

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 22, 2007
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative John Faber
Representative Lance Kinzer
Representative Jan Pauls
Representative Arlen Siegfried
Representative Mark Treaster

Members Absent

Senator Donald Betts
Senator Chris Steineger
Representative Josh Svaty

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Tatiana Lin, Kansas Legislative Research Department
Judy Glasgow, Committee Assistant

Others Present

Rodney Bieker, Kansas Department of Education
Susan Helbert, Kansas Department of Education
Mark Boranyak, Capitol Strategies
Chris Tymeson, Kansas Department of Wildlife and Parks
P. A. Hurley, Patrick J. Hurley & Co.
Derek Hein, Hein Law Firm
Julene Miller, Kansas Board of Regents
Madi Vannaman, Kansas University
Lane Hemsley, Kansas Board of Pharmacy

Justin McFarland, Kansas Board of Pharmacy
Sandy McAdam, Kansas Department of Health and Environment
Gail Hansen, Kansas Department of Health and Environment
Bill Bider, Kansas Department of Health and Environment
Christine Mennicke, Kansas Department of Health and Environment
Joe Cronin, Kansas Department of Health and Environment
Ken Powell, Kansas Department of Health and Environment
Karl Milhon, Kansas Department of Health and Environment
Ron Seeber, Hein Law Firm
Mary Lou Davis, Kansas Board of Cosmetology
Marie Plinsky, Kansas Board of Cosmetology
Laura Graham, Assistant Attorney General

Morning Session

Chairperson Holmes called the meeting to order at 9:00 a.m. on May 22, 2007.

Chairperson Holmes welcomed Rodney Bieker to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Education. KAR 91-1-201, type of licensure; KAR 91-1-202, endorsements; KAR 91-1-203; licensure requirements; KAR 91-1-204; licensure of out-of-state and foreign applicants; KAR 91-1-209, additional endorsements; and KAR 91-1-234, innovative or experimental programs.

In response to a question from the Committee about there being no requirement for foreign exchange teachers to be proficient in the English language in KAR 91-1-203, page 7, Mr. Bieker stated that it was left to each school district to be sure that a foreign teacher be fluent in the English language. In KAR 91-1-204, the Committee indicated that the requirements for a school specialist position should be the same for both in-state teachers and those applying from another state. After responding to general questions from Committee members, the Chairperson thanked Mr. Bieker for his presentation before the Committee.

Chairperson Holmes requested action on the minutes for April 24, 2007. *Senator Schmidt moved to approve the minutes as presented. Representative Treaster seconded the motion. Motion passed.*

Chris Tymeson was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-3a, cabin camping permit fees; KAR 115-4-13, deer permits; descriptions and restrictions; and exempt KAR 115-25-9a, deer; open season, bag limit, and permits; additional considerations.

Mr. Tymeson answered questions of a general nature. He was thanked for his presentation by the Chairperson.

Chairperson Holmes welcomed Mark Stafford to address the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-22-6, notice to the public of licensure; KAR 100-22-8, phosphatidylcholine and sodium deoxycholate; and KAR 100-28a-10, supervision and direction; adequacy.

The Committee noted that no information was given in KAR 100-22-6 on the size of the "notice to patients" and if the sign is not being furnished to offices by the Board, then there should

be specific information on the size of the notice and the font to be used. Staff noted that there appeared to be an error in the history section. Mr. Stafford stated that the agency would check on this. Mr. Stafford stated that Kansas is the only state that has addressed the issue of restricting the administering or authorizing another to administer phosphatidylcholine and sodium deoxycholate for the purposes of eliminating or reducing localized fat accumulation. He stated that since the drug has not been approved as a drug by the Food and Drug Administration (FDA) or by the Secretary of Health and Environment, this regulation is appropriate. Mr. Stafford stated that KAR 100-28a-10 is being amended and letters have been sent to all physicians and physician assistants. The Board is accepting comments by mail and by e-mail from interested parties. After answering all questions from the Committee, the Chairperson thanked Mr. Stafford for appearing before the Committee.

Julene Miller, General Counsel, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Regents (Attachments 1 and 2). KAR 88-30-1, definitions; KAR 88-30-2, election of coverage; and KAR 88-30-3, payment of premiums.

There was a concern by the Committee as to whether a student under 18 seeking a degree would be legally eligible to sign a contract for insurance since the student would not be of an age of majority. Ms. Miller stated that this would be reviewed. In response to questions from the Committee, she stated that the state did not subsidize the student health insurance program and students choosing to participate in the plan will be required to pay the appropriate premium. After responding to all questions from the Committee, Ms. Miller was thanked for her presentation before the Committee.

The Chairperson recessed the meeting at 10:00 a.m. for *Sine Die*.

Afternoon Session

The Chairperson reconvened the meeting at 1:15 p.m.

Lane Hemsley, Counsel, Kansas Board of Pharmacy, was introduced by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing. KAR 68-7-11, medical care facility pharmacy and KAR 68-7-12, responsibility of pharmacist-in-charge in other than a medical care facility.

A Committee member questioned what penalty would be assessed for non-compliance. Mr. Hemsley stated that this was decided on a case-by-case basis. Staff noted that in KAR 68-7-11, page 6, (o) and (p), the word 'this' should be inserted so that the sentence reads "A record of 'this' inventory shall be maintained for at least five years" to designate which inventory is kept. This also would be true in KAR 68-7-12.

After responding to general questions from the Committee, Mr. Hemsley was thanked for his presentation by the Chairperson.

Chairperson Holmes recognized Dr. Gail Hansen, Division of Health, Office of Surveillance and Epidemiology, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (KDHE). KAR 28-1-5, general provisions for isolation or quarantine of persons afflicted with infectious or contagious disease; examination of persons; collection of specimens; and KAR 28-1-6, requirements for isolation and quarantine of specific infectious and contagious diseases; exception; definition.

In KAR 28-1-6, staff suggested that the word "local" be added to the first paragraph on page one, line four before "health officer." Dr. Hansen stated that this would be done. There being no more questions, the Chairperson thanked Dr. Hansen for her appearance before the Committee.

Bill Bider and Christine Mennicke were introduced by Chairperson Holmes to speak to the proposed rules and regulations notice for hearing by the Department of Health and Environment, Bureau of Waste Management (Attachment 3). KAR 28-29-28, definitions; KAR 28-29-29, waste tire processing and disposal standards; KAR 28-29-29a, beneficial use of waste tires; KAR 28-29-29b, pest control requirements for outdoor storage of new tires, used tires, waste tires, and tire-derived products; KAR 28-29-30, waste tire processing facility, waste tire collection center, and mobile waste tire processor permits; KAR 28-29-31, requirements for storage of waste tires, used tires, and tire-derived products; KAR 28-29-31a, requirements for permitted waste tire processing facilities, waste tire collection centers, and mobile waste tire processors; KAR 28-29-32, waste tire transporter permits; KAR 28-29-33, requirements for waste tire transporters; KAR 28-29-2011, waste tire permit fees; and KAR 28-29-2101, financial assurance for closure and postclosure.

Ms. Mennicke noted that KAR 28-29-29b will remain open for an extended 30-day public comment period to deal with the issue of pest control, specifically mosquito control. In KAR 28-29-28, staff noted that the reference to subsection (d) should be deleted when referring to KSA 65-3424 in order to avoid having to change the rule and regulation if the statute was amended. Mr. Bider responded to questions of a general nature from several Committee members concerning KAR 28-29-29a, beneficial use of waste tires, concerning silo covers, and windbreaks. In KAR 28-29-29b, staff suggested that the agency check with the Kansas Department of Agriculture on its regulations covering the use of pesticides in agriculture use. A Committee member asked that the agency check to see if topographic maps would be available as described in KAR 28-29-30, page 2, (c). In KAR 28-29-31, staff noted that the history section needed to be amended to reinstate KSA 65-3424h and KSA 65-3424b. Ms. Mennicke and Mr. Bider responded to questions of a general nature from Committee members. It was the consensus of the Committee that an interim study be recommended on emergency landfills in cases of emergency situations similar to the Greensburg disaster to be ready in case of other large emergencies. Mr. Bider stated that the agency would be willing to participate in any type of hearing concerning this. After responding to Committee questions, Mr. Bider and Ms. Mennicke were thanked by the Chairperson for their presentation before the Committee.

Chairperson Holmes recognized Karl Milhon, Bureau of Disease Control and Prevention, to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-24-1, definitions; KAR 28-24-2, personal cleanliness; KAR 28-24-3, communicable diseases or conditions; universal precautions; KAR 28-24-4, towels, robes, and linens; KAR 28-24-5, headrests, shampoo bowls, treatment tables, and sinks; KAR 28-24-6, bottles and containers; KAR 28-24-7, products; KAR 28-24-8, instruments and supplies; KAR 28-24-9, pedicure equipment; KAR 28-24-10, disinfecting nonelectrical instruments and equipment; KAR 28-24-11, disinfecting electrical instruments; KAR 28-24-12, electrolysis equipment and practices; KAR 28-24-13, physical facilities; KAR 28-24-14, prohibitions; KAR 28-24-15, posting of regulations, licenses, and inspection reports; KAR 28-24-16, revoked; KAR 28-24a-1, definitions; KAR 28-24a-2, facility standards and practices; KAR 28-24a-3, protective eyewear; KAR 69-12-6, revoked; and KAR 69-12-13, revoked.

Mr. Milhon provided a history of the proposed rules and regulations, noting that the 2002 Legislative Session transferred the Board of Cosmetology sanitation rules and regulations for tanning facilities and body art facilities to the Secretary of the Department of Health and Environment. The proposed rules and regulations are the result of the amendment to KSA 2006 Supp. 65-1-138.

In KAR 28-24-1, a question from Committee members concerned the definition of communicable disease in KAR 28-24-3, and the need to clarify paragraph (b) as to whether or not it is the consumer or the person providing the service, who has the communicable disease. After discussion by the Committee concerning the availability of hot and cold running water, Mr. Milhon stated that in KAR 28-24-5, paragraph (d) and (e) were deleted by mistake and will be reinserted. This regulation addresses hot and cold running water at shampoo bowls. Staff noted that in KAR 28-24-7, paragraph (b) the statement "that was removed from the bulk supply" needs to be added at the end of the sentence "licensee or apprentice shall discard any portion that is not used during the consumer's service." In KAR 28-24-9 (a), staff noted that "prior to each use" should be added after the word "following:" There was a question from staff concerning the requirement of record keeping in KAR 28-24-9 and KAR 28-24-12, since KDHE rules and regulations are to cover sanitation issues. It was noted that on page 3 of KAR 28-24-12, (2) the term "board" should be defined. Staff questioned KAR 28-24-13, page 3, (g) (B), the requirement of an ABC fire extinguisher being included in the regulation by the Department of Health and Environment because it is not a sanitation issue. A Committee member had a concern about KAR 28-24-14 and the prohibition of any eating in the area where service is provided since this would include customers. Committee members questioned KAR 28-24-15, and exactly how much of the regulation and attachments the agency wants posted and what the cost of this would be to the operator. Mr. Milhon stated that the agency would check into this. Staff noted that the history section of KAR 28-24a-3 should be identical to KAR 28-24a-1 and 2. After responding to questions of a general nature for the Committee, the Chairperson thanked Mr. Milhon for his presentation.

Chairperson Holmes recognized Laura M. Graham, Assistant Attorney General, to address the questions raised by the Committee during the hearing in February on the proposed rules and regulations that the Kansas State Board of Nursing (KSBN) brought before the Committee applicable to advanced registered nurse practitioners (ARNPs) in regard to "protocol" ([Attachment 4](#)). Ms. Graham responded to questions from Committee members concerning the position that the Office of the Attorney General had regarding the authorization of KSBN to adopt a regulation defining "protocol." Ms. Graham stated that it is the belief of the Attorney General's Office that KSA 65-1130(c) authorizes KSBN to adopt a regulation defining "protocol" in the broader context of defining the role of ARNPs and establishing limitations and restrictions on such role. Committee members questioned where the regulations were at this time and were informed that the public hearing had been held and comments had been received.

Chairperson Holmes stated that the next meeting would be held July 9, 2007 (primary date). The meeting was adjourned at 4:40 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general provisions for isolation or quarantine of persons afflicted with infectious or contagious disease, examination of persons, collection of specimens; and requirements for isolation and quarantine of specific infectious and contagious diseases, exception, definition, and had the following comment.

KAR 28-1-6. The Committee suggests that all references to "health officer" be preceded by the word "local" in subsection (a).

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; personal cleanliness; communicable diseases or conditions, universal precautions; towels, robes, and linens; headrests, shampoo bowls, treatment tables, and sinks; bottles and containers; products; instruments and supplies; pedicure equipment; disinfecting nonelectrical instruments and equipment; disinfecting electrical instruments; electrolysis equipment and practices; physical facilities; prohibitions; posting of regulations, licenses, and inspection reports; definitions; facility standards and practices; protective eyewear; and revocations, and had the following comments.

KAR 28-24-2. In subsection (b), there is a requirement that the licensee or apprentice be "clean at all times." The Committee seeks clarification as to how the agency will determine what constitutes cleanliness.

KAR 28-24-3. The Committee finds subsection (b) problematic. There is no reference to a definition for "communicable disease" established by statute or in regulation, nor for a way for the operator to determine when a consumer is ill. The Committee requests an explanation of how the agency intends to enforce this regulation.

KAR 28-24-5. The Committee believes that the elimination of the requirement for hot and cold running water should be reinstated in this regulation.

KAR 28-24-7. In subsection (b), the Committee believes that the second sentence requires clarification so that only the portion of the product prepared for the consumer is discarded when unused and not the entire bulk supply.

KAR 28-24-9. Please review this regulation and others for references to the "board" and clarify which "board" is being referenced. In addition, does the agency have the authority to require record keeping, given that the authority to promulgate these regulations only applies to sanitation issues? Should these requirements instead be promulgated by the Board of Cosmetology? These questions also apply to KAR 28-24-12.

KAR 28-24-13. This regulation requires a fire extinguisher for mobile establishments. Please explain how having a fire extinguisher relates to sanitation standards.

KAR 28-24-15. This regulation requires the posting of regulations. Please explain how the agency proposes to require and enforce the posting of these regulations as well as the documents adopted by reference which also are a part of the rules and regulations.

KAR 28-24a-3. The history section of the regulation is not consistent with other regulations in this series. Please review and make corrections if necessary.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; waste tire processing and disposal standards; beneficial use of waste tires; pest control requirements for outdoor storage of new tires, used tires, waste tires, and tire-derived products; waste tire processing facility, waste tire collection center, and mobile waste tire processor permits; requirements for storage of waste tires, used tires, and tire-derived products; requirements for permitted waste tire processing facilities, waste tire collection centers, and mobile waste tire

processors; waste tire transporter permits; requirements for waste tire transporters; waste tire permit fees; and financial assurance for closure and postclosure, and had the following comments.

KAR 28-29-28. The Committee suggests the elimination of the reference to subsection (d) of KSA 65-3424 in case that statute is amended, which would then require that the regulation be amended to reference the appropriate subsection.

KAR 28-29-30. In subsection (b)(3)(C), the Committee requests that the agency check to make sure that the topographic map is available where the contour has an interval of five feet or less.

KAR 28-29-31. The history section of this regulation does not reference any of the statutes which make up the Kansas Waste Tire Law.

KAR 28-29-33. The Committee suggests an amendment to the title of the regulation (and elsewhere in the regulations where appropriate) to clarify that the requirements only would apply to "permitted" waste tire transporters.

Kansas State Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning type of licensure; endorsements; licensure requirements; licensure of out-of-state and foreign applicants; additional endorsements; and innovative or experimental programs, and had the following comment.

KAR 91-1-204. The Committee believes that the requirements for individuals wishing to hold a valid professional school specialist license as a school counselor should be the same whether the individual lives in-state or out-of-state.

State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervision and direction, adequacy; phosphatidylcholine and sodium deoxycholate; and notice to the public of licensure, and had the following comment.

KAR 100-22-6. The Committee believes that the size of the sign to be displayed should be included in the rule and regulation.

State Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning medical care facility pharmacy; and responsibility of pharmacist-in-charge in other than a medical care facility pharmacy, and had the following comment.

KAR 68-7-11. In subsections (o) and (p), the Committee suggests that the second sentence of each regulation begin with the phrase, "A record of such inventory..." so that there is no confusion as to which "inventory" is being discussed in the sentence. This same language also appears in KAR 68-7-12.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; election of coverage; and payment of premiums, and had the following comment.

KAR 88-30-1. The Committee suggests the agency consider the addition of language to clarify that the eligible student not also be enrolled in an accredited Kansas high school. The Committee wonders whether the agency contemplated having eligible students who are under 18 participate?

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning cabin camping permit fees; deer permits, descriptions, and restrictions; and deer, open season, bag limit, and permits, additional considerations (exempt), and had no comment.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

July 9, 2007

Date