

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 p.m. on March 10, 2004 in Room 231-N of the Capitol.

All members were present except:

Senator Chris Steineger- excused
Senator David Haley- excused
Senator Pete Brungardt- excused

Committee staff present:

Ms. Emalene Correll, Legislative Research
Mr. Norm Furse, Revisor of Statutes
Mrs. Diana Lee, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Mr. Ron Hein, Legislative Counsel, Kansas Society of Radiologic Technologists
Mr. Jerry Slaughter, Executive Director, Kansas Medical Society
Dr. James Owen, Diagnostic Radiologist and Councilor representing the state of Kansas to the Council of the American College of Radiology
Mr. Doug Billings, B.A.R.T.(R), C.N.M.T., FKSRT, Registered Technologist in Radiography and a Registered Nuclear Medicine Technologist
Ms. Marla Rhoden, Director, Health Occupations Credentialing, Kansas Department of Health and Environment
Ms. Rebecca Rice, Legislative Counsel, Kansas Chiropractic Association
Ms. Deborah Stern, Vice President Clinical & Quality Services, Kansas Hospital Association
Mr. Larry Buening, Executive Director, Board of Healing Arts

Others attending:

Please See Attached List.

Hearing on Sub for HB2698 - an act providing for the regulation of licensing of radiologic technologists and x-ray technicians

Upon calling the meeting to order, the Chair announced there would be a hearing on Sub for HB2698 and asked Mr. Furse to give a brief overview of the bill. His highlights included:

- generally the bill relates to the regulation and licensing of radiologic technologists and x-ray operators and is basically in the format of most of our licensing laws, with some unique features;
- the first section defines what the act is to be called the radiologic technologists practice act;
- Sec.2 is the definition section and sets out the key definitions as used throughout the bill
- sec. 3 commencing on page 2, sets out the basic credentialing level and would envision a scope of practice protections as shown on lines 21 through 24 (“..no person shall perform radiologic technology procedures on humans for diagnostic or therapeutic purposes unless the person possesses a valid license issued under this act.”);
- Sub section (b) provides a person holding a license under the act shall use radioactive substances or equipment for radiologic technology procedures on humans only for diagnostic or therapeutic purposes by prescription of a license practitioner;
- Seb section ©) states no person shall hold oneself out basically either orally or in writing expressly by implication as a licensee in this act unless that person holds a current valid license under this act;
- In this act, as with the traditional, for scope of practice act and protects the title, sub section (d) line 32 through 35, only persons licensed under the act may use certain abbreviations of terms along with their new title;
- Sec. 4, top of page 3, and all of these sections will be new to the law) provides quite a certain number of exemptions from provisions of the act (ex. Licensed practitioner, resident physician, health care providers, etc.) and again, traditional for the licensure act;

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on
March 10, 2004 in Room 231-N of the Capitol.

Page 2

- Sec. 5 relates to an applicant making application and sets out certain standards for the applicant (ex. Must be 18 years of age, completed secondary school or a high school education or equivalent thereof). Another application would be the payment of the fees.
- At the bottom of page 3, top of page 4, a person could obtain a temporary license seeking to be licensed under the act;
- Sub sec. c) provides a sort of partial grandfather position here saying the Board may accept in lieu of its own licensure exam, a current certificate by a national association that the individual had passed an examination by that association;
- Sub sec. (d) states that the Board may waive the examination, education or experience requirements and grant a license to an applicant that has proof of current licensure as a radiologic technologist in another state. (So there is a reciprocity provision in sub (d) of this bill.)
- Sub sec. (e) provides that a person whose license has been revoked, may apply to have that license reinstated;
- Sub sec. (f) provides that at least 30-days before the expiration of the license that Board will provide notice by mail that the license is going to expire;
- Sub sec. (g) states if the licensee changes his/her address or name that he/she be required to notify the Board of this/these change(s);
- Sec. 6 is basically a grandfather clause and more extensive than some, which provides:
 - (a) a person who has been engaged in the practice for a period of 2 of the 3 years immediately proceeding July 1, 2005 and who is 18 years old and has successfully completed schooling;
 - **or** in line 38;
 - (b) a person who has been engaged in practice prior to July 1, 2005, has a current valid certificate by the national organization, plus the age and schooling as in (a); or
 - ©) a third possibility, submits an affidavit from 2 of the following: hospital administrator, radiologist, or a licensed practitioner other than a radiologist attesting to the applicants competency in the practice of radiologic technology and again, the age and education as in (a);
- Sec. 7 is one of the unique features of the bill providing that the Board of Healing Arts would maintain a registry of the persons who do not meet the requirements of the act of licensure, but who practice limited diagnostic radiography as an x-ray operator under the supervision of a licensed practitioner. These are people who are not licensed, but who perform this function under a practitioner who is licensed and this language would make it unlawful to function as an x-ray operator unless that person is licensed under the act or their name has been entered on this registry;
- Sub sec. (b) is language that provides that the Board could not adopt rules and regs which may require continuing education for this group of unlicensed individuals;
- Sub sec. ©) provides that no persons name would be entered on the registry of x-ray operators unless the person has been presented to the Board, an application and signed by the supervising practitioner or by the person designated by the hospital licensed;
- Sub sec (d) provides, on page 5, that a person whose name appears on the registry, shall not be entitled to use the titles listed in Sec. 3. (This is a unique approach to sort of credentialing individuals.);
- Sec. 8, page 6, establishes a radiologic technology council, again not unusual where a profession is commencing to being licensed regulated by the state, it would:
 - (a) consist of 5 members, the Board of Healing Arts appointing two and the Governor would appoint two members to the council;
 - (b) serve at the pleasure of the Board (the 2 members appointed by them) and at least two members appoint by the Governor from a list of 4 nominees submitted by the Kansas Society of Radiologic Technologists shall serve at the pleasure of the Governor;
- Sub sec. (b) sets out terms that would not be consistent with the members serving at the pleasure of the appointing authority. (This would not be needed unless you want to set some terms out for the members who are appointed in which case “serving at the pleasure” needs to be taken out of Sub sec. (a) and would need to reconcile these two concepts;
- the balance of Sec. 8 talks about the provisions of the council;
- in line 29, it appears that the reference here to the council meeting on the Chairperson’s call or request of the majority members of the **Board**, and should be changed to “council”;
- Sec. 9 provides for the duties of the radiologic technologists council and has a number of “advises” to the Board (traditionally relating to examination fees and rules and regs, generally about the administration of the act;

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 10, 2004 in Room 231-N of the Capitol.

Page 3

- Sec. 10 sets out the powers and duties of the Board with advice and assistance of the council as to pass upon the qualifications of applicants, adopt rules and regs, establish standards for educational courses and professional conduct, and in lines 20 through 27, the language here would authorize the Board to set out the period of the length of time the license would be valid and the times for renewal;
- lines 32 through 36 relates to a license that has been suspended (“..shall not engage in any conduct or activity or violation of the order by which the license was suspended..” (And feels this language would be more appropriate on page 8, following line 42, which talks about the disciplinary actions the Board might take.);
- Sec. 11 set out fees for licensure and the application fee, and in this case would be \$200 for the radiologic technology examination;
- on page 8, line 5 through 8, the language again states that if the exam is not given by the Board, but by a private examination service, that the fees would be paid to the examination service as directed by the Board. (This again is standard language.);
- Sec. 12 states that a licensure of the rad tech may be limited, suspended, revoked, censured, remanded, or otherwise sanctioned. (This is the disciplinary section and sets out the grounds listed in 1 through 10 here for the discipline of a person who is licensed by the act and those on the register would be subject to these disciplinary sanctions. Then is where the insertion of the language on suspension, mentioned in Sec. 10, lines 32 through 36 would be more appropriate here, after line 42, rather than on the proceeding page.);
- Sec. 13 provides objective authority to enjoin violations of the act;
- Sec. 14 provides any monies collected under this act for fees would be deposited, after the 20% allocated to the state general fund, to the Healing Arts Fee Fund;
- Sec. 15 - states a violation of the act would be a class B misdemeanor which is a sentence of up to 6 months in the city jail and a fine or both;
- Sec. 16 - the bill would become effective on the statute book, which raises a question with regard to when it should be effective, whether or not this would give the agency adequate time to prepare rules and regs. (Have had the same function in the past and generally the legislature has given a little more time (ex. 1-1 of the following year or in some cases May of that following year);
- and lastly, this is a full licensure act with all the grounds, duties, and responsibilities and the advisory council that is being proposed.

Mr. Furse stood for questions and Senator Barnett asked as far as fees for the registry with the Board, have those been determined or is that to be determined at a later date and Senator Salmans asked if there are any graduated levels addressed in the bill (ex. Entry level and then full-licensure)?

The Chair then called upon the first of six proponents, Mr. Ron Hein, legislative counsel for the Kansas Society of Radiologic Technologists (KSRT) which is the Kansas Chapter of the American Society of Radiologic Technologists and the professional association for radiologic technologists in Kansas who are certified by the American Registry of Radiologic Technologists. He stated:

- that Kansas is one of only 11 states that do not have some form of licensure for rad techs;
- they amended the bill, in response to concerns raised in previous hearings in the House, to provide for an exemption from licensure Licensed Physicians Assistants, and Licenses Nurses working under the supervision of licensed practitioners as defined by the bill, or under the direction of a person designated by a licensed hospital;
- their goals are two-fold: 1) to insure that patients are not mis-diagnosed because x-ray films are not of diagnostic quality; and 2) to insure patients are exposed to the least amount of man-made radiation possible over their lifetime; and lastly,
- the state of Kansas requires licensure of the x-ray machines themselves and persons operating the machines for use on inanimate objects to the minimum education requirements and pass an exam, but requires no minimum education requirements for persons applying ionizing radiation on humans. A copy of his testimony is ([Attachment 1](#)) attached hereto and incorporated into the Minutes as referenced.

The second proponent was Mr. Jerry Slaughter, Executive Director, Kansas Medical Society, who stated

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 10, 2004 in Room 231-N of the Capitol.

Page 4

that the provision on page 5, Sec. 7, lines 15-43 was added at their request and is certainly not a perfect solution, creating a registry to provide some basic accountability and education without imposing significant regulatory costs and burdens on our rural practices and specifically designed to recognize that many small, rural medical practices would simply not be able to meet the requirement to employ a licensed rad tech. A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

Third, was Dr. James Owen, a diagnostic radiologist, and also past-President of KRS, and stated that they have previously gone on record in support of legislation to set minimum standards governing the quality of x-ray exams in Kansas (and that this legislation already exists in 37 other states). He also stated that most patients presume that their doctor oversees the quality of the x-ray, but with the exception primarily of radiologists, most physicians receive no training in x-ray image assessment, let alone x-ray generation, and not only are unable to give guidance to the radiographer, they are often unable to determine if the x-ray is even acceptable to interpret. He also offered opposing arguments and his responses to them, including:

- (oppose) this is unnecessary regulation & intrusion into a physician's or hospital's practice of medicine (response) find it incredible that one has to be licensed to cut hair in Kansas but not to expose a patient to radiation or determine whether or not they have a life-threatening condition;
- (oppose) there aren't enough rad tech's to replace people not qualified (response) this bill does not even require any training;
- (oppose) negatively impact small rural hospitals and practices (response) no one is being shut down because they don't have rad techs and 37 other states, including rural areas, already provide for more stringent regulation than this legislation making it a priority and found a way to make it work;
- (oppose) cost (response) the state would not have to incur any cost of developing and administering exams since there is already a nationally recognized process and cost of record-keeping should be born by those being certified, similar to other groups; and
- (oppose) dentists are exempted (response) dental radiography is limited to a single standardizes exam, limited exposure options using a machine that can be used for nothing else, and hygienists all receive appropriate radiographic education.

A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

The fourth proponent was Doug Billings, a registered technologist in radiography and a registered nuclear medicine technologist who stated taking an x-ray does not simply require placing a patient or body part on a table and pushing a button, not only are there are hundreds of specific positions to know to properly image a person with x-rays, you need to know how to make adjustments for different patients (ex. a newborn baby, an eighty-year old frail grandmother confined to a wheelchair, or a 450 pound man injured in an auto accident). He also offered examples representing over diagnosis based on poor quality exams. A copy of his testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

Next to testify was Ms. Marla Rhoden, Director, Health Occupations Credentialing, Kansas Department of Health and Environment (KDHE) who stated:

- 1) that KDHE is responsible for the administration of the Kansas Health Occupations Credentialing Act, the purpose of which is to review the public's need, according to statutory criteria, for a new health occupation to be credentialed in Kansas and that the rad techs have pursued licensure through the statutory established process;
- 2) the October, 1999 technical review committee found that the applicant group met all ten criteria outlined in the state;
- 3) the bill is similar to 2003 **HB2274** and the provisions are consistent with the technical review with a couple of additions:

A) the addition of the category of x-ray operator and credentialing at the level of registration, which was not addressed by the technical review but which is consistent with the concern for

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 10, 2004 in Room 231-N of the Capitol.

Page 5

grandfathering in of current practitioners; and

B) additional work outlining the composition of a rad tech council and fee structure.

A copy of her testimony is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

The final proponent was Ms. Rebecca Rice, Legislative Counsel, Kansas Chiropractic Association who stated that because most chiropractic offices will only be affected by the sections regarding registered technicians, they have no comment regarding the licensing provisions. She also stated that chiropractors continue to use radiology as a primary diagnostic tool and that while reviewing the categories of studies for the House Health committee last year, Dr. Tom Nichols, Chairman of Diagnostic Sciences at Cleveland Chiropractic College, told the committee that during the three-semester-per-year four year program, Cleveland College requires 18.5 credit/semester hours (360 clock/contact hours) of radiology study. A copy of her testimony is (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

The Chair then called on the first of two neutral conferees, Ms. Deborah Stern, Vice President Clinical & Quality Services, Kansas Hospital Association (KHA), who stated they had recently conducted a member survey that identified workforce shortages as one of the most critical problems facing hospitals in Kansas and included a map showing 2002 regional vacancy rates for rad techs in Kansas. She stated current Kansas hospital regulations require that the personnel working in a hospital radiology department must be qualified for the type of service performed and current federal regulations state that in hospitals, only personnel designated by the medical staff may use the radiologic equipment and administer procedures. Lastly, she stated that the legislature must recognize the current worker shortage and provide for some flexibility in the law. A copy of her testimony and attachment are (Attachment 7) attached hereto and incorporated into the Minutes as referenced.

The second neutral conferee was Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts, who stated the purpose of the Board is to regulate approximately 17,500 individuals that provide health care in 13 health care professions. He offered findings of the October, 1999 technical committee and a history of the bill that is in its fourth consecutive year of being introduced in the legislature to regulate rad techs and offered suggested amendments, attached, to the Substitute Bill that should enable the Board to provide for the regulation of rad techs. He states that Section of the bill, regarding a registry of what will be known as "x-ray operator" but: no application is required, no fee allowed, no renewal process is provided, no grounds for denying a license, and if they cease to be supervised, there are no provisions for removing their name from the registry, so the Board is looking for some direction of what is expected of them in the creation and maintenance of this registry. And lastly, he stated that the Board asks that the Committee consider what public policy is advanced by the enactment of this legislation as:

- 1) it would impose upon those rad techs who have appropriate education & training to heed to obtain a license from the Board and comply with all the requirements that may be established to maintain that license; and on the other hand,
- 2) licensed practitioners and hospitals would still be allowed to delegate radiography to anyone of their choosing, the only difference is they would have to submit the x-ray operators name for the registry.

A copy of his testimony and his amendment is (Attachment 8) attached hereto and incorporated into the Minutes as referenced.

Written testimony was offered as follows:

- 1) Mr. Wayne Probasco, Executive secretary, Kansas Podiatric Medical Association, who stated his association has no objection to its passage.
- 2) Dr. James Kilmartin, Director of Medical Imaging Services, Stormont-Vail HealthCare, who believes the original intent of the bill has been lost after 5 years of consideration and stated that it does not change

the use of but allows for status quo of ionizing radiation or improve the quality care to Kansas residents receive.

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE at 1:30 p.m. on March 10, 2004 in Room 231-N of the Capitol.

Page 6

3) Mr. David Saidian, Certified Nuclear Medicine Technologist, Lime Medical, Wichita Kansas who stated he opposes the bill because: nuclear med techs are required to work under a physician's supervision; already regulated, and hardships on small clinics and hospitals.

4) Ms. Linda Croucher, Radiologic Technologist, Kansas Society of Radiologic Technologists, offered three main points that demonstrate the necessity of credentialing:

A) Patient safety - ionizing radiation can damage cells as it passes thru the body;

B) Enhanced Quality - in addition to realizing that a radiograph needs to be repeated, the tech must understand how to correct the error;

C) Healthcare cost reductions - it is estimated that nearly half of the American population will have a radiographic exam in a given year, so it is imperative to keep exposure as low as possible.

5) Mr. Randy Stucky, Executive Board member & Legislative Chair, KSRT, who offered a history and results of the task force formed by the Department of Health and Human Services, formed by President Jimmy Carter.

A copy of these written testimonies is (Attachment 9) attached hereto and incorporated into the Minutes as referenced.

The Chair then asked for questions or comments from the Committee. Senators Barnett, Salmans, Brungardt, and Wagle asked a range of questions for Mr. Hein, Mr. Slaughter, and Mr. Buening ranging from: historically speaking, when you first introduced this bill you didn't offer the registry concept, is this correct, are you saying (Mr. Slaughter) don't support this legislation without something like this, could the council that is created provide some of the information Mr. Buening requested in his testimony (ex. Asking for something in the future to give you guidelines), clarification regarding written testimony: are nuclear medicine technologists not affected by the bill, isn't the bill broad enough for rules and regs, without this bill, why are they writing down names that are exempt from the act?

The Chair then asked for a sense from the Committee, without working the bill, if you want to move forward and try to work this out. Senator Barnett feels there is reason to go ahead with the licensure and patient safety issues but would like more conversation with Mr. Buening, Mr. Hein, and Mr. Slaughter to see if they can address some of his concerns quickly. Senator Salmans stated that since the protection of the rural areas has been addressed, he felt it okay to move forward.

The Chair asked Mr. Furse to work on some technical changes, and to clarify, since the amendments Mr. Buening proposed did not deal with this extra registration he is saying he is conceptually opposed to that and the medical society doesn't support it without it. She asked that they all keep their minds open and they would see what happens in the next few days as discussions continue. She then closed the hearing.

Adjournment

As there was no further business, the meeting was adjourned. The time was 2:31 p.m.

The next meeting is scheduled for Thursday, March 11, 2004.