

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 P.M. on February 12, 2008 in Room 136-N of the Capitol.

Committee members absent:

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

Conferees appearing before the Committee: Mr. Mark Stafford, General Counsel,  
State Board of Healing Arts

Others in attendance: Please see Guest List

**Handouts**

Upon calling the meeting to order, Chairperson Wagle referred the Committee to the handout from Dr Rory Murphy, the psychiatrist, who testified last Wednesday, February 6, 2008, and did not have testimony. (On the first page are his thoughts he wanted to offer and the remaining pages are his testimony. A copy of his testimony and an article from the Menninger Foundation entitled "An occasional paper from The Menninger Clinic: Psychotherapists who transgress sexual boundaries with patients," by Glen O. Gabbard, MD) A copy of his testimony and attachment are (Attachment 1) attached.

**Presentation from the Board of Healing Arts**

She then called upon Mr. Larry Buening, Executive Director, Board of Healing Arts. However, Mr, Mark Stafford said that he would be testifying for Mr. Buening, who had an accident the night before and has 3 broken ribs, but if there were specific questions the Committee needs to address to him, please feel free to do so. He then went on to introduce Ms. Kelley Stevens, Litigation Counsel for the BHA and Ms. Shelley Wakeman, Disciplinary Counsel for the Board. He began his testimony by saying they appreciate the opportunity to respond to what they perceive to be the Committee's concern, that they had looked at all of the testimony that has been provided to the Committee, and heard the oral statements that have been made. He said that after you have read their testimony and have questions to please call.

Mr. Stafford went on to say that this whole situation involves the government, us and you combined taking somebody's liberty or property. He asked what it takes to prove a case, saying that an allegation made is nothing more than an allegation, it is not proof. He said the first thing that was needed to prove a violation of the Healing Arts Act or other law, is a good description of the violation in the law. He stated he had provided in the testimony some language regarding the finding of professional incompetence and adding, a pattern or repeated acts of practice below the standard of care is needed, according to the statutes; requires persuasive, expert testimony among the members of that profession to reach the conclusion that there has been a breach of the standard of care.

He offered:

- an explanation regarding Mr. Wall's concerns that the Board does not investigate medical malpractice petitions ;

-differences of opinion as to the quality of proof required for an administrative agency to take action against a professional license when misconduct or incompetence is alleged,

- propriety and appearances of propriety in regards to Mr. Wall's email sent to Mr. Buening inviting the Board to share information on his malpractice case;

- explanations as to the testimony regarding Dr. Schroll, Dr. Schneider, and Dr. Geenens; and,

## CONTINUATION SHEET

MINUTES OF THE Senate Health Care Strategies Committee at 1:30 P.M. on February 12, 2008 in Room 136-N of the Capitol.

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- potential resolutions.

A copy of Mr. Buening's testimony is ([Attachment 2](#)) attached.

As there was no further testimony, the Chair asked for questions from the Committee which came from Senators Palmer, Barnett, and Wagle including:

- addressing one misunderstanding regarding Mr. Stafford's concern for anonymous complaining (Senator Wagle remembers talking discussions about two ladies who wanted to remain anonymous, who did not want to come forward before the Committee, but they had filed complaints.

- re: Mr. Buening's January 22, 2008, testimony, page 3, and previously, he was laying out the complaint they received about Dr. Schneider. Then they get to the third paragraph on page three that states, "from October 6, 2005, through the end of the year. the Board received one complaint and four initial reports from the Health Care Plan that malpractice suits had been filed". The questions was the other complaint she said, when Mr. Buening testified, that they were either found that they did not meet the standard of care or you did not consider them that way, the questions is there anyone here who call tell the Committee whether this complaint filed in October 6 did it result in a finding of not meeting standard of care or not and asking the same questions of the two complaints in the next paragraph which were February 7 and 17<sup>th</sup>. A copy of Mr. Buening's January 22, 2008 testimony is ([Attachment 2](#)) attached.

The Chair offered a time line she had made from Mr. Buening's testimony, writing down the dates of complaints, what his findings were, and complaints she was not sure what his findings were. A copy of her time line is ([Attachment 3](#)) attached.

The Chair then offered a letter from Ms. Tanya Tredway, Assistant United States Attorney, dated October 3, 2006, from the US Dept of Justice in which it appears to her that there is going to be an agreement about sharing information ("By coordinating we will avoid duplicating efforts and we will stay out of the KBHA's way in its administrative proceedings against Dr. Schneider.") and in talking to some of the lawyers at the DOJ, they feel they have a whole different role in our society than the BHA. They feel their case in no way affects the license and in fact their cases don't affect the license unless someone is convicted of a crime, and after the criminal case, the license becomes an asset, therefore they have no authority over the license to practice medicine. She feels if they had followed through with the recommendations and evidence the BHA had, maybe there would not be these deaths. A copy of Ms. Tredway's letter is ([Attachment 4](#)) attached.

- Does Dr. Schneider still have his license? What date was it taken away and why was it suspended on 1-15-08? How many people died and are licenses not taken away until there are three findings?

- what is your Board's reaction to this? Did fee funds impact this case? What is their annual budget? When are their Board meetings and are they open?

### **Adjournment**

As there were no further questions. The meeting was adjourned. The time was 2:30 p.m.

The next meeting is scheduled for February 18, 2008.