

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 20, 2005
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Dennis Wilson, Vice Chairman
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative Jerry Henry
Representative Lance Kinzer
Representative Janice Pauls
Representative Candy Ruff
Representative Scott Schwab
Representative Sharon Schwartz

Members Absent

Senator Don Betts
Senator Chris Steineger

Staff

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Diana Lee, Office of the Revisor of Statutes
Gary Deeter, Committee Secretary

Conferees

Gary Price, Board Member, Kansas Behavioral Sciences Regulatory Board
Larry Buening, Executive Director, Kansas Board of Healing Arts
Patricia Clark, Director, Community Development Division, Kansas Department of Commerce
Stephen Martino, Executive Director, Kansas Racing and Gaming Commission
Stephen Durrell, Assistant Attorney General, Kansas Racing and Gaming Commission
James Glackin, Assistant Attorney General, Kansas Racing and Gaming Commission
Tom Gross, Director, Bureau of Air and Radiation, Division of Environment, Kansas Department of Health and Environment

Others Attending

See attached list.

Morning Session

The Chairman called the meeting to order at 9:14 a.m. and welcomed Gary Price, Board Member, Kansas Behavioral Sciences Regulatory Board, who outlined two proposed changes to KAR 102-3-4a of the Board's rules and regulations. Mr. Price stated that the proposed changes add "internship" to a license applicant's recognized work experience and add a paragraph allowing someone authorized in a field related to professional counseling to submit a reference for an applicant.

Larry Buening, Executive Director, Kansas Board of Healing Arts, stated that 2004 HB 2813 changed the status of occupational therapists, requiring changes in the profession's rules and regulations. He also stated that 2004 HB 2737, which changed athletic trainer credentialing from registration to licensure, required the proposed revocation of two regulations and adoption of eight changes in athletic trainer rules and regulations.

Mr. Buening stated that amendments to KAR 100-54-1 will specify what information is required when an occupational therapist (OT) or occupational therapist assistant (OTA) submits an application, noting that the changes expand what is included on an application and, by providing specifics, facilitates enforcing what information can be required on an application. A member asked if a social security number is required; Mr. Buening affirmed it to be so, further explaining that the number can be released only to the Kansas Department of Revenue, the Health Care Data Governing Board, and the Child Support Enforcement Division of the Kansas Department of Social and Rehabilitation Services.

Mr. Buening said that KAR 100-54-6, dealing with OT license renewals and late renewals, is being changed to meet the Attorney General's requirements for annual licensing, the change in expiration date allowing the Board to distribute the year's work load more efficiently. Regarding KAR 100-54-8, which deals with continuing education and expired, canceled, and revoked licenses, Mr. Buening said the previous language was indefinite and misleading, with no statutory provision for cancellation; the changes in wording will conform to the wording of regulations in other professions. Answering a question, he said a 30-day window for late renewal allows a license to expire but not be canceled.

Commenting on KAR 100-54-10, Mr. Buening said this new regulation is a response to legislation passed in 2003, indicating who may delegate what OT procedures and what procedures shall not be done by an OT aide, an OT technician, or an OT paraprofessional. Responding to discussion, Mr. Buening said the terms "technician" and "paraprofessional" are used in KSA 65-5419 and are therefore included in KAR 100-54-10. Members commented that the terms OT paraprofessional, OT assistant, and OT technician seem to be synonymous terms, but only the OT technician is defined in KAR 100-54-10.

Mr. Buening said KAR 100-54-11 is being adopted as a result of legislation (KSA 65-5421) that became effective January 1, 2005. He stated that this is a regulation that limits a licensed OT from owning more than 49 percent of a professional corporation organized to render the professional services of a physician, surgeon, osteopathic physician, podiatrist, dentist, or optometrist. Answering

questions, Mr. Buening suggested that some professional corporations may be out of compliance with the new law. Members suggested the Board find a way to notify corporations of the statutory changes and recommended a grace period or a way to grandfather into compliance existing corporations affected by the law.

Regarding the change in credentialing of athletic trainers from registration to licensure, Mr. Buening outlined the proposed replacement of the word "registration" with the word "licensure" and clarifying vague language in KAR 100-69-1 (approved education for athletic trainers), KAR 100-69-2 (clinical experience required); KAR 100-69-3 (the examination an athletic trainer must pass either as a new applicant or for reinstatement); KAR 100-69-4 (dealing with a national certifying organization; being revoked as applying to applications prior to July 1, 1997); KAR 100-69-6 (expiration of license); KAR 100-69-7 (defining unprofessional conduct); KAR 100-69-8 (revoking temporary registration as a regulation, since it is now authorized in statute); KAR 100-69-9 (practice protocols); KAR 100-69-10 (license renewals and continuing education); and KAR 100-69-11 (reinstatement for canceled or revoked licenses).

The Chairman discussed the selection of dates for further meetings. The following dates (all Monday-Tuesday, with Monday as the primary day) were selected for interim meetings:

July 11-12
August 22-23
October 3-4
November 7-8
December 12-13
January 9 at 9:00 a.m.

Afternoon Session

Patricia Clark, Director, Community Development Division, Kansas Department of Commerce, testified regarding the Business Development Tax Credit Program, stating that the proposed regulations were developed in response to 2004 Senate Sub. for HB 2647, which created the Kansas Economic Growth Act ([Attachment 1](#)). She stated that the new tax credit focuses on rural business development by awarding state tax credits of \$1 million to each of seven designated regional organizations, allowing individuals, businesses, financial institutions, and insurance companies to donate to these regional foundations. Ms. Clark noted that any credits not sold by a specified date would be reclaimed by the Department and redistributed to other regions that had exhausted their allowed credits.

Ms. Clark said KAR 110-13-1 defined terms used in the proposed regulations. Staff suggested a conflict may exist between the definition of "entrepreneur" in the regulation and in the statute. Regarding KAR 110-13-2, the seven designated regions, Ms. Clark said the regions match an economic development map already in place. She explained that, although KAR 110-13-3 outlines how the regional foundations are determined, all seven foundations have already been selected and approved. Answering questions, Ms. Clark said a template request for proposal was provided to each region to create uniformity and assist collaboration with existing organizations. She replied that quarterly reports from each foundation help the Department monitor the process, and that each foundation must be re-approved annually by the Secretary. Members expressed concern that the annual approval process would limit continuity, further commenting that unless funds remain in

the region for which they were donated, donors may be reluctant to use the tax credits. Ms. Clark was unable to answer one member's question regarding where funds would reside if a foundation were dissolved. A member suggested that the regulation's wording be reworked to allow initial approval and annual review of the approval, rather than requiring annual application and approval.

Ms. Clark said KAR 110-13-4 specifies eligible projects for regional business development funds, noting that the intent of the law is for each region, not the state, to manage the funds. KAR 110-13-5 provides for allocation of tax credits, and if a region does not use all its allocation, KAR 110-13-6 allows the Secretary to re-allocate the unused credits. Ms. Clark commented that, although the term "sold" is used in the statute regarding tax credits, the Secretary requires staff to use the term "marketed" or "utilized" instead, the latter terms having a more favorable emotional appeal. Continuing, Ms. Clark said that KAR 110-13-7 provides an appeals process, and KAR 110-13-8 requires each regional foundation to submit quarterly progress reports; the progress reports serve not only as an oversight tool, but as a means of communication between the Department and each region. Regarding the auditing provision of KAR 110-13-9, staff noted a lack of auditing guidelines and suggested wording that would assure standard auditing procedures be followed.

Ms. Clark stated that KAR 110-13-10 regulates how foundations administer contributions and projects; it gives the Secretary authority to approve all contributions as qualifying for a tax credit and provides for documentation of the foundation's contributions. Members discussed at length the regulation's prohibition of the words "sell," "sales," "selling," "sold," "purchases," and "purchasing," objecting to such prohibition when the authorizing statute uses those terms, and suggesting that (f) be struck or reworked.

Stephen Martino, Executive Director, Kansas Racing and Gaming Commission, introduced two Assistant Attorneys General, Stephen Durrell and James Glackin, and proceeded to explain two proposed regulations: the first, a new regulation allowing the Kansas Lottery to sell lottery tickets at racing tracks; the second, allowing medication for two-year-old horses. Mr. Martino explained that KAR 112-4-1a creates a class 7 concessionaire license to allow the Executive Director of the Kansas Lottery to be eligible to apply for a concessionaire license to provide lottery products at a specified racetrack facility. Staff noted that the regulation conflicts with statutes governing the Kansas Lottery, the latter statutes prohibiting the Lottery Director from directly selling lottery products as a retailer. The Assistant Attorneys General explained that the regulation simply allows the Lottery Director to provide lottery products to the racing track for the track to sell. Staff observed that the regulation is worded to make the Lottery Director a concession retailer, citing KSA 74-8802 that implies the licensee also sells the product. Mr. Martino said a class 7 license is race-track specific. Answering questions, the conferees stated that permitting the sale of lottery tickets at racing tracks also may allow Keno gaming at tracks. They said the regulation would not open the door to horse racing at Native American casinos in Kansas, since the gambling compact specifically prohibits parimutuel racing. They explained the regulation was created so that lottery employees would not be required to undergo background checks. Members suggested the regulation be reworded to authorize the Kansas Lottery to provide lottery products to the track without making the lottery a concessionaire, but instead, making the track responsible for retail sales. They also suggested the agency consider a revamping of the definition of the term "concessionaire."

Mr. Martino explained that present regulations allow the medication furosemide to be administered to race horses before a race to inhibit bleeding from the nose. KAR 112-10-5 removes the restriction that a horse be three years old, bringing Kansas into line with the generally accepted practice nationally of giving the medication to two-year-old horses.

Tom Gross, Director, Bureau of Air and Radiation, Division of Environment, Kansas

Department of Health and Environment, appeared before the Committee to present three sets of proposed revocations and amendments to air quality regulations. Mr. Gross said KAR 28-19-22, adopted in 1972 to deal with sulphur compound emissions from refineries and smelters, is being revoked, since smelters no longer exist in Kansas and refineries are now subject to more stringent requirements for sulphur emissions. Mr. Gross said the second set, revocation of KAR 28-19-575 through KAR 28-19-578, which deals with Class III permits, will streamline the air emissions sources permitting process. He said Class III permits are used to track minor sources whose emissions have little impact on air quality.

Regarding the proposed revisions, Mr. Gross said amendments to KARs 28-19-517, 28-19-542, 28-19-546, 28-19-561, 28-19-562, and 28-19-563, the "inventory regulations," adjust the annual reporting date for Class II permittees from the current due date of June 1 to April 1. Further, the changes in language of permits-by-rule (KARs 28-19-561, 28-19-562, and 28-19-563) to eliminate specific due date references and change that language to reference the date in KAR 28-19-546 will distribute the reporting dates and even out the staff workload. He said the changes do not create new requirements. Answering a member's question, Mr. Gross said dry cleaning establishments are too small for KAR 28-19-562 to apply.

Staff referred to the printed agency responses to previous concerns of members. Senator Ostmeyer noted that Mr. Buening's letter (Kansas Board of Healing Arts) stated that the Board does not regulate abortion clinics, only the doctors who perform the abortions. The Committee agreed with the Chairman's announced decision to put on hold a previous request for records through the Open Records Act.

By motion of Representative Pauls, seconded by Representative Schwab, the minutes for April 25, 2005, were approved as amended.

The meeting was adjourned at 4:14 p.m. The next meeting is scheduled for July 11 (primary, July 12, secondary), 2005.

Comments by Committee 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 application; license renewal, late renewal; continuing education, expired, canceled, and revoked licenses; delegation and supervision; occupational therapist, ownership of corporation or company; approved education (athletic training); clinical experience; examination; expiration of license; unprofessional conduct, definition; temporary registration; practice protocols; license renewal; continuing education; reinstatement, canceled and revoked licenses; and revocations. After discussion, the Committee had the following comments.

KAR 100-54-10. Question. Does the definition of an "occupational therapy technician" include an "occupational therapy paraprofessional"? If not, should there be a separate definition for "occupational therapy paraprofessional"?

KAR 100-54-11. Request and Comment. The Committee is concerned that those impacted by this regulation may not be aware of its requirements. The Committee recommends that efforts be made to notify those affected and that the Board consider

a delay in the implementation of this regulation. In addition, the Committee is curious as to the number of entities which would be impacted by this proposed regulation.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Class I operating permits, annual emission inventory; Class II operating permits, permit-by-rule; Class II operating permits, annual emission inventory; Class II operating permits, permit-by-rule, reciprocating engines; Class II operating permits, permit-by-rule, organic solvent evaporative sources; Class II operating permits, permit-by-rule, hot mix asphalt facilities; and revocations, and had no comment.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applications for licensure and had no comment.

Kansas Department of Commerce. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; designated regions; determination of regional foundations; regional business development funds and eligible projects; allocation of tax credits; reallocation of tax credits; appeals; progress reports; auditing; and administration of contributions and regional business development fund, and had the following comments.

KAR 110-13-1. In subsection (a), the Committee believes reference should be made to the statutory citation of the Act. In subsection (d), the Committee suggests clarification of the term "entrepreneur" since it is defined as a new entity in this subsection. It also is a part of the definition of "business support services" which includes existing entrepreneurs.

KAR 110-13-3. The Committee is concerned that the funds raised for a foundation in a region stay within the region. The Committee suggests clarification of this regulation so that if a foundation is no longer in operation, the funds remaining will be required to stay in the region of the state where the original foundation was located. This requirement may necessitate the introduction of legislation.

KAR 110-13-9. The Committee is concerned with the language dealing with the auditing procedure and suggests that clarification as to the type of auditing procedure be included in this regulation.

KAR 110-13-10. The Committee is concerned with the restriction of the use of words such as "sell" and "sold" in subsection (f), since this is the language used in the implementing statute. The Committee suggests the removal of subsection (f).

Request. The Committee expresses concern with the progress of regulations regarding STAR bonds. Please provide an update to the Committee on the status of these regulations.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning concessionaire licenses and authorized medications definitions and had the following comments.

KAR 112-4-1a. The Committee suggests the inclusion of a definition for a class 7 concessionaire. The Committee is not familiar with the term "lottery products" and is concerned that the term may include games such as Keno. Should this term be restricted to the sale of lottery tickets only? The Committee suggests that this regulation be reconsidered and reviewed by attorneys from both the Racing and Gaming Commission and the Kansas Lottery to ensure that there is no conflict with the Lottery Law. In addition, the Committee requests that this regulation not be adopted until the review is completed. Please advise the Committee as to the progress on this regulation.

Prepared by Gary Deeter
Edited by Melissa Calderwood and Raney Gilliland

Approved by Committee on:

July 11, 2005
(date)