

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 P.M. on March 24, 2008 in Room 136-N of the Capitol.

Committee members absent: Senator Vicki Schmidt - excused
Senator David Haley - excused

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department
Mrs. Terri Weber, Kansas Legislative Research Department
Ms. Renae Jefferies, Revisor of Statutes Office
Ms. Margaret Cianciarulo, Committee Secretary

Committee staff absent: Ms. Nobuko Folmsbee, Revisor of Statutes Office

Conferees appearing before the committee: Ms. Callie Denton-Hartle, Kansas Association for Justice

Others in attendance: Please see attached Guest List

Handout

Upon calling the meeting to order, Chairperson Wagle asked the Committee to look at the information provided by Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts regarding Senator Palmer's question from the March 18, 2008 meeting. The Chair asked Senator Palmer to restate her questions which was, as a result of this hearing (March 18, 2008) could Mr. Buening provide at Monday's meeting (March 24, 2008) recommendations he might have regarding their staff, ex. How they might be more efficient? The Chair said there would be time to read the response after Committee and they would work the bill tomorrow (March 25, 2008.) A copy of Mr. Buening's handout is ([Attachment1](#)) attached.

Continued hearing on HB2620 - an act concerning the State Board of Healing Arts, relating to non-disciplinary resolution; fingerprinting and criminal history records checks.

The Chair then said when they left Committee last week they did not have time to hear neutral testimony from Ms. Callie Denton-Hartle, Kansas Association for Justice and called her to the podium regarding **HB2620**. Ms. Hartle stated that the bill is a step in the right direction towards enabling the KBHA to fulfill its mission of protecting the public, but did ask that the Committee:

- consider strengthening the bill to address transparency of information about health care providers as an additional consumer protection measure;

- amend the bill to give KBHA the resources and direction to increase Kansans' access to information about both pending investigations of licensees as well as general information on all licensees. She went on to say that currently, information relating to pending investigations of health care providers is confidential and not subject to discovery and that the bill makes no changes to the current law in this respect.

Ms. Hartle offered the rules of the Kansas Supreme Court dealing with the discipline of attorneys which she felt, serves as a good model (Supreme Court Rule 222) and explaining that KsAJ believes the Supreme Court rule for discipline of attorneys should be considered as a model for increasing the transparency of the disciplinary process for KBHA licensees. She also offered a Colorado law, requiring all physician licensees to disclose specific information about their practices, including specialties, business interests, public disciplinary actions, and final criminal convictions and malpractice actions. regarding accessing general information about KBHA's licensees, as a model that the Committee might consider. She went on to explain the Michael Skolnik Medical Transparency Act listing the information that is disclosed and made public to the public.

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Ms. Hartle concluded by stating that since much of the information required under the Colorado law is not made available to the public in Kansas, such as regulatory, civil, or criminal actions in other states against a Kansas-licensed provider, KsAJ believes that the broader scope of information disclosed under Colorado law, compiled centrally and made available on-line, will make it easier for Kansas health care consumers to inform themselves about their physicians. A copy of her testimony and 2 pieces of legislation as attachments, including an article from the Colorado Department of Regulatory Agencies implementing "Physician Profile Requirements" and a copy of Colorado's HB07-1331, the Michael Skolnik Medical Transparency Act, are (Attachment 2) attached.

The Chair asked if there were questions from the Committee. Senators Barnett and Wagle's questions and comments included:

- in your testimony you point out that the law in Colorado requires that studies show no significant correlation between malpractice history and a physician's competence. Is better data available that provides data on quality of care?

- is transparency necessary in the case of a malpractice lawsuit, especially when you enter into an agreed upon settlement just to close the case? Do you think a transparency website would be complete without reporting malpractice?

The Chair then called upon Mr. Jerry Slaughter, Executive Director, Kansas Medical Society, and asked him on hearing this testimony does he have any or comments about the Colorado Act? He stated that first of all they are not opposed to transparency, but specifically about the Colorado Act, he felt it odd because it was determined that there was no negligence and they passed this law. Interestingly, he said, it would not have provided any answers that were not already there because there was no medical malpractice. He stated that the area most problematic to them is in the area of judgments and settlements.

A discussion between Senator Wagle, Mr. Slaughter, Mr. Buening, and Ms. Hartle ensued regarding KBHA's website. The "alpha" list offers easier accessibility, information on their website, the Dr. Bernard Megaffin case, ownership interest, accessing the national database, and all disciplinary information. The only information not available on the website is malpractice cases. Mr. Slaughter ended by again saying, they have no problem with transparency, but what effect it will have on the ability for physicians and their insurers to settle claims that probably ought to be settled rather than go to court..

The next discussion between Senators Wagle, Brungardt, and Journey, Mr. Slaughter, Ms. Hartle, and Mr. Buening, came from Senator Brungardt's question to Mr. Slaughter and Ms. Hartle asking if there were differences or distinctions in their amendments?

- if it becomes a disciplinary matter it should become public, if it does not rise to a level of egregious and can be handled in a non-disciplinary manner, then that would not be made public?

- with the attorneys, once the disciplinary administrator says there is probable cause, it goes to a hearing committee and the hearing committee process is public;

- feels the KBHA could act in a much more expeditious and accurate fashion if they could look into things in a less formal way;

- the KBHA disciplinary process is governed by the Kansas Administrative Procedure Act. The investigations and information they have and have gathered during the course of the disciplinary process is by two statutes (6528-39a & 6528-98a). However, once their disciplinary panel has said that there is probable cause to proceed and directs their staff to proceed they file a petition, much like is filed in a court to revoke, suspend, or limit or otherwise take disciplinary action against the individual and from that point forward that petition and everything is part of the hearing and is a matter of public record on their website.

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- 22 other states participate in sharing of data and if your doctor has a license in any of these states, you can get the same verification as you can get from KBHA and for the rest of the states not participating you have the individual search site of each state right on the one website
- questions for Mr. Buening:
 - regarding history of the Dr. Megaffin case, did he have his residency long before he was convicted of being a sex predator and then went into a second residency in Kansas after his conviction in another state? (Dr. Megaffin was monitored for five years in which there were no problems identified, the monitoring was discontinued, the doctor moved to Wichita, and the problem occurred.)
 - was he present during the Senate Judiciary Committee hearing?
 - would more members on the Board of KBHA help smooth out the process?
 - when you look at the proposal from Colorado, the addition of some factors for public inspection seems reasonable, what are your feelings on that recommendation?
 - do you get information when medical insurance is cancelled? Did Dr. Schneider lose his medical liability insurance?
 - do you get information when someone's DEA license is suspended, terminated or put on probation? All of these could be required to be self-reported, to maintain their licenses, even if we cannot get it from other sources.

As there was no further questions or discussion, the Chair closed the hearing on **HB2620** and announced intent to work it tomorrow at 1:30 p.m.

Action of SCR1618 - a concurrent resolution memorializing Congress to allow states greater flexibility in the use of federal health care funding

The Chair then asked the Committee to turn their attention to **SCR1618**.

Senator Haley made a motion to pass favorably SCR 1618. It was seconded by Senator Gilstrap and the motion carried.

Adjournment

As there was no further business, the meeting was adjourned. The time was 2:30 p.m.

The next meeting is scheduled for March 25, 2008.

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