration authority and local registration

authority, information confidentiality, access, classification, verification, correction, and revision; registration authority and local registration authority, security procedures; registration authority and local registration authority, equipment security and physical access; registration authority and local registration authority personnel, qualifications and requirements; registration authority and local registration authority, private key archiving; registration authority's and local registration authority's private key use, restrictions; identification and authentication, initial registration; identification and authentication, types of names; identification and authentication, meaningful name required; identification and authentication, name interpretation and subordination; identification and authentication, recognition and authentication of trademarks; identification and authentication, procedures; identification and authentication, certificate security levels; certificate renewal, updating, and routine rekeying; agreements, registration authority, local registration authority, subscriber; and picture identification credentials, and had the following comments.

KAR 7-41-1. The Committee suggests the adoption by reference for all published documents cited in this regulation.

KAR 7-41-15. The Committee suggests cross-reference of the "I and A procedures" outlined in other proposed regulations.

KAR 7-41-18. The Committee suggests that the agency consider the introduction of legislation to amend the Open Records Act if the agency wishes to shield the certificates from disclosure.

KAR 7-41-23. The Committee suggests that the terms be clarified by referencing the statutory citation where the terms are defined.

KAR 7-41-26. The Committee notes that the title of the regulation refers to "meaningful name." However, this term is not accounted for in the text of the regulation.

KAR 7-41-33. The Committee is interested in knowing whether the current Kansas drivers' licenses, including those used by minors, meet the identification credentials of the regulation.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

May 20, 2005

(date)