

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

September 22, 2008
Room 545-N—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Joe Patton
Representative Jan Pauls
Representative Arlen Siegfroid
Representative Mark Treaster
Representative Ed Trimmer

Members Absent

Senator Donald Betts

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

Randall J. Forbes, Kansas Pharmacy Board and Kansas Dental Board
Mary Blubaugh, Kansas State Board of Nursing
Leslie Allen, Kansas Behavioral Sciences Regulatory Board
Deb Carlson, Hein Law Firm
Jack Confer, Board of Healing Arts
Scott Hesse, Board of Healing Arts

Erik Wisner, Kansas Department of Agriculture
Julie Ehler, Kansas Department of Agriculture
Steve Moris, Kansas Department of Agriculture
Becky Pfannenstiel, Kansas Department of Agriculture
Kevin Robertson, Kansas Dental Association
Lane Hemsley, Kansas Dental Board and Kansas Pharmacy Board
Karl McNorton, State Fire Marshal's Office
Rebecca A. Weeks, State Fire Marshal's Office
Dan McLaughlin, State Fire Marshal
Rachel Soden, State Fire Marshal's Office
Berend Koops, Hein Law Firm
Susan L. Vogel, Kansas Department of Health and Environment
Rick Brunetti, Kansas Department of Health and Environment
Yvonne Anderson, Kansas Department of Health and Environment
Marla Rhoden, Kansas Department of Health and Environment
Susan Kang, Kansas Department of Health and Environment
Amy Campbell, WMS Gaming, Inc.
Shari Albrecht, Kansas Department of Health and Environment

Morning Session

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m.

Chairperson Schmidt reviewed the minutes of August 12, 2008 and asked for Committee action on the minutes. *Representative Faber moved that the minutes be approved as presented, Senator Ostmeyer seconded the motion. The motion passed.*

Chairperson Schmidt welcomed Scott Hesse to speak to the proposed rule and regulation noticed for hearing by the Board of Healing Arts. KAR 100-5-2, special meetings.

Mr. Hesse stated that this rule and regulation is to shorten the time for calling a special meeting from five days to two and to allow the vice-president to perform the duties of the president if the president is absent or the office of the president is vacant.

The Committee questioned how parties who had requested notification of hearings will be notified when these special meeting would be called. Mr. Hesse stated that they would use e-mail or telephone if they had to because of the short time frame. Jack Confer, Acting Executive Director, answered Committee questions concerning the need for special meetings and how they would be handled. A question also arose concerning allowing the vice-president to fill in for the president and if this was also true at the regular meetings. Mr. Hesse stated that he did not believe that this was the case since the regular meeting schedule was set one year in advance. Committee members stated that the same designation should be included for regularly scheduled meetings. Mr. Hesse stated that he would take this back to the Board. Staff noted that there may be a need to take legislative action to give the Board the authority to call these special meetings since there did not appear to be any statute granting that type of authority. Mr. Hesse stated that the Board would check on this, and if action was needed, it would ask for the Committee's assistance.

After they responded to all questions from the Committee, the Chairperson thanked Mr. Hesse and Mr. Confer for their presentation before the Committee.

Julie Ehler was recognized by Chairperson Schmidt to address the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-6-1, certificate of free sale; definitions; KAR 4-6-2, certificate of free sale; KAR 4-6-3, certificate of free sale; fees; KAR 4-16-1a, definitions; KAR 4-16-1c, adoption by reference; and KAR 4-28-5, fees; food processing plant.

Ms. Ehler stated that the last legislature, during the legislative session, gave the Department authority to charge for certificates of freesale. These certificates are for items being exported and stated that the owner/operator has a license, registration, permit or other authority issued by the Kansas Department of Agriculture, and that the items comply with the requirements of Kansas laws for distribution in Kansas and, where applicable, the United States.

In KAR 4-6-1, the Committee had questions concerning the term "free sale" and if there was a definition anywhere. A Committee member noted that the word "of" should be added in KAR 4-6-3 (b) after "certificate." In KAR 4-6-3, staff had some concerns about exceeding the \$25.00 statutory limit for the shipping costs of the certificates. Erik Wisner stated that the agency would take a look at this. In KAR 4-16-1a, subsection (a)(3), a Committee member suggested that the term "bovine" be used in place of "cattle." Staff noted that the Department should check that this definition does not conflict with any rules and regulations that have transferred from the Department of Health and Environment. Staff also noted that the history section needs to be corrected to include KSA 65-65-6a30 in KAR 4-16-1a and KAR 4-16-1c. The Committee noted that the breakdown of the economic impact statement was one of the most comprehensive ones that had been furnished to the Committee.

Chairperson Schmidt thanked Julie Ehler and Erik Wisner for their presentation before the Committee.

Randy Forbes, General Counsel, was welcomed by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board. KAR 71-5-7, definitions; KAR 71-5-8, applicability of regulations; KAR 71-5-9, general requirements; KAR 71-5-10, analolysis; KAR 71-5-11, level I permit; enteral conscious sedation or combination inhalation-enteral conscious sedation; KAR 71-5-12, level II permit; parenteral conscious sedation; KAR 71-5-13, level III permit: deep sedation and general anesthesia; and KAR 71-5-14, grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.

A question from the Committee concerned whether these rules and regulations changed the rules on nitrous oxide. Mr. Forbes stated that it was everyone's desire that these rules and regulations not change the rules on the use of nitrous oxide. He stated that he would check to make sure that this was the case. In response to a question from staff, Mr. Forbes stated that rules and regulations KAR 17-5-1 through KAR 17-5-6 will be withdrawn when the rules and regulations being presented go into effect. He stated that the revocations have not been noticed for hearing, but the agency will get the two sets coordinated so there is no lapse. Staff noted that in order to make these regulations effective March 1, 2009, a new subsection may need to be added to that effect and that a corresponding section be added on the regulations being revoked for a specific date. The Committee had questions on KAR 17-5-11(a)(3)(B) using five years and KAR 17-5-12 and KAR 17-5-13(a)(3)(B) using two years. Mr. Forbes stated that he would look at these again and suggest that they be identical. Another question raised by the Committee was whether disclosing a death on the application automatically disqualified the person from practicing. In KAR 17-5-14, staff suggested that the wording is unclear and does not reflect what the Board intended. It was noted that the Committee could help with legislation that would let the Board establish grounds for denial of a sedation permit if the Board requested. Mr. Forbes stated that he would take these concerns back to the Board at its next meeting.

The Chairperson thanked Mr. Forbes for appearing before the Committee.

Lane Hemsley was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board. KAR 71-9-1, definitions; KAR 71-9-2, approval of educational program; KAR 71-9-3, requirements for approval of educational program; KAR 71-9-4, notice of new location; KAR 71-10-1, definitions; KAR 71-10-2, approval of educational program; KAR 71-10-3, requirements for approval of educational program; and KAR 71-10-4, notice of new location.

Mr. Hemsley stated that these rules and regulations had been before the Committee in May 2008, and had a public hearing in July. He noted the rules and regulations before the Committee contain the changes that came out of that public hearing. In KAR 71-9-3(h), the Committee noted that the language should be clarified to show that the form is valid for one visit.

Mr. Hemsley was thanked by the Chairperson for his presentation before the Committee.

Kevin Robertson, Kansas Dental Association, was recognized by Chairperson Schmidt to address the proposed rules and regulations. He expressed concerns about KAR 71-9-3(b), which differs from previous practice where a private practice dental office or clinic could have a dental student. He stated that the Association has been working with the Kansas Dental Board to work on the details so that the present practice could continue (Attachment 1).

Chairperson Schmidt thanked Mr. Robertson for his presentation before the Committee.

Chairperson Schmidt recognized Richard Cram to speak to the rules and regulations noticed for hearing by the Department of Revenue. KAR 92-28-1, definition; KAR 92-28-2, filing of quarterly reports; deadline; KAR 92-28-3, record requirements; and KAR 92-28-4, funds erroneously paid, informal conferences.

Mr. Cram stated that these new regulations are a result of HB 2145 passed in the 2007 Legislative Session. Staff noted in KAR 92-28-2 page 2(c)(1), the word "gasoline" should be used in place of "gas." A Committee member had a concern about KAR 92-28-2, (c) (3) "any other relevant information" being requested. It was felt that this statement should be removed. Staff also noted that in KAR 92-28-2 and KAR 92-28-3, the history section should be updated to include KSA 2007 Supp. 79-343,17. In KAR 92-28-4, the Committee had concerns about how disputes would be handled and whether the revenues for the next quarter would be deferred. Mr. Cram stated that this was not the intent of the agency. The Committee suggested that the statement needed clarification. The Committee also noted that there were no penalties to be assessed for money erroneously received. Staff stated that the history section should be updated to included the statute covering auditability.

Mr. Cram was thanked by the Chairperson for his presentation before the Committee.

Lane Hemsley was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-7-14, prescription labels.

Mr. Hemsley stated that this regulation came before the Committee in April 2008, and the changes recommended by the Committee have been incorporated. A Committee member stated that in (a)(2) the line should read "only the name of the individual prescriber...." Mr. Hemsley stated that he would take this back to the Board.

Mr. Hemsley was thanked by the Chairperson for his presentation before the Committee.

Chairperson Schmidt recognized Mary Blubaugh, Executive Administrator, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Nursing (Attachment 2). KAR 60-11-101, definition of expanded role; limitations; restrictions; KAR 60-11-103, educational

requirements for 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 60-13-103, school approval requirements; KAR 60-13-104, exam approval; KAR 60-9-105, definitions; KAR 60-9-107, approval of continuing nursing education; KAR 60-15-101, definitions and functions; KAR 60-15-102, delegation procedures; and KAR 60-15-104, medication administration in a school setting.

Ms. Blubaugh stated that KAR 60-11-101 thru KAR 60-11-107 came before this Committee in February 2007 and, after the public hearing March 7, 2007, the Board voted to send the rules and regulations back to the ARNP Committee to take into consideration the comments that were received. She stated the remaining rules and regulations are new. Staff also stated that the history sections in KAR 60-15-101, 102, and 103 should be amended to include KSA 65-1164. Ms. Blubaugh stated this would be addressed. A Committee member had a question on KAR 60-15-101, page 3, (7) if the word "glucose" should be used in place of "sugar."

After Ms. Blubaugh responded to all questions from the Committee, the Chairperson thanked her for appearing before the Committee.

Karl McNorton was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State Fire Marshal. KAR 22-6-1, definitions; exclusions; KAR 22-6-2, KAR 22-6-3, and KAR 22-6-4, revoked; KAR 22-6-5, sale; days permitted; KAR 22-6-6, KAR 22-6-7, and KAR 22-6-8, revoked; KAR 22-6-9, discharge of fireworks; KAR 22-6-12, illegal fireworks; KAR 22-6-13, fireworks; seizure; disposal; KAR 22-6-14, petition by owner; determination; order; KAR 22-6-18, records; KAR 22-6-19, purchase of display fireworks in another state; KAR 22-6-20, adoptions by reference; KAR 22-6-21, manufacturing license; KAR 22-6-22, hobbyist manufacturer license; KAR 22-6-23, distributor license; KAR 22-6-24, display operator license; KAR 22-6-25, proximate pyrotechnic operator license; KAR 22-6-26, fireworks storage permit; and KAR 22-6-27, denial, suspension, or revocation of permit or license.

Mr. McNorton stated that these proposed rules and regulations were updates to bring Kansas into compliance with statutory changes to the Kansas Fireworks Act and the National Fire Protection Association standards. Fire Marshal McLaughlin noted that KAR 22-6-13 and KAR 22-6-14 were being withdrawn from the public hearing, and they were not reviewed by the Committee. Staff noted that the history section of KAR 22-6-20 should be updated. The Committee had a concern that the Economic Impact Statement showed an expense of \$70,000 but the revenue was expected to be only \$36,000, indicating a loss. In KAR 22-6-27, (a) a Committee member was concerned that the license would be denied if there were a violation of any provision of any regulation of the State Fire Marshal. It was suggested that (a) be moved to a separate section using the term "may" be revoked instead of "shall" be revoked. Staff suggested that the history section be reviewed and updated.

After Mr. McNorton responded to all questions from the Committee, Chairperson Schmidt thanked him for his presentation.

Chris Tymeson, Chief Counsel, was welcomed to the Committee to speak to the proposed rules and regulations noticed for hearing by the Wildlife and Parks Commission. KAR 115-2-1, amount of fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-7-1, fishing; legal equipment, methods of taking, and other provisions; KAR 115-7-2, fishing; general provisions; KAR 115-18-21, floatline fishing permit; requirements, restrictions, and permit duration; and KAR 115-25-14, fishing; creel limit, size limit, possession limit, and open season (exempt).

Mr. Tymeson stated that KAR 115-2-3a adds several new locations where cabin rental is available and new cabins at existing locations. He stated that the agency is running a pilot program on floatline

fishing for the next three years and the rest of the proposed rules and regulations are being amended to reflect this pilot program.

There were no questions from Committee members, and the Chairperson thanked Mr. Tymeson for appearing before the Committee.

Chairperson Schmidt recessed the meeting at 12:30 p.m.

Afternoon Session

The Chairperson reconvened the meeting at 1:45 p.m.

Leslie Allen, Credentialing Specialist, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-1-8a, renewal audit; KAR 102-2-11a, renewal audit; KAR 102-3-9b, renewal audit; KAR 102-4-9b, renewal audit; KAR 102-5-9a, renewal audit; and KAR 102-6-9a, renewal audit.

Ms. Allen stated that these proposed rules and regulations clarify procedures which the agency has been doing for several years. It was noted by a Committee member that the first paragraph on all these rules and regulations is self-directing and it was suggested that the paragraph start by stating that "when the board does its random audit of 10 percent of the professional licenses and content, the following criteria will be followed." A Committee member had some questions concerning (d) in all of the regulations and asked that the agency consider rewording this to accommodate unintentional errors by the applicant. Ms. Allen stated that she would take both suggestions back to the Board for consideration.

After responding to all questions from the Committee, Chairperson Schmidt thanked Ms. Allen for appearing before the Committee.

Chairperson Schmidt recognized Marla Rhoden, Director of Health Occupations Credentialing, to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-38-18, licensing examinations; KAR 28-38-19, qualification for licensure; KAR 28-38-21, temporary license; KAR 28-38-22, licensure by reciprocity; KAR 28-38-23, license renewal and license reinstatement; continuing education; and KAR 28-38-29, definitions.

Ms. Rhoden stated that these proposed rules and regulations were the result of legislative action in 2007 SB 11. Staff questioned KAR 28-38-23, page 4, (k) concerning how long a license could be lapsed and the renewal process still be valid. Ms. Rhoden stated that there was no time limit. Ms. Rhoden responded to all questions from the Committee.

Chairperson Schmidt thanked her for appearing before the Committee.

Steve Wassom, Director of Finance and Administration, was welcomed by Chairperson Schmidt to speak to proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner. KAR 81-3-2, broker-dealer and agent registration fees; and KAR 81-14-2, investment advisers, investment adviser representatives, and federal covered investment advisers; registration fees.

Mr. Wassom stated that the purpose of the proposed rules and regulations was to raise the fees for broker-dealer agent and investment advisers. A Committee member noted that the Office of Securities Commissioner is raising fees, and asked whether the agency was complying with the Governor's letter to reduce agency expenses by 2 to 3 percent. Mr. Wassom stated that the agency was following through with an agreement made last year when staff worked on the budget to raise more revenue. It was noted that the agency has transferred approximately \$7.5 million to the State General Fund every year.

After responding to all questions from Committee members, Mr. Wassom was thanked by the Chairperson for his presentation.

Chairperson Schmidt recognized Bob Krehbiel, Racing and Gaming Commission, to review for the Committee the status of the Woodlands Race Track (Attachment 3). He explained the current economic condition as it concerns the race track and casinos in Kansas. Mr. Krehbiel noted that the figures on the attachment were projections and that to get more complete figures, Committee members could go to the website of the Kansas Lottery for the Christiansen Report and to the Racing and Gaming website for the Cummings and Wells reports. Mr. Krehbiel stated that it looked like the present owner of the Woodlands would not attempt to reopen and that he was looking for someone else to take over the operation of the facility.

Chairperson Schmidt thanked Mr. Krehbiel for his presentation before the Committee.

The Chairperson recognized Patrick Martin to address the Committee concerning the progress on the proposed rules and regulations for SB 66. He stated that there are two waves remaining to be processed and reviewed for this Committee. He stated that one article has made it through the complete process in the second wave and three are still being finalized within the Attorney General's Office. Mr. Martin stated that several in the third wave that are still in the process of being completed. The Chairperson requested that Mr. Martin check in with Mr. Gilliland twice a week letting him know where the articles are and what progress has been made. Senator Schmidt asked that staff prepare a letter to Mr. Martin asking him to keep the Committee apprised as to the progress being made on the rules and regulations concerning the implementation of 2007 SB 66.

Mr. Martin was thanked by Chairperson Schmidt for his appearance before the Committee.

Chairperson Schmidt noted that the Secretary of Health and Environment was not in attendance and was informed by his staff that he was out of town at a meeting. After checking with his office, his staff informed the Committee that he was in Wichita at a previously scheduled meeting. The Chairperson requested that a letter be sent from KDHE stating the conference or meeting in Wichita that required the Secretary's absence.

Chairperson Schmidt called on Rick Brunetti, Director of the Bureau of Air and Radiation, Kansas Department of Health and Environment, to address the Committee concerning its Boiler Initiative (Attachment 4). Two letters were attached that had been sent out to each facility concerning the Boiler Sheltered Initiative Program and the voluntary registration (Attachments 5 and 6). Mr. Brunetti noted that this testimony is in regard to the list of boilers that KDHE had requested from the Department of Labor (Attachment 7). He also provided the Committee members with a list of boilers between 10 million and 100 million Btu per hour without permits (Attachment 8).

The Committee asked Mr. Brunetti if the New Source Performance Standards (NSPS) contained any greenhouse gas emission standards. Mr. Brunetti stated that it did not. The Committee asked where the authority for the agency to do this rested. Chief Counsel Yvonne Anderson stated that because KDHE was involved in a litigation concerning the coal-powered electric plant, the agency is not in a position to comment on the decision which would include questions

regarding the Department's position concerning CO₂ regulations. In response to questions by a Committee member as to what the next area of investigation would be and if this would include large industrial engines, Ms. Anderson again stated that because of the litigation she was not able to answer the question. A question was raised by a Committee member as to what legal authority the agency had for refusing to answer valid questions about policy. The Committee member then asked that staff find out what it would take to subpoena whatever information the Committee needs. After researching, staff noted that KSA 46-1001 *et seq.* deal with investigative committees and compulsory process which could include subpoenas. This Committee is an investigative committee, but under KSA 46-1004 subsection (c), paragraph (2), an investigative committee is authorized to exercise compulsory process in connection with any authorized subject of inquiry study or investigation but only when specifically authorized to do so by the Legislative Coordinating Council.

A Committee member requested that a copy of letters from companies who replied to the KDHE'S May 7 and May 27 letters be furnished to the Committee. A Committee member asked what pollutant KDHE was trying to control. Mr. Brunetti stated that in this particular situation, the pollutants are particulate matter and carbon monoxide. The Committee requested that a list of those boilers between 10 million and 100 million Btu per hour that did have permits be sent to Mr. Gilliland for the Committee members. A Committee member pointed out that in both letters dated May 7 and May 27 from KDHE, reference is made to greenhouse gases which makes it appear that this is the targeted emission. In response to a question from the Committee, Mr. Brunetti stated that NSPS has specific definitions stating what a boiler is and if someone has a boiler that meets that definition, it has a heat input of greater than 10 million Btu per hour or less than 100 million Btu per hour and certain other criteria that must be evaluated. KDHE uses the Small Business Environmental Systems Program because it could utilize the information found on the faceplate of a boiler in order to determine the potential to emit pollutants for those triggering standards. A Committee member requested that the agency check the regulation that was adopted on June 15, 2007, and ask whether it contained an Economic Impact Statement addressing anything regarding boilers or other facilities. Mr. Brunetti stated that he could not recall the Economic Impact Statement and would have to go back to look at it. He was requested to get a copy and send it to Mr. Gilliland for the Committee's review.

A Committee member also questioned whether natural gas generators having over 10 thousand Btu per hour are registered with KDHE. The Committee requested that if there is a list, that it be furnished to the Committee through Mr. Gilliland. Mr. Brunetti stated that they would not be subject to NSPS because they do not meet the definition of a boiler, but they may have additional NSPS with which they had to comply and, if there is a list, KDHE will provide it. Chairperson Schmidt asked Mr. Brunetti if any rules and regulations had been promulgated by the agency on particulate matter. Mr. Brunetti stated that they had not. She then asked if any rules or regulations are being promulgated by KDHE on CO₂. Ms. Anderson stated that she did not know and because of the lawsuit could not comment on anything involving CO₂. Chairperson Schmidt then asked if there were any policies or guidelines that are being developed concerning CO₂ emissions. Ms. Anderson stated that she could not answer that question. When asked who would know, Ms. Anderson stated that Secretary Bremby would know. The Chairperson stated that since he was not appearing before the Committee, it was difficult to get an answer.

A question was asked whether the Committee could go into Executive Session. After staff checked, it was determined that the matter before the Committee did not meet the criteria for an Executive Session.

Chairperson Schmidt thanked Mr. Brunetti and Ms. Anderson for appearing before the Committee and asked that they relay to the Secretary how disappointed the Committee was that he was not able to appear before it.

A motion was made by Representative Holmes that the portion of the meeting with Kansas Department of Health and Environment concerning the Sheltered Initiative Boiler Program be transcribed word for word. After much discussion by Committee members, it was decided that this would not be done. It was the unanimous decision of the Committee members present that the tapes concerning this portion of the meeting be retained until further notice.

Representative Patton suggested to the Committee that the Secretary of KDHE be invited to the next meeting on November 6 and 7, and if he refuses to attend and answer any questions, the Committee could proceed with the process where the Committee could issue a subpoena, since these would be two different occasions on which the Secretary refused to accommodate the Committee.

A Committee member requested that a letter be sent to KDHE inquiring whether any other regulated sectors of the economy had been mailed an "informational" cover letter from KDHE concerning greenhouse gases.

A copy of the following documents were received by all Committee members mailed by the Legislative Research Department prior to the meeting:

- A copy of a memorandum from Governor Sebelius dated June 27, 2008, concerning the request for agencies to reduce their budgets by 1 to 2 percent (Attachment 9).
- A copy of a letter from Mary Feighny, Deputy Attorney General, dated August 18, 2008, as requested by this Committee (Attachment 10).

Chairperson Schmidt called the Committee's attention to correspondence from Ronald R. Hein, dated September 19, 2008 (Attachment 11). Mr. Hein asked for the review of KAR 111-101-18 of the lottery rules and regulations. He believes this to be in conflict with the authorizing statute in the Kansas Expanded Lottery Act, Sec. 31, found at KSA 74-8752 and is requesting that this Committee submit a request to the Attorney General for a ruling on the issue. After discussion by the Committee members present, it was the unanimous decision to prepare a letter from the Committee asking for a ruling by the Attorney General on this matter.

Chairperson Schmidt asked the Committee to consider having an additional meeting date set for the early part of December in case it would be needed. December 2 and 3 were selected as dates for the Committee in case they were needed for hearing the rules and regulations of the Racing and Gaming Commission.

Chairperson Schmidt adjourned the meeting at 5:10 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning special meetings. After discussion, the Committee had the following comments.

Question. The Committee questions the authority of the president to call a special meeting at any time. Please explain the agency's basis for promulgation of subsections (a) and (b).

Question. If the vice-president needs the authority to perform the duties of the president during special meetings, then why is the agency not proposing the same authority for regular meetings of the Board?

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Certificate of free sale, definitions; certificate of free sale; certificate of free sale, fees; definitions; adoption by reference; and fees, food processing plant. After discussion, the Committee had the following comments.

KAR 4-6-1. The Committee believes that the agency should include a definition of “free sale” in this regulation to provide clarity.

KAR 4-6-3. The Committee believes that the agency should examine this regulation to clarify that the sum of the fees charged in subsection (a) plus the delivery charges in subsection(b), if any, shall not exceed the statutory fee limitation of \$25 . In addition, the Committee suggests the addition of the word “of” in the first line of subsection (b) after the word “certificate.

KAR 4-16-1a. The Committee believes that a definition of the term “cattle” would be helpful to provide clarity in subsection (a)(3). This definition would clarify what was included or excluded. In addition, the Committee suggests that the agency compare these regulations with those transferred from the Kansas Department of Health and Environment regarding food safety to ensure that there are no conflicting rules and regulations.

Comment. The Committee wishes to commend the agency for its outstanding fiscal note on these rules and regulations.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Definitions; applicability of regulations; general requirements; anxiolysis; level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; level II permit: parenteral conscious sedation; level III permit: deep sedation and general anesthesia; and grounds for refusal to issue permit or for revocation, suspension, or limitation of permit. After discussion, the Committee had the following comments.

KAR 71-5-7. The Committee questions how these definitions interface with those contained in KAR 71-5-1 and would suggest that it may be necessary to revoke some or all of the definitions contained in KAR 71-5-1.

KAR 71-5-9. The Committee believes that if it is the intent that this rule and regulation or others in this set become effective March 1, 2009, then an effective date should be placed within the rule and regulation. Efforts should be made to have no gap between the former rules and regulations and the ones the Board intends to have become effective on March 1, 2009. The Committee is concerned that the rule and regulation is not clear about who is permitted to administer nitrous oxide. Please clarify.

KAR 71-5-11, KAR 71-5-12, and KAR 71-5-13. The Committee is concerned with the amount of time required for record keeping in these rules and regulations, subsection (a)(3)(B). It appears that the amount of time is less for more complex administration of sedation products. Please explain and justify. The Committee suggests five years

for each level of administration. Further, the Committee questions the authority to require records to be kept for specific time periods. Please provide the agency's statutory authority. The proposed rules and regulations appears to require that no sedation-related mortality or morbidity has occurred in order for the applicant to be successful. However, the Committee believes mortality or morbidity could have occurred through no fault of the dentist. The Committee suggests the agency clarify its intent.

KAR 71-5-14. The Committee is concerned that the language of this regulation does not express what is actually meant. The Committee believes that as the language currently stands, the regulation appears to create a bar to disciplinary action. Should not the language be phrased something like the following:

“No sedation permit shall be granted or renewed if the applicant dentist is the subject of a disciplinary action pursuant to KSA 65-1436, and amendments thereto, or is being or has been disciplined for, any violation of the regulations governing sedation by dentists and dental hygienists.”

Also the Committee would suggest that it may be necessary for the agency to review KAR 71-5-7 through 71-5-14 for conflicts with the provisions of KAR 71-5-1 through 71-5-6 and revoke or amend any conflicting provisions of KAR 71-5-1 through 71-5-6.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Definitions; approval of educational program; requirements for approval of educational program; notice of new location; definitions; approval of educational program; requirements for approval of educational program; and notice of new location. After discussion, the Committee had the following comments.

KAR 71-9-3 and 71-10-3. The Committee questions the language in these two regulations and believes that the implication could be that the patient is giving consent forever. The Committee suggests the rules and regulations be clarified to include language limiting the consent to the current office visit.

Concern. The Committee is concerned that this set of rules and regulations is not drafted to take into consideration those dental students who wish to serve patients in rural areas of the state in private practices or temporary clinics (e.g., Mission of Mercy Clinic). Please review and comment about this concern.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Definition; filing of quarterly reports, deadline; record requirements; and funds erroneously paid, informal conferences. After discussion, the Committee had the following comments.

KAR 92-28-2. The Committee is concerned about what additional relevant information may be required and believes that this regulation is too broad. See subsection (c)(3). The Committee notes that “gas” in subsection (c)(1) should be replaced with “gasoline.”

KAR 92-28-3. The Committee questions the authority of the agency to require record keeping. If relevant authority is elsewhere in the statutes, the agency should include it in the history section.

KAR 92-28-4. The Committee questions the authority for the informal conference process and the audit process. Please provide an explanation and, if the authority is contained in other statutes, please make reference to those statutes in the history section.

Kansas 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; educational requirements for advanced registered nurse practitioners; functions of the advanced registered nurse practitioner in the category of nurse practitioner; functions of the advanced registered nurse practitioners in the category of nurse-midwife; functions of the advanced registered nurse practitioners in the category of clinical nurse specialist; school approval requirements; exam approval; definitions; approval of continuing nursing education; definitions and functions; delegation procedures; and medication administration in a school setting. After discussion, the Committee had the following comment.

KAR 60-15-101. The Committee believes that the term “blood sugar” in subsection (h) should be replaced with the term “blood glucose.”

Kansas State Fire Marshal. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Definitions, exclusions; sale, days permitted; discharge of fireworks; illegal fireworks; purchase of display fireworks in another state; adoptions by reference; manufacturing license; hobbyist manufacturer license; distributor license; display operator license; proximate pyrotechnic operator license; fireworks storage permit; denial, suspension, or revocation of permit or license; and revocations. After discussion, the Committee had the following comments.

KAR 22-6-20. The Committee believes that whenever a document referred to in another regulation has been adopted by reference in this regulation, a cross reference to this regulation should be added in the original regulation.

KAR 22-6-27. The Committee is concerned that a license or permit would be denied permanently if a violation had occurred at any time and wonders whether the agency actually wants to do this. Perhaps the Fire Marshal should be given discretionary authority to consider applicants with previous violations under some circumstances.

Concern. The Committee is concerned that the economic impact statement indicates the program will not pay for itself and wonders how the agency intends to address this issue in the future.

Note. The Committee notes that the conferee indicated that KAR 22-6-13 and 22-6-14 were scheduled to be withdrawn by the agency.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Amount of fees; cabin camping permit fees; fishing, legal equipment, methods of taking, and other provisions; fishing, general provisions; and floatline fishing permit, requirements, restrictions, and permit duration. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Prescription labels. After discussion, the Committee had the following comment.

KAR 68-7-14. The Committee believes clarity could be added to this rule and regulation by the addition of “only” at the beginning of the language in subsection (a)(2) and by the addition of “individual” between the words “the” and “prescriber.”

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Renewal audit (psychologists); renewal audit (social workers); renewal audit (professional counselors); renewal audit (master’s level psychologists); renewal audit (marriage and family therapists); and renewal audit (alcohol and drug abuse counselors). After discussion, the Committee had the following comments.

Concern. The Committee is concerned that subsection (a) of each of the rules and regulations reviewed is self-directing and each should be reworded so that it avoids that concern.

Concern. The Committee also is concerned that the continuing education completed after the renewal application would be determined only during an audit and not at any other time. The Committee wonders whether the agency wishes to allow a licensee who in good faith counted specific continuing education units that are disapproved during the audit to make up the questioned number of credits.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Licensing examinations; qualification for licensure; temporary license; licensure by reciprocity; license renewal and license reinstatement, continuing education; and definitions. After discussion, the Committee had the following comment.

KAR 28-38-23. The Committee is concerned with the length of time when the licensing process must start over after one’s license has lapsed. The Committee wonders whether the agency should limit the time period considered a “lapse” and require new licensing after that period.

Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Broker-dealer and agent registration fees; and investment advisers, investment adviser representatives, and federal covered investment advisers, registration fees. After discussion, the Committee had the following comment.

Note. The Committee notes that because of the fees imposed under this rule and regulation a substantial amount of revenue is deposited in the State General Fund.

Prepared by Judy Glasgow
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Approved by Committee on:

November 6, 2008
(Date)

