

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 p.m. on March 23, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Ms. Emalene Correll, Legislative Research
Mr. Norm Furse, Revisor of Statutes
Mrs. Diana Lee, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Others attending:

Please See Attached List.

Action on HB2657 - an act concerning mortuary arts; relating to removal of dead bodies; educational requirements; examination and licensure; subpoenas; amending statutes and repealing existing sections.

The Chair stated, the Committee was working on a balloon on HB2657 yesterday when they adjourned, and Senator Journey had made a motion to replace the stricken language on line 23 with “an attested copy of the record of the action of the other jurisdiction meaning presumptive evidence thereof,” and it had passed. Also passed, a motion made again by Senator Journey that the amended language “crime” be stricken on page 3, line 27 and replaced with “felony” as originally drafted and on lines 29 and 30, the stricken language be reinserted with additional language to read as “or has been convicted of any offense involving moral turpitude or criminal desecration.”

Senator Brungardt made a conceptual motion to change the language on page 3 from “incapacitated” to “impaired” to reflect other statutes in the healing art acts dealing with impairment. It was seconded by Senator Jordan. The motion carried.

Senator Brungardt made a conceptual amendment to allow this person to get a professional opinion or evaluation, such as a person licensed to practice medicine and surgery or a person licensed to diagnose or treat mental illness, to determine if the person is impaired and for the Board to have the right to request or review. The motion was seconded by Senator Barnett and the motion carried

Senator Brownlee made a motion to approve the technical amendments on page 1. Senator Barnett seconded and the motion carried.

Senator Barnett made a motion to adopt the technical change on page 2, line 19, inserting the words “or after,” and the two policies by: 1) striking language in lines 22 and 23 as current law requires 30 semester hours in mortuary arts, the change would leave to the board to determine the hours and 2) striking language on lines 30 and 31, the change would leave to the board the passing score. This was seconded by Senator Brownlee and the motion carries.

Senator Barnett made a motion to adopt the policy change on page 5, lines five through 11, which adds three additional grounds for disciplinary action. Senator Jordan seconded the motion and the motion carried.

The Chair then asked Mr. Furse to reread Senator Journey’s amendment beginning on line 27, of page 3 per Senator Haley’s request, who then asked for clarification of the use of the word “or.”

As there were no other amendments of the bill, Senator Barnett made a motion to move the bill favorably as amended. This was seconded by Senator Brownlee and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 23, 2004 in Room 231-N of the Capitol.

Page 2

Action on HB2658 - an act concerning adult care licenses; relating to informal dispute resolution; providing for an independent review panel

The Chair said the next order of business was action on HB2658 and stated that the proponents were concerned they were receiving deficiencies and when they would appeal them, they were appealing to the supervisors of those who wrote the deficiencies. As the Secretary just took this function over in July, felt like she wanted some time to work on it. In visiting with her recently, the Chair asked her if she could offer the Committee some language that would not cost money and allow these people to feel like they are being treated in a fair manner, as the bill is costing money. The Chair stated the original bill in the House said the Secretary of Aging would appoint a 3-person panel, but as it came out of the House Committee, they had a contract with the Center for Medicare and Medicaid which meant it was going to cost money to review these filings and she is reluctant to pass a bill that is going to cost money.

The Chair then asked Mr. Furse to explain the balloon with the Secretary of Aging's suggestions. He stated the change would basically give the Secretary the authority to appoint a panel of three persons to compose the independent review panel and goes on to explain how the members would be chosen. Also, on page 2, the change would strike the reference again to the medicaid/medicare agency and is being replaced by this panel that the Secretary will appoint. A copy of the balloon is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chair asked for questions and recognized Senator Barnett who asked: 1) will the two outside of the department be paid and if so, it's still going to cost a little bit of money, and 2) if we are really trying to create an independent panel, it seems like the last sentence should be changed to "two members shall be appointed from outside, not from within the Department of Aging, and suggest maybe people from the health care profession or from a consumer group. The Chair recognized Ms. Kathy Greelee, representing the Secretary, who stated:

- there is a fiscal note involved if they go outside the agency and that Senator Barnett's comments really reflect the way the bill was drafted initially and the department does have the resources to do that;
- the current process they have internally is just absorbed into the agency budget and this amendment was drafted to have the option as stated; and
- some of the proponents of the bill have suggested they might be able to find volunteers.

The Chair asked for questions of Ms. Greelee and was asked by Senators Brungardt and Salmans regarding: does this group remain advisory, wasn't there an agency that volunteered to fund this; and do you think that the lack of legislation will work against you?

The Chair again recognized Ms. Greelee who pointed out that when the Secretary sent this over, there was one other change she made that was not picked up in the balloon on page 1, line 41 which strikes the words "not to dispute."

Senator Barnett made the motion to amend as per the balloon, make this advisory which is a conceptual amendment, and strikes the words "not in dispute" on line 41, page 1 as per the balloon. This was seconded by Senator Brungardt and the motion carried.

Action on HB2770 - an act concerning the state board of healing arts; relating to the supervision of physician assistants.

The next order of business was action on HB2770 and the Chair stated that during the testimony, the proponents said they were having problems implementing the language of a limit of two when it could be full time equivalent, so a balloon had been offered and asked Senator Barnett to explain. Senator Barnett stated he had visited with Mr. Buening, representing the Board of Healing Arts, and the physician

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 23, 2004 in Room 231-N of the Capitol.

Page 3

assistants to have their approval of these two amendments. He said this essentially, the change on page 6, allowed the Board to comply with all the rules and regs of the Board establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery, with the recommendation from Ms. Correl, for two full time PAs and they do not consider 40 hours full time, it may be more. A copy of the balloon is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chair asked for questions and Senator Brownlee asked why they are limiting to two? Senator Barnett said from a physician and physician assistant's standpoint, they feel like two is a maximum number for safety and is a practiced pattern that has been observed. Senator Haley asked what is considered full time and it was stated that the Board would determine that by rules and regs.

As there was no further discussion, a motion was made by Senator Barnett to adopt the two amendments in the balloon and advance the bill favorably. This was seconded by Senator Steineger and the motion carried.

Action on HB2813 - an act concerning health care records; relating to the abandonment thereof;

The next order of business was action on HB2813 and the Chair stated that this is a Board of Healing Arts bill dealing with health care records which have become a problem with the passing of HIPPA. The Chair then asked Mr. Furse to explain the balloon which basically were clean up amendments. A copy of the balloon is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

Mr. Furse stated the language separates out clearly where the problem is, because the health care providers are deceased, or have quit practicing or for some other reason (ex. License revoked). He stated this language eliminates line 30 through 38 on page 1 and picks it up again to say that the two situations where the Board would immediately petition the court:

- 1) one where the records have been abandoned where otherwise the licensee is still alive but just not providing records to their patients or
- 2) has died and the health care providers' patients are unable to access their health care records.

The Chair asked for questions and Senator Haley asked if the Kansas Medical Society (KMS) had resolved the question they had during the hearing of the bill? The Chair recognized Ms. Chris Collins, representing the KMS, stated she was concerned about the definition of "abandoned." The Chair provided a copy of the balloon for Ms. Collins to review, giving her time to look over and would come back to the bill.

Action on HB2820 - an act concerning the state board of healing arts; relating to actions taken for unprofessional conduct, expiration of licenses and registrations; creation of designations for certain licenses.

The Chair moved on to HB2820 for action, stating this bill was also requested by the Board of Healing Arts, provided amendments to their own clean up bill, and with Mr. Buening Executive Director of the Board, being the only conferee to testify on clean up language. After it came over from the House, she asked the Committee to refer back to Mr. Buening's testimony on page 6, dealing with podiatry and, as an oversight, does not have a charge for a post graduate permit in the amount of not more than \$60. She said he had provided us with a balloon the day he testified to put a line item in there for \$60. She then asked him to explain the three amendments that were attached to his testimony of March 16, 2004.

Mr. Buening stated at the time they introduced the bill they were working with the insurance commission office on appropriate language; we received a letter from the commissioner indicating that insurance for naturopaths in 7217, there is no policy of professional liability insurance that has been approved by the

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 23, 2004 in Room 231-N of the Capitol.

Page 4

commissioner and has been issued by an insurer duly authorized to transact business in the state. They do all have insurance as required of all of them but they are through an excess line which says "the policies issued by the insurer not authorized to do business, financial conditions of the rates are not subject to review by the Commissioner of Insurance and the insurer is not protected by any guaranteed fund." They do have insurance but have no ability to get insurance as the statute says. And likewise last year, and starting April 1, physical therapists will have the same difficulty in that there will be a number of PT's employed by Washburn University, K-State, etc. that have coverage through the university or otherwise but they don't have a policy that has been approved by the Commissioner and issued by an insurer duly authorized to transact business. However, this language would allow them to get the coverage but not necessarily through an approved policy and insurer authorized to do business. A copy of his amendments is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

As there were no questions from the Committee, Senator Salmans made a motion to adopt the amendments that were in the Board of Healing Arts testimony of March 16, 2004. It was seconded by Senator Brownlee and the motion carried.

Senator Brownlee made a motion to move the bill out as amended. It was seconded by Senator Barnett and the motion carried.

Action on SB530 - an act concerning public water supply; requiring fluoridation in certain public water supply systems

The next order of business was action on **SB530** which the Chair stated the Committee spent three days on the bill requiring fluoridation and if there was a nonprofit that would provide for it to be in towns of 10,000 hookups or more. She sensed there was not support from the Committee to tell a local community what to do. The Kansas Dental Association has brought before the Committee a resolution in support of fluoride that has to do with some of the information that we received during this hearing and there is the option to introduce this resolution by Public Health and Welfare Committee in the Senate to this effect, put it on the floor, and run it.

The Chair asked for questions or comments. Senator Haley suggested, if this ran, perhaps take a copy of it and forward it to all major communities.

Senator Jordan made a motion to draft a resolution with this language and send it to the floor and have it be from the Public Health and Welfare Committee. It was seconded by Senator Haley and the motion passed.

Continuation of Action on HB2813

There was a discussion among Senators Brownlee, Brungardt, Haley, Wagle and Barnett and Mr. Buening and Ms. Collins regarding the language on page 2 beginning on line 12 through 16, of a fiduciary notifying each patient of their last known address and how to access; who will be paying for this; would this place a burden then to take every medical record and notify each patient that you now own these

records; how do you know who to notify to retrieve your records if that medical practice shuts down; couldn't you forward this information, of the clinic closing, to the fiduciary so there would be a mechanism for the patient; who would pay for this; if the practice does dissolve, there should be some mechanism that we are trying to put into place where we can contact through the contact who is responsible for the records; and if someone does retire or leaves their practice, they are required by law to notify the Board of Healing Arts, so there is already something in practice and the statutory scheme is already in place.

As there was no further discussion, Senator Haley made a motion to send out the bill as amended. It was

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on
March 23, 2004 in Room 231-N of the Capitol.

Page 5

seconded by Senator Brownlee and the motion carried.

Adjournment

As there was no further business, the Chair thanked the Committee for all of their hard work and adjourned the meeting. The time was 2:30 p.m.