

Approved: February 1, 2005

Date

## MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 P.M. on January 27, 2005 in Room 526-S of the Capitol.

Committee members absent:

Representative Eber Phelps- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Mary Galligan, Kansas Legislative Research Department

Renae Jefferies, Revisor of Statutes' Office

Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Larry Buening, Executive Director, Kansas Board of Healing Arts

Others attending:

See attached list.

The minutes for the January 26, 2005, meeting were approved.

Representative Don Hill requested the committee sponsor two bills from the Kansas Board of Pharmacy. He said the first bill deletes obsolete language regarding renal dialysis, and the second bill puts in place a statute resembling one by the Board of Healing Arts that requires a licensee, if he loses an action against him/her, must pay the cost of the action. A motion was made, seconded, and passed to accept both bills as committee bills.

Larry Buening, Executive Director, Kansas Board of Healing Arts, continued testimony begun by Mark Stafford on January 20. ([Attachment 1](#)) Noting that he had been with the Board for over 20 years as disciplinary counsel, general counsel, and, since 1992, executive director, Mr. Buening said that no two states have identical laws governing the disciplining of doctors. The Board uses the Federation of State Medical Boards' *Guide to the Essentials of a Modern Medical Practice Act*, a guide which lists 41 grounds for disciplinary action; he further noted that Kansas statutes (**K.S.A. 65-2836** and **K.S.A. 65-2837**), when including issues of incompetency, give more than 41 grounds for disciplinary action. He reiterated what Mr. Stafford said: that the Board does not regulate hospitals, institutions, or surgical centers, noting that the Board accepts the "captain of the ship" dictum regarding doctors so that an investigator's primary responsibility is to evaluate a doctor's competence, but not the doctor's office. However, he said, if there are sanitation issues, these are noted and included in an investigator's report.

Regarding office procedure and standard of care, Mr. Buening stated that the Board has adopted the KMS' (Kansas Medical Society's) *Guidelines for Office-based Surgery and Special Procedures* as the standard by which investigators evaluate physicians who do office surgical procedures, noting that the *Guidelines* would be posted on the Board's website by the end of the week. He said that in response to the Board's request, the

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Governor's budget adds additional investigators, and the agency's Information Technology upgrade should improve the Board's efficiency in tracking the licensing information.

Members commended the KMS guidelines, suggested that the Board employ an expert rather than volunteers to help investigators develop their cases, and had numerous questions for Mr. Buening, most of which centered around the perception of the Board's failure to address complaints about a physician in a timely manner, the quality of the investigations, and the failure of investigators to follow the standard-of-care guidelines the Board has adopted. Mr. Buening answered these questions as follows:

- The Board received a grade D from *Public Citizen* magazine because the magazine allows some other states to gain higher rankings by the use of subterfuge in reporting statistics, a tactic which the Board does not do.
- Standard of care is a moving target because the practice of medicine changes so rapidly. The Board does not want to become too specific regarding these standards and have them become quickly obsolete. Even without written guidelines, the Board knows what a standard of care is when applied to specific cases.
- The Board has the authority to go into any doctor's office at any time, even without a complaint, to conduct an investigation.
- Sometimes the Board advises a physician about an investigation ahead of time, sometimes not, depending on the situation.
- With the number of complaints registered each year, the Board needs more investigators to respond in a timely manner; at present, investigative resources are stretched. The Governor's budget allocates two more investigators for FY 2006, but none for FY 2007.
- The Board is 100% fee-funded and by statute shifts 20% of these funds to the State General Fund each year; however, in recent years additional monies have been swept into the State General Fund to make up for deficits elsewhere, reducing the Board's funds significantly.
- A council considers complaints and decides if a given complaint is worthy of investigation. If the council deems it not to be, the Board does not hear about the complaint.
- All investigators have law-enforcement training. The average investigations takes between 9 months and a year.
- Because of the code of confidentiality, the Board must wait until the investigation is complete before reporting back to the originator of the complaint.
- If an investigation results in a fine, the money goes to the State General Fund.
- Reciprocity does not automatically result in granting a license to a physician coming into Kansas from another state. The Board checks national databases to guard against unfit physicians; if a physician's license is limited in another state, the Kansas license will likewise reflect that restriction.
- Last year (2004) 10 licenses were revoked and 3-4 were suspended.
- Under the captain-of-the-ship philosophy, a physician can delegate any health-care activity to anyone he or she chooses; thus physicians' employees are neither monitored nor regulated by the Board.

Staff provided a briefing on **HB 2086**, commenting that the bill addresses the length of time between surveys

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of long-term care facilities, extending the time from 15 months to 36 months.

The meeting was adjourned at 2:58 p.m.