

Approved: February 1, 1993  
Date phv

## MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on January 28, 1993 in Room 423-S of the Capitol.

All members were present except:

Committee staff present:

William Wolff, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Camille Nohe, Assistant Attorney General  
Pat Johnson, Executive Director, Ks. Board of Nursing  
Terri Roberts, Executive Director Kansas State Nurses Association  
Diane Glenn, Practice Specialist (answered questions only)

Others attending: See attached list

Chairperson Flower called meeting to order and drew attention to HB2072. She noted that because questions were raised about costs, the number of cases, hours spent on cases on services provided by the Attorney General's office for the Board of Nursing, the Chair had requested the data in question be explained by the Attorney who works with the Board. Ms. Camille Nohe will provide that report to Committee.

### HEARINGS RE-OPENED ON HB2072.

Camille Nohe, General Counsel for the Kansas Board of Nursing and other state agencies, drew attention to the hand out provided. (See Attachment No.1) Ms. Nohe stated she cannot make assurances of clear accuracies of the figures. It is raw data, taken from the computer that does not categorize litigation by Department, so it was difficult to come up with these figures. It does indicate total cases that have been reported to the Attorney General's office, but does not indicate how many cases were settled, how many have been held over, how many have been dismissed, etc. There is no way to distinguish how many hours were spent on each case by the attorney handling the litigation since that kind of data is not recorded. She answered questions. Ms. Nohe then introduced Ms. Diane Glenn, Practice Specialist who was available to answer questions as well.

When asked, Ms. Nohe commented that IF the Board were authorized to obtain their own counsel, she thought one big advantage for the Board would be having some continuity in their litigation i.e. employing the same attorney. She explained the Attorney General's office has quite a turn over, (she has been assigned to the Board of Nursing for only one month, and there is a lot of catch up work to do when beginning with a new Agency. Ms. Nohe agrees there would be a greater expediency if one person were to handle litigation.

When asked, Ms. Nohe stated, from a Legislator's view, it might be appropriate to know whether or not funding had been made available for the position of the attorney for the Board.

Ms. Glenn answered questions, i.e., she doesn't know how many cases referred to the AG's office have actually gone to court. All cases were referred to litigation, but from there she doesn't have specific numbers as to settlement.

Ms. Johnson when asked about funding for the salary of an attorney stated, if they are permitted to hire an attorney, they would cut into the fee fund balance eventually, but for 2 or 3 years that would not be necessary.

Chair thanked all those answered questions related to HB2072.

Chair then again CLOSED HEARINGS ON HB2072.

Chair drew attention to the agenda, and requested a staff briefing on HB2073.

Mr. Furse gave basic background information about the language used in the writing of legislation, symbols, title information, effective date, how you can tell which language is current law, which is new law, amended language. He then detailed the bill section by section, pointing out numerous changes, amended language, deleted language. He drew attention to numerous policy questions, policy issues, technical matters, i.e., page 1, line 35 is a policy issue; page 3 Sec.2, a policy issue; page 3 line 33-36 a policy change; page 3 line 38 directed to changing the class of a penalty to Class E felony is a substantive change; page 4 Sec.4, line 30 a policy change, but perhaps the intent is broader than the Board intended so clarification would be needed for this language; page 5 line 27 where language deals with public censure is a policy issue; new policy is indicated in new Sec.7; subpoena authority is a policy issue.

Mr. Furse answered numerous questions, and also indicated during his remarks, it is the responsibility of Staff to provide information for questions on legislation, not to recommend, support, or oppose any changes the Committee may wish to make. As legal counsel to the Committee, however, if he sees a legal problem with something that has been proposed, he may make a recommendation in those cases and suggest alternatives.

### HEARINGS BEGAN ON HB2073.

Pat Johnson, Executive Administrator of Kansas State Board of Nursing provided hand/out (Attachment No.2), regarding HB2072 indicating updated figures from a hand/out distributed on 1/26/93, the hearing date for HB2072.

Ms. Johnson then drew attention to HB2073 and offered hand/out (Attachment No.3), her written testimony. She noted the grounds for disciplinary action have been updated for all Board of Nursing licensees in HB2073. The section for registered nurse anesthetists has been moved into K.S.A.65-1120 (a) pgl lines 18,20-21, per suggestion from Mr. Furse last year when changes to the statute was first introduced. All nurses will now be covered and grounds for discipline will be uniform. She then explained HB2073 in detail and gave rationale for disciplinary action; combining all groups of licensees into the discipline section; subpoena power being granted for investigations; confidentiality of files; public censure. In summary, she noted the Board revised most of these statutes last year. Statutes from all categories of licensees are addressed so each will be parallel to the other. New provisions have been added to allow access to evidence and to make it confidential. Ms. Johnson and Ms. Glenn both answered questions. Ms. Johnson was questioned as to whether or not any significant impact would be made if criminal penalties were changed to civil penalties. There was also concern from several members about the issue of public censure.

Terri Roberts, Kansas Nurses Association offered hand/out, (Attachment No.4). She spoke in support of proposed changes in HB2073. The Kansas State Nurses Association is particularly pleased about the addition of "public censure" since this expands the list of actions the Board may use to discipline licensees when necessary. She noted it might be wise to perhaps add "private censure" for those situation that may involve ethical issues or gray areas. Kansas State Nurses Association supports New Sec.(7); supports New Sec. (8), and recommends to amend this language to reflect that the complaints or reports received apply only to licensees of the Board relevant to discipline related matters. They also recommend a look at the penalty sections on Page 3 line 7. She indicated support for strong penalties for violations of the Nurse Practice Act, SB479 passed last year has reclassified misdemeanor offenses and they encourage Committee to make sure the Nurse Practice Act violations are properly reclassified as well. Ms. Roberts answered questions, i.e., when a nurse is going through the disciplinary process, she can petition for judicial review and still maintain her license until the appeal has been resolved.

Chair thanked all conferees and staff for their in-put, and to the members who have asked some very penetrating questions.

Meeting adjourned 3:00 p.m.

Next meeting will be Monday, February 1, 1993 at 1:30 p.m.

Note: Minutes of January 28, were amended on February 1, 1993 to add language in the 2nd to last long paragraph on page 2, (near the end of the paragraph), noting a question in regard to impact, if any, on changing criminal penalties to civil penalties in the language of HB2073 proposed.

## HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE Jan. 28, '93

[illegible]



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

HOUSE HEALTH AND WELFARE COMMITTEE  
January 28, 1993

Testimony presented on behalf of Attorney General Robert Stephen  
by Camille Nohe, Assistant Attorney General

At the request of the Chair of this committee, the Attorney General's office was asked to provide information about the number of cases which the Kansas State Board of Nursing has referred for administrative prosecution of disciplinary action. A computer search of Attorney General files by case caption shows the following in regard to the number of such cases:

<i>Calendar Year</i>	
1989	26 cases
1990	59 cases
1991	61 cases
1992	24 cases

*PHW  
1-28-93  
Attn #1.*

## COMPARISON OF CASES FROM BOARD OF NURSING AND BOARD OF HEALING ARTS

	<u>FY 89</u>		<u>FY 90</u>		<u>FY 91</u>		<u>FY 92</u>	
	HA	Nsg	HA	Nsg	HA	Nsg	HA	Nsg
Cases	302	147	244	302	313	426	252	525
Investigations	537	?	541	1562	956	1610	944	1652

ACTIONS

Denial for Cause	5	1	3	2	17	6	7	1
Emergency Proceeding	15	0	3	0	1	1	1	3
Stipulation	30	3+	11	31	18	53	18	18
Fine or Censure	18	NA	11	NA	6	NA	1	2
Informal Reprimand	0	NA	0	NA	5	NA	1	NA
Revocation/Suspension/ Limitation	8	15	3	26	8	16	6	17
Affidavit	10	NA	8	NA	0	NA	0	NA
Litigation	0	0	0	1	6	0	10	1
Total Actions	92	19+	44	60	66	77	61	42

PHILL  
 1-28-93  
 Action # 2

## KANSAS STATE BOARD OF NURSING

## INVESTIGATIONS

CALENDAR YEAR	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
<u>Licensing Violations</u>				
Unlicensed Practice				
Lapsed	13	18	41	46
Never Licensed	11	25	9	11
Practicing Beyond Scope of License	7	1	2	6
Permitting Unlicensed Person to Use License	2	0	0	0
License Alteration	2	1	1	1
Fraud and Deceit	1	11	3	3
Delegation to Unlicensed Person	3	4	3	12
Stolen License	0	2	3	2
<u>Practice Standard of Care Violations</u>				
Violation Policy/Procedure	32	28	63	25
Patient Abuse	9	17	17	23
Medication Error	24	52	98	25
Substandard Care	28	28	66	91
<u>Criminal Violations</u>				
Kansas	17	24	34	29
Other States	6	7	7	12
<u>Administrative Actions in Another State</u>				
(Includes both crime and practice)	33	28	36	33
<u>Impaired Licensees</u>				
Drug Diversion	29	26	29	17
Forging Prescriptions	2	2	1	2
Falsification of Records	0	2	7	0
Substance Abuse Outside Work Setting	8	13	21	9
Mental/Emotional	3	1	0	4
Non-Compliance with Monitoring Program	5	5	8	12
Physical Impairment	0	0	0	1
<u>Wrongly Identified/Application Defect</u>	5	7	12	16
<u>Practice and Medication Errors</u>				
Isolated or Non Egregious	0	0	0	145
<hr/>				
TOTAL CASES	240	302	447	525

PH/KW  
1-28-3  
Attn # 2  
Pg 272

# Kansas State Board of Nursing

Landon State Office Building  
900 S.W. Jackson, Rm. 531  
Topeka, Kansas 66612-1230  
913-296-4929



Patsy L. Johnson, R.N., M.N.  
Executive Administrator  
913-296-3068

To: The Honorable Representative Joann Flower, Chairperson  
and Members of the Public Health & Welfare Committee

From: Patsy L. Johnson, R.N., M.N.  
Executive Administrator  
Kansas State Board of Nursing

Date: January 27, 1993

Re: HB 2073

Thank you for allowing me to testify to HB 2073 for the Board of Nursing. The grounds for disciplinary action have been updated for all Board of Nursing licensees in HB 2073. The disciplinary section for registered nurse anesthetists has been moved into K.S.A. 65-1120 (a) (Page 1, lines 18, 20-21). This was a suggestion from Norman Furse last year when the statute changes were first introduced. All nurses will be covered in this part of the statute and grounds for discipline will be uniform.

K.S.A. 65-1120 for professional and practical nurses and K.S.A. 65-4209 (Section 6, Pages 4-6) for licensed mental health technicians have been revised so that both statutes are similar in language. A new action "public censure" has been added to both statutes as another method that can be utilized following hearing. Many other states have a public censure policy. While used infrequently, public censure allows for notice to consumers. An example of this would be the nurse who has stolen from a patient. Such actions would be printed in the Board's newsletter but could also be printed in the licensee's local newspaper. A limitation on the

*PH/LL  
1-28-93  
attm #3*

L.M.H.T.'s license was suppose to be added (Page 4, line 37), but the statute did not get amended. The Board asks that a balloon to the bill be considered to add "limitation" to K.S.A. 65-4209. Attachment A. Limitation is used most often to restrict licensees from having access to habit forming drugs.

Another change in this section is adding "misdemeanor" (Page 1, line 26). This allows the Board to take disciplinary action if an individual has been guilty of a misdemeanor and there is no evidence of rehabilitation. Most convictions involving drugs are misdemeanors, rather than felonies. Also, many felonies are being plead down to misdemeanors. The language for habitually intemperate in the use of alcohol and addicted to the use of habit forming drugs has been revised (page 1, lines 30-34). This reflects language similar to what is used in the risk management laws K.S.A. 65-4924 (a). Attachment B.

In Section 2 (Page 3, line 33-36) it will be a violation of the Kansas Nurse Practice Act if a person or organization represents itself as a provider of continuing nursing education and is not approved by the Board. The Board has had nurses telephone concerned about the continuing nursing education they have attended. When they go to renew their licenses, they find the continuing nursing education has not been approved through the Board and the provider has represented that it has. Currently we can only advise the licensees to ask for their money back.

The Board asks that a violation of the Nurse Practice Act be changed from a Class C to a Class A misdemeanor with subsequent violations a Class E felony (Page 3,

*PH/Kel*  
1-28-3  
Attn # 3  
02/28/17



lines 38-40). There has been a reluctance of county attorneys to prosecute licensees for violations of the Nurse Practice Act which are only Class C misdemeanors. By changing to a Class A misdemeanor, there will be consistency between the nursing statutes and the mental health technology act which is already a Class A misdemeanor.

One of the questions as to Class A versus Class C misdemeanors was how does this compare to other laws. An example given involved eggs. It is correct that mislabeling of eggs imposes a penalty of less than a Class C misdemeanor, K.S.A. 2-2302 and 2-2305. However, in reading the Kansas Egg Law, there are a number of unlawful acts including "to falsely or deceptively label, advertise, or invoice eggs" K.S.A. 2-2503 (d). These infractions carry a Class B misdemeanor fine and jail term. Attachment C. The effect that Nurse Practice Act violations can have on consumers is significant and warrants a Class A penalty. Having less consequence than an infraction of the Egg Law seems ironical.

Section 3 (Page 3, lines 41-43 and page 4, lines 1-3) clarifies that the registered nurse anesthetist statutes are read as part of the Kansas Nurse Practice act. This follows with the new language found in 65-1120 which combines all groups into the discipline section.

K.S.A. 65-1162, Section 4 has been revised to parallel the disciplinary language in K.S.A. 65-1122 (section 2). Subsection (b) (3) (Page 4, lines 25-29) could be deleted if the titling clause is added to K.S.A. 65-1114 in HB 2072.

PNew  
1-28-3  
Attn. #3  
Pg 3 of 7

Section 5 (Page 4 and 5) provides the same provisions for the licensed mental health technician.

*She deleted & gave rationale*

New section 7 (Page 7, lines 17-43 and page 8, lines 1-33) has been included in this bill to increase subpoena power for investigations. Currently subpoena power is referenced under K.S.A. 65-1120 in all matters pending before the Board. It is logical that subpoena power is implied when an agency regulates. It is necessary for investigations. While it is referenced there are no particulars in the act to define how the subpoena power shall be implemented. The language you see was added to the Board of Healing Arts Act in 1986 for the same reasons. Attachment D. While never challenged in court, the Board has experienced an increase of attorneys, for facilities and individuals, questioning the Board's subpoena power. An increasing amount of staff time is wasted in arguing these points because the language is unclear. The Board's subpoena power for formal action is not questioned because Kansas Administrative Procedures Act clearly defines that power. It is a consensus of administrative law attorneys that the Kansas Administrative Procedures Act subpoena power speaks only to formal actions, not pending investigations. Without the ability to collect evidence, there is no discipline or regulation of licensees.

New section 8 (Page 8, line 34 and page 9) also addresses investigative records. This new statute would specifically close the investigation file so that all records would remain confidential except in the specified situations as stated in the bill. This provides protection to consumers whose patient records have been obtained to use as evidence. It also protects the

*PH#U  
1-28-3  
Attn# 3  
Pg 4717*

licensee who was accused unjustly and cleared through investigation. It does not effect a potential civil action because Chapter 60, discovery rules are the appropriate avenues in those cases. It also follows with the risk management language which make peer records privileged and confidential. This encourages better self policing of the profession.

In summary, the Board revised most of these statutes last year. Statutes from all categories of licensees are addressed so each will be parallel to the other. New provisions have been added to allow access to evidence and to make it confidential.

Thank you. I will be glad to answer any questions.

PLJ:sb

PHW  
1-28-3  
Attn# 3  
Cg 5817

1 and any acts amendatory thereof *amendments thereto* or made  
 2 specifically supplemental thereto shall be construed together and may  
 3 be cited as the Kansas nurse practice act.

4 Sec. 4. K.S.A. 65-1162 is hereby amended to read as follows:  
 5 65-1162. (a) ~~On and after January 1, 1987,~~ Except as otherwise  
 6 provided in K.S.A. 65-1151 to 65-1163, inclusive, *and amendments*  
 7 *thereto* any licensed professional nurse or licensed practical nurse  
 8 who engages in the administration of general or regional anesthesia  
 9 without being authorized *by the board* to practice as a registered  
 10 nurse anesthetist ~~by the board shall be~~ is guilty of a class A  
 11 misdemeanor.

12 (b) ~~On and after January 1, 1987,~~ Any person, corporation,  
 13 association or other entity, except as otherwise provided in K.S.A.  
 14 65-1151 to 65-1163, inclusive, *and amendments thereto* who engages  
 15 in any of the following activities shall ~~be~~ is guilty of a class A  
 16 misdemeanor:

17 (1) Employing or offering to employ any person as a registered  
 18 nurse anesthetist with knowledge that such person is not authorized  
 19 *by the board* to practice as such ~~by the board~~ a registered nurse  
 20 anesthetist;

21 (2) fraudulently seeking, obtaining or furnishing documents in-  
 22 dicating that a person is authorized by the board to practice as a  
 23 registered nurse anesthetist when such person is not so authorized,  
 24 or aiding and abetting such activities; or

25 (3) using in connection with one's name the title registered nurse  
 26 anesthetist, the abbreviation R.N.A., or any other designation tend-  
 27 ing to imply that such person is authorized by the board to practice  
 28 as a registered nurse anesthetist when such person is not authorized  
 29 by the board to practice as a registered nurse anesthetist; or

30 (4) *violation of the Kansas nurse practice act or rules and reg-*  
 31 *ulations adopted pursuant thereto.*

32 (c) *Upon conviction of a second or subsequent violation of this*  
 33 *section, the person is guilty of a class E felony.*

34 Sec. 5. K.S.A. 65-4209 is hereby amended to read as follows:  
 35 65-4209. (a) The board shall have the power, after notice and an  
 36 opportunity for hearing, to withhold, *may publicly censure,* deny,  
 37 revoke or suspend any license to practice as a mental health tech-  
 38 nician issued or applied for in accordance with the provisions of this  
 39 act or otherwise to discipline a licensee upon proof that the licensee:

40 (1) Is guilty of fraud or deceit in procuring or attempting to  
 41 procure such a license *to practice mental health technology;*

42 (2) is habitually intemperate or is addicted to the use of  
 43 habit forming drugs *is unable to practice with reasonable skill and*

PAUCU  
 1-28-3  
 Altman #3  
 Pg 6 of 17

, limit

## HEALTH CARE PROVIDERS

65-4924

## Attorney General's Opinions:

Health care peer review committee reports; confidentiality and open meeting requirements. 59-42.

**65-4924. Reports relating to impaired providers; procedures.** (a) If a report to a state licensing agency pursuant to subsection (a)(1) or (2) of K.S.A. 1986 Supp. 65-4923 or any other report or complaint filed with such agency relates to a health care provider's inability to practice the provider's profession with reasonable skill and safety due to physical or mental disabilities, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol, the agency may refer the matter to an impaired provider committee of the appropriate state or county professional society or organization.

(b) The state licensing agency shall have the authority to enter into an agreement with the impaired provider committee of the appropriate state or county professional society or organization to undertake those functions and responsibilities specified in the agreement and to provide for payment therefor from monies appropriated to the agency for that purpose. Such functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) receiving and evaluating reports of suspected impairment from any source;
- (3) intervening in cases of verified impairment;
- (4) referring impaired providers to treatment programs;
- (5) monitoring the treatment and rehabilitation of impaired health care providers;
- (6) providing posttreatment monitoring and support of rehabilitated impaired health care providers; and
- (7) performing such other activities as agreed upon by the licensing agency and the impaired provider committee.

(c) The impaired provider committee shall develop procedures in consultation with the licensing agency for:

- (1) Periodic reporting of statistical information regarding impaired provider program activity;
- (2) periodic disclosure and joint review of such information as the licensing agency considers appropriate regarding reports received, contacts or investigations made and the disposition of each report;
- (3) immediate reporting to the licensing agency of the name and results of any contact

or investigation regarding any impaired provider who is believed to constitute an imminent danger to the public or to self:

(4) reporting to the licensing agency, in a timely fashion, any impaired provider who refuses to cooperate with the committee or refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment, and who in the opinion of the committee exhibits professional incompetence; and

(5) informing each participant of the impaired provider committee of the procedures, the responsibilities of participants and the possible consequences of noncompliance.

(d) If the licensing agency has reasonable cause to believe that a health care provider is impaired, the licensing agency may cause an evaluation of such health care provider to be conducted by the impaired provider committee or its designee for the purpose of determining if there is an impairment. The impaired provider committee or its designee shall report the findings of its evaluation to the licensing agency.

(e) An impaired health care provider may submit a written request to the licensing agency for a restriction of the provider's license. The agency may grant such request for restriction and shall have authority to attach conditions to the licensure of the provider to practice within specified limitations. Removal of a voluntary restriction on licensure to practice shall be subject to the statutory procedure for reinstatement of license.

(f) A report to the impaired provider committee shall be deemed to be a report to the licensing agency for the purposes of any mandated reporting of provider impairment otherwise provided for by the law of this state.

(g) An impaired provider who is participating in, or has successfully completed, a treatment program pursuant to this section shall not be excluded from any medical care facility staff solely because of such participation. However, the medical care facility may consider any impairment in determining the extent of privileges granted to a health care provider.

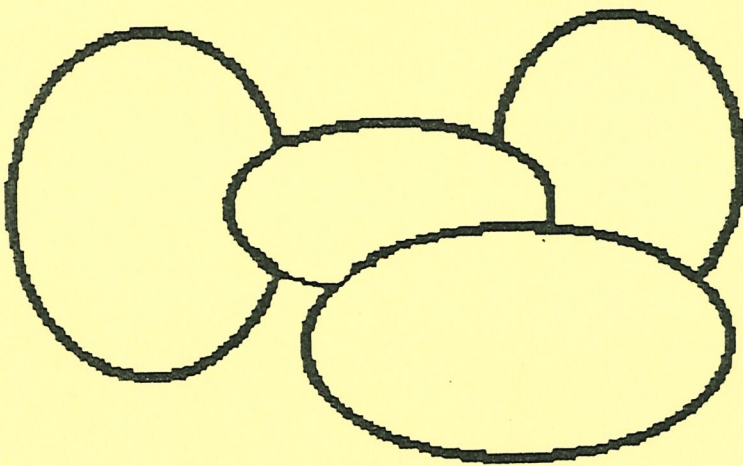
(h) Notwithstanding any other provision of law, a state or county professional society or organization and the members thereof shall not be liable to any person for any acts, omissions or recommendations made in good faith while acting within the scope of the responsibilities imposed pursuant to this section.

PKH/V  
1-28-3  
Attn #3  
027817

KANSAS

EGG

LAW



PHW  
1-28-3  
Attn #3

pg 8 of 17

**2-2213. Invalidity of part.** If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

**History:** L. 1947, ch. 10, § 13; June 30.

**2-2214. Jurisdiction over distribution, sale and transportation.** Jurisdiction in all matters pertaining to the distribution, sale and transportation of agricultural chemicals is by this act vested exclusively in the secretary, and an authorized representative of the secretary, except as otherwise specifically provided in this act.

**History:** L. 1947, ch. 10, § 14; June 30.

**2-2215. Judicial review of secretary's actions.** In addition to any other remedy which may be available, any action of the secretary pursuant to the agricultural chemical act of 1947 is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

**History:** L. 1947, ch. 10, § 15; L. 1986, ch. 318, § 14; July 1.

**Research and Practice Aids:**

Administrative Law and Procedure ¶ 658.

C.J.S. Public Administrative Bodies and Procedure § 167.

Am.Jur.2d Administrative Law § 553 et seq.

**Law Review and Bar Journal References:**

Judicial review of administrative decisions. Kenton C. Granger, 33 J.B.A.K. 291, 336 (1964).

"Administrative Law: The Kansas Commission on Civil Rights—True De Novo Review Arrives," Samuel D. Ogilby, 16 W.L.J. 161, 162 (1976).

"Judicial Review of Administrative Action—Kansas Perspectives," David L. Ryan, 19 W.L.J. 423, 433 (1980).

**2-2216.**

**History:** L. 1981, ch. 4, § 1; Repealed, L. 1988, ch. 6, § 1; July 1.

**Article 23.—LABELING OF AGRICULTURAL PRODUCTS**

**Cross References to Related Sections:**

Divisions of markets, see 74-530 et seq.

Kansas egg law, see ch. 2, art. 25.

**2-2301. Definitions.** The term "person" shall mean and include individuals, corporations, associations, receivers, and trustees. The term "agricultural products" shall mean and include products and foods, in raw or processed form which are obtained in whole or in part from plants or domestic animals. Domestic

animals shall be construed to include poultry and bees. The term "established standard" shall mean and include a grade and standard which has been adopted and provided for by the United States congress, the Kansas legislature, or by an authorized federal or state agency.

**History:** L. 1951, ch. 14, § 1; June 30.

**Research and Practice Aids:**

Agriculture ¶ 16.

C.J.S. Agriculture § 5.

Am.Jur.2d Agriculture § 48.

**2-2302. Unlawful acts.** It shall be unlawful for any person: (a) To label any agricultural product, or the container thereof, with any grade, standard, designation, words or figures denoting comparative quality which is in any way misleading;

(b) to represent any agricultural product as being of any grade, standard or comparative quality, which representation is in any way misleading;

(c) to move into the state for sale, have in possession for sale, or sell, any agricultural product, which is labeled or represented in any misleading manner as any grade or standard. Nothing in this section shall prohibit any person from using a brand or descriptive term in the labeling of an agricultural product: *Provided*, Such labeling is not misleading. If an established standard has not been adopted for an agricultural product nothing in this section shall prohibit any person from selling such a product with a label thereon, or on its container, denoting comparative qualities: *Provided*, That such product is not made in semblance of or imitation of, a product for which an established standard has been adopted.

**History:** L. 1951, ch. 14, § 2; June 30.

**Cross References to Related Sections:**

Unlawful acts relating to grading or inspection, see 74-538.

**2-2303. Same; false established standards.** It shall be unlawful for any person to grade any agricultural product, and identify it or its container, with a false established standard. It shall be unlawful for any person to label any agricultural product, or its container, with a false established standard.

**History:** L. 1951, ch. 14, § 3; June 30.

**2-2304. Nuisances; seizure; injunctions.** Agricultural products which are moved, or possessed, or exposed for sale, with an incorrect or unlawful label on such product, or its con-

PHxLV  
1-28-3  
Attm #3  
pg 9 of 17

tainer, shall constitute a common nuisance and such products shall be subject to seizure in the manner as provided by law. Acts and threatened acts in violation of the provisions of this law, and acts amendatory thereof, and supplemental thereto, may be enjoined in a court of competent jurisdiction without any other civil or criminal action being instituted.

**History:** L. 1951, ch. 14, § 4; June 30.

**Research and Practice Aids:**

Injunction — 102.

C.J.S. Injunctions § 150 et seq.

**2-2305.** **Penalty.** Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than twenty-five dollars (\$25), nor more than five hundred dollars (\$500).

**History:** L. 1951, ch. 14, § 5; June 30.

**2-2306. Administration and enforcement.** The marketing division of the Kansas state board of agriculture shall be charged with the administration and enforcement of the provisions of this act.

**History:** L. 1951, ch. 14, § 6; June 30.

#### Article 24.—PEST CONTROL

**Cross References to Related Sections:**

Insect and plant diseases, see ch. 2, art 7.

Powers and duties of state board of agriculture, see 74-515a, 74-515b.

**Law Review and Bar Journal References:**

Water quality regulation in Kansas, George Cameron Coggins, 21 K.L.R. 1, 31 (1972).

"Environmental Law: Agricultural Pesticides," J. Steve Massoni, 13 W.L.J. 53, 61, 62 (1974).

#### PEST CONTROL ACT

##### 2-2401.

**History:** L. 1953, ch. 371, § 1; L. 1957, ch. 9, § 1; L. 1963, ch. 10, § 1; L. 1965, ch. 7, § 1; L. 1969, ch. 9, § 1; L. 1973, ch. 5, § 1; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2402.

**History:** L. 1953, ch. 371, § 2; L. 1957, ch. 9, § 2; L. 1963, ch. 10, § 2; L. 1965, ch. 7, § 2; L. 1972, ch. 7, § 1; L. 1973, ch. 5, § 2; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2402a.

**History:** L. 1957, ch. 9, § 3; L. 1959, ch. 6, § 1; L. 1965, ch. 7, § 3; L. 1973, ch. 5, § 3; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2403.

**History:** L. 1953, ch. 371, § 3; L. 1957, ch. 9, § 4; L. 1965, ch. 7, § 4; L. 1973, ch. 5, § 4; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2404.

**History:** L. 1953, ch. 371, § 4; L. 1957, ch. 9, § 5; L. 1965, ch. 7, § 5; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2405.

**History:** L. 1953, ch. 371, § 5; L. 1957, ch. 9, § 6; L. 1959, ch. 6, § 2; L. 1961, ch. 6, § 1; L. 1963, ch. 10, § 3; L. 1965, ch. 7, § 6; L. 1969, ch. 9, § 2; L. 1973, ch. 5, § 5; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2405a.

**History:** L. 1963, ch. 10, § 4; L. 1965, ch. 7, § 7; L. 1969, ch. 9, § 3; L. 1973, ch. 5, § 6; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2405b.

**History:** L. 1963, ch. 10, § 6; L. 1965, ch. 7, § 8; Repealed, L. 1969, ch. 9, § 7; July 1.

##### 2-2406.

**History:** L. 1953, ch. 371, § 6; L. 1957, ch. 9, § 7; L. 1965, ch. 7, § 9; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2407.

**History:** L. 1953, ch. 371, § 7; L. 1957, ch. 9, § 8; L. 1959, ch. 6, § 3; L. 1963, ch. 10, § 5; L. 1965, ch. 7, § 10; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2407a.

**History:** L. 1957, ch. 9, § 9; L. 1969, ch. 9, § 4; L. 1973, ch. 5, § 7; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2407b.

**History:** L. 1957, ch. 9, § 13; Repealed, L. 1965, ch. 7, § 13; June 30.

##### 2-2407c.

**History:** L. 1963, ch. 10, § 7; L. 1965, ch. 7, § 11; L. 1969, ch. 9, § 5; L. 1973, ch. 5, § 8; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2407d.

**History:** L. 1963, ch. 10, § 8; L. 1973, ch. 5, § 9; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.

##### 2-2407e.

**History:** L. 1973, ch. 5, § 12; Repealed, L. 1976, ch. 1, § 32; Oct. 21, 1977.



**2-2501. Definitions.** This act may be cited as the "Kansas egg law," and for the purposes of this act the following words shall mean as follows:

(a) "Eggs" shall mean eggs in the shell that are the product of the domesticated chicken;

(b) "person" shall mean and include all individuals, firms, associations, partnerships, and corporations;

(c) "board" shall mean the state board of agriculture;

(d) "secretary" shall mean the secretary of the state board of agriculture.

**History:** L. 1955, ch. 9, § 1; July 1.

**Research and Practice Aids:**

Food — 5.

C.J.S. Food § 15.

**2-2502. Standards; tolerances.** The standards of size and quality of eggs shall be those promulgated and adopted by the board as provided in article 5 of chapter 74 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto and the tolerances for eggs in any container or bulk lot, as determined by count, of the quality grades "Grade AA," "Grade A," and "Grade B," shall conform to the tolerances adopted by the board as provided by statute.

**History:** L. 1955, ch. 9, § 2; July 1.

**2-2503. Unlawful acts.** It shall be a violation of this act for any person other than those exempted by K.S.A. 2-2508:

(a) To sell eggs below the quality of "Grade B" to food purveyors or consumers;

(b) to sell eggs to food purveyors or consumers that are not labeled on the container to indicate size and quality thereof in boldface type letters not less than three-eighths ( $\frac{3}{8}$ ) inch in height;

(c) to sell eggs to food purveyors or consumers without the name of either the dealer, retailer, food purveyor or agent by or for whom the eggs were graded or labeled, indicated on the carton or container;

(d) to falsely or deceptively label, advertise or invoice eggs;

(e) to advertise eggs in a manner which indicates price without also indicating the full, correct and unabbreviated designation of size and quality as provided herein;

(f) to hold eggs for human consumption at a temperature higher than 60 degrees Fahrenheit after being received at the point of first purchase or assembly;

(g) to sell to food purveyors or consumers eggs in a container which does not bear an inspection fee stamp showing that the inspection fee has been paid thereon unless the person registered as required by subsection (i) has been issued a permit to pay the inspection fee on a quarterly basis as required by K.S.A. 2-2507;

(h) to use an inspection fee stamp the second time, or to use a counterfeit thereof;

(i) to grade eggs for size and quality for subsequent resale to food purveyors, retailers or consumers without first registering his or her place of business with the board;

(j) to fail or neglect to file the quarterly inspection fee report and pay the inspection fee due, as provided in K.S.A. 2-2507, or to file a false quarterly inspection fee report of the quantity of eggs sold during any period;

(k) to refuse entry to any authorized inspector or employee of the board for the purpose of making inspections under the provisions of this act;

(l) to engage in the business of purchasing eggs unless there is posted in a conspicuous place in such place of business every day that the same is open for the purchase of eggs the prices which are being paid for each of the various grades of eggs.

**History:** L. 1955, ch. 9, § 3; L. 1971, ch. 7, § 1; July 1.

**Cross References to Related Sections:**

Marketing act, see 74-538.

Labeling, see 2-2302.

**Research and Practice Aids:**

Food — 12.

C.J.S. Food § 21 et seq.

**2-2504. Enforcement of act; rules and regulations.** The secretary and inspectors under the supervision and control of the secretary shall enforce the provisions of this act. The board shall adopt such rules and regulations as may be necessary to carry out the provisions of this act. (a) Any authorized inspector or employee of the board may enter any place of business within the state where any eggs are held and may take for inspection purposes representative samples of such eggs and containers for the purpose of determining whether or not any provisions of this act have been violated. (b) Any authorized inspector or employee of the board may, while enforcing the provisions of this act, seize and hold as evidence any eggs held to be in violation of any provisions of this act.

**History:** L. 1955, ch. 9, § 4; July 1.

PNKCV  
1-28-3  
Attn #3  
pg 17

**2-2505. Sampling of eggs; evidence.** The board shall prescribe by regulation methods of selecting samples of lots or containers of eggs which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled. Any sample taken hereunder or an official certificate of the grade shall be prima facie evidence, in any court in this state, of the true condition of the entire lot in the examination of which said sample was taken.

History: L. 1955, ch. 9, § 5; July 1.

**2-2506. Penalties.** (a) Any person who violates any of the provisions this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such imprisonment and fine. (b) The district courts of Kansas shall have jurisdiction to enjoin violations of this act by injunction without the institution of criminal proceedings.

History: L. 1955, ch. 9, § 6; July 1.

**Cross References to Related Sections:**

Marketing act, see 74-538.

Labeling act, see 2-2305.

**Research and Practice Aids:**

Food ~~as~~ 16.

C.J.S. Food § 30 et seq.

**2-2507. Inspection fee; increase or decrease in amount of fees; stamps; quarterly payment; reports and records; disposition of moneys received; egg fee fund.** For the purpose of financing the administration and enforcement of this act, there is hereby levied an inspection fee on all eggs sold, offered or exposed for sale to food purveyors or consumers at the rate of three and one-half (3.5) mills for each dozen eggs. Said fees shall be paid quarterly; but in no event shall the remittance for any quarter be less than fifteen dollars (\$15). If the board finds that the above fees are providing more funds than necessary for the administration of this act, it may reduce the above-mentioned fee by regulation, and in like manner may increase said fee when necessary, but not to exceed the rate specified above. The secretary shall provide inspection fee stamps for sale to persons desiring them. The price of such stamps shall include the printing and mailing costs thereof. Such inspection fee stamps shall also serve as a label indicating size and quality in boldface type let-

ters not less than three-eighths ( $\frac{3}{8}$ ) inch in height. Persons desiring to report and pay the inspection fee quarterly, in lieu of using inspection fee stamps, may make application to the secretary for a permit to pay the inspection fee quarterly.

The secretary may grant the permit if the applicant agrees to keep such records as may be necessary to indicate accurately the quantity of eggs sold on which the inspection fee is due, and if the applicant agrees to grant the secretary or a duly authorized representative of the secretary permission to verify the statement of quantity of eggs sold. The report shall be filed in the office of the secretary, and shall be due and payable on the first day of October, January, April, and July for the previous three months. If the report is not filed and the inspection fee paid within thirty (30) days after the due date, or if the report of quantity be false, the secretary may revoke the permit. In addition to the inspection fee there shall be assessed against the permit holder a penalty of one dollar (\$1) per day for each day the inspection fee remains unpaid after the thirty (30) day period. Such records of quantity sold shall be held for a period of three years. The secretary shall remit all moneys received by or for the secretary under article 25 of chapter 2 of Kansas Statutes Annotated and amendments thereto to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the egg fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the state board of agriculture or by a person or persons designated by the secretary.

History: L. 1955, ch. 9, § 7; L. 1971, ch. 7, § 2; L. 1973, ch. 2, § 10; L. 1979, ch. 10, § 1; July 1.

**2-2508. Registration of certain persons, fee; exemption of person selling from own flock production.** Any person registering his or her place of business for the purpose of qualifying to grade eggs as required under subsection (i) of K.S.A. 2-2503 shall file an application for such registration on a form supplied by the secretary and shall pay an annual registration fee of five dollars (\$5). Each registration shall expire on December 31 of the year in which issued. A producer of eggs when

*PA/PLU*  
*1-28-3*  
*Attn #3*  
*pg 127:17*

57. Cited: judicial conduct supporting censure proceedings, fair sentencing proceedings, sentencing guidelines examined. State v. Lake, 12 K.A.2d 275, 276, 740 P.2d 106 (1987).

58. Cited: discretion in sentencing under Habitual Criminal Act (21-4504) without considering factors in 21-4601 and 21-4606 examined. State v. Kulper, 12 K.A.2d 301, 307, 744 P.2d 519 (1987).

59. Cited: when motion to modify acts as probation request (21-4603), no direct appeal from probation denial (22-3602) examined. State v. Deavours, 12 K.A.2d 361, 743 P.2d 1011 (1987).

60. Cited: unconsciousness induced by seizure as defense to murder (21-3401), violation of order in limine examined. State v. Massey, 242 K. 252, 253, 747 P.2d 302 (1987).

61. Cited: guidance in construing sentencing statutes (21-4601), criteria to consider in sentencing (21-4606) examined. State v. McGlothlin, 242 K. 437, 438, 747 P.2d 1335 (1988).

**21-4501a. Application of certain penalties; review and reduction of previous sentences.** (a) The minimum term of imprisonment established by subsection (e) of K.S.A. 21-4501 and amendments thereto shall apply retroactively to individuals sentenced on or after May 17, 1984, for a class E felony.

(b) If an individual has been sentenced to a minimum term of imprisonment of more than one year for a class E felony and the sentence was imposed on or after May 17, 1984, such minimum sentence is hereby reduced to one year.

(c) If an individual's minimum term of imprisonment is reduced by this section, the individual shall be eligible for parole as provided by K.S.A. 22-3717 and amendments thereto, based upon the individual's reduced minimum term of imprisonment.

**History:** L. 1984, ch. 119, § 10; L. 1988, ch. 115, § 11; May 19.

**Attorney General's Opinions:**

Classification of crimes and penalties; effect of legislation providing for reduction of sentences. 84-57.

**CASE ANNOTATIONS**

1. Cited: where one convicted of crime has never been legally sentenced, proper sentence may be imposed later. State v. Osbey, 238 K. 280, 286, 288, 710 P.2d 676 (1985).

**21-4502. Classification of misdemeanors and terms of confinement; possible disposition.**

(1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) year;

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six (6) months;

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) month;

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503, instead of or in addition to confinement, as provided in this section.

(3) Whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or an alcoholic beverage by such person, the court may:

(a) Order any of the dispositions authorized by this section or by article 46 of chapter 21 of the Kansas Statutes Annotated;

(b) Order such person to attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; or

(c) Any appropriate combination of subsections (a) and (b) of this subsection.

**History:** L. 1969, ch. 180, § 21-4502; L. 1977, ch. 117, § 2; L. 1979, ch. 90, § 4; July 1.

**Revisor's Note:**

For Judicial Council comment, see 21-4503.

**Law Review and Bar Journal References:**

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392 (1979).

**CASE ANNOTATIONS**

1. Sentence under 21-4501 (e) reversed with directions to resentence hereunder; criminal damage to property. State v. Smith, 215 K. 865, 868, 528 P.2d 1195.

2. Resentence for lesser offense where failure to instruct on value in prosecution under 21-3701. State v. Piland, 217 K. 689, 693, 538 P.2d 666.

3. Erroneous original sentence vacated; defendant must be present at time of imposing new sentence. State v. Coy, 234 K. 414, 420, 672 P.2d 599 (1983).

4. Cited: guidance in construing sentencing statutes (21-4601), criteria to consider in sentencing (21-4606) examined. State v. McGlothlin, 242 K. 437, 438, 747 P.2d 1335 (1988).

*PHK*  
1-28-3  
Att'n 3  
Pg 18 of 17

5. Cited; 21-3808 as inapplicable without underlying felony, misdemeanor or civil case as basis for penalty classifications examined. *State v. Hagen*, 242 K. 707, 708, 750 P.2d 403 (1988).

**21-4503.** Fines. (1) A person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class B or C felony, a sum not exceeding \$15,000.

(b) For a class D or E felony, a sum not exceeding \$10,000.

(2) A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class A misdemeanor, a sum not exceeding \$2,500.

(b) For a class B misdemeanor, a sum not exceeding \$1,000.

(c) For a class C misdemeanor, a sum not exceeding \$500.

(d) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor.

(3) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(4) A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court not exceeding \$500.

**History:** L. 1969, ch. 180, § 21-4503; L. 1979, ch. 90, § 5; L. 1983, ch. 135, § 3; L. 1984, ch. 39, § 34; Jan. 1, 1985.

**Judicial Council, 1968:** By classifying crimes of like gravity within a single category and providing a single statutory penalty for all crimes within each class, the section seeks to establish a rational and consistent system of penalties. Where punishments are provided separately, in connection with each definition of criminal conduct, apparent disparities may often be observed. The classification is intended to eliminate those disparities.

The idea here implemented is suggested by the Model Penal Code, 6.06.

The following characteristics of the penalty provisions should be observed:

(a) The alternative penalties of death or life imprisonment are retained for Class A felonies (first-degree murder and aggravated kidnapping).

(b) Other felony penalties are indeterminate within the limits fixed by the statute.

(c) In each case the maximum term is fixed by law.

(d) In the cases of Class B, C and D felonies, the Court shall fix the minimum term within the limits provided.

(e) In its discretion the court may select an appropriate minimum penalty, after giving consideration to the criteria suggested in section 21-4606. Note that the defendant's history of prior criminal activity is one of the circumstances that may be considered by the court in fixing the penalty. From the standpoint of the convicted person, the minimum term is the most significant part of the sentence, as it determines the period that must be served before he becomes eligible for parole.

(f) Fines are authorized in felony cases. Criteria for the imposition of fines are found in section 21-4607.

(g) Maximum penalties are prescribed for misdemeanors of each class. Within these limits, a court may impose any appropriate sentence of confinement or fine or both.

(h) Unclassified crimes are those which are defined and made punishable in chapters other than the crimes act. There are more than 1500 such offenses, found in virtually every chapter of the statute book. These are mainly intended to implement regulatory legislation and are not appropriate subjects for a criminal code. Hence, this revision of the crimes act does not affect them either as to content or penalty.

#### Cross References to Related Sections:

Criteria for setting fines, see 21-4607.

#### Law Review and Bar Journal References:

"Constitutional Law—Imprisonment of Convicted Indigent for Nonpayment of Fine." John Terry Moore, 10 W.L.J. 120, 127 (1970).

"Decisions, Decisions, Decisions." Terry L. Bullock, 17 W.L.J. 26, 27 (1977).

"Survey of Kansas Law: Family Law," Camilla Klein Haviland, 27 K.L.R. 241, 250 (1979).

"The Admissibility of Child Victim Hearsay in Kansas: A Defense Perspective." Christopher B. McNeil, 23 W.L.J. 265, 268 (1984).

#### Attorney General's Opinions:

Size, weight, and load of vehicles; penalties for weight violations. 81-44.

#### CASE ANNOTATIONS

1. Mentioned in holding that a defendant is to be considered convicted of a crime even though not yet sentenced. *State v. Holmes*, 222 K. 212, 214, 563 P.2d 480.

2. Court cannot, when firearm used (21-4618), impose fine instead of minimum sentence. *State v. Keeley*, 236 K. 555, 560, 694 P.2d 422 (1985).

3. Cited; specific findings required of court before imposing fine (21-4607) examined. *State v. McClothlin*, 242 K. 437, 439, 747 P.2d 1335 (1988).

**21-4504. Conviction of second and subsequent felonies; exceptions.** (a) If a defendant is convicted of a felony a second time, the punishment for which is confinement in the custody of the secretary of corrections, the trial judge may sentence the defendant as follows, upon motion of the prosecuting attorney:

*PHxLU*  
1-28-3  
*attn-3*

*pg 14 of 17*

1  
pg ~~12~~ 9/7

**65-2839a****PUBLIC HEALTH****Research and Practice Aids:**

Physicians and Surgeons — 11 et seq.  
C.J.S. Physicians, Surgeons and Other Health-Care Providers § 35.

**Law Review and Bar Journal References:**

"Malpractice '87: Status and Solutions," M. Martin Halley, M.D., J.D., 88, No. 9, Kan.Med. 261, 263, 264 (1987).

**65-2839a.** Investigations and proceedings conducted by board; access to evidence; subpoenas; confidentiality of information. (a) In connection with any investigation by the board of healing arts, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained by and in possession of any clinic, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the boards duly authorized agent to produce evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(c) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the investigation procedure outlined in this section shall be confidential and shall not be disclosed.

(d) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

**History:** L. 1986, ch. 229, § 39; July 1.

**Law Review and Bar Journal References:**

"Malpractice '87: Status and Solutions," M. Martin Halley, M.D., J.D., 88, No. 9, Kan.Med. 261, 263, 264 (1987).

**65-2840a.** Disciplinary counsel; appointment; qualifications; duties; application for subpoenas; staff; rules and regulations. The state board of healing arts shall appoint a disciplinary counsel, who shall not otherwise be an attorney for the board, with the duties set out in this act. The disciplinary counsel shall be an attorney admitted to practice law in the state of Kansas. The disciplinary counsel shall have the power and the duty to investigate or cause to be investigated all matters involving professional incompetency, unprofessional conduct or any other matter which may result in disciplinary action against a licensee pursuant

P. H. W.  
1-28-3  
Attn #3

pg 16 of 17

to K.S.A. 65-2836 through 65-2844, and amendments thereto. In the performance of these duties, the disciplinary counsel may apply to any court having power to issue subpoenas for an order to require by subpoena the attendance of any person or by subpoena *duces tecum* the production of any records for the purpose of the production of any information pertinent to an investigation. Subject to approval by the state board of healing arts, the disciplinary counsel shall employ clerical and other staff necessary to carry out the duties of the disciplinary counsel. The state board of healing arts may adopt rules and regulations necessary to allow the disciplinary counsel to properly perform the functions of such position under this act.

**History:** L. 1984, ch. 238, § 8; L. 1986, ch. 229, § 44; July 1.

**65-2842. Mental or physical examination or drug screen, or any combination thereof, of licensee; requirement by board; computation of time limit for hearing.** Whenever the board directs, pursuant to subsection (i) of K.S.A. 65-2836 and amendments thereto, that a licensee submit to a mental or physical examination or drug screen, or any combination thereof, the time from the date of the board's directive until the submission to the board of the report of the examination or drug screen, or both, shall not be included in the computation of the time limit for hearing prescribed by the Kansas administrative procedure act.

**History:** L. 1957, ch. 343, § 42; L. 1979, ch. 198, § 6; L. 1983, ch. 214, § 3; L. 1984, ch. 238, § 14; L. 1984, ch. 313, § 119; L. 1991, ch. 192, § 4; July 1.

**65-2844. Reinstatement of license; application; burden of proof; reapplication for reinstatement, when; proceedings.** A person whose license has been revoked may apply for reinstatement of the license after the expiration of three years from the effective date of the revocation. Application for reinstatement shall be on a form provided by the board and shall be accompanied by a reinstatement of a revoked license fee established by the board under K.S.A. 65-2852 and amendments thereto. The burden of proof by clear and convincing evidence shall be on the applicant to show sufficient rehabilitation to justify reinstatement of the license. If the board determines a license should not be reinstated, the person shall not be eligible to reapply for reinstatement for three years from the effective date of the den-

ial. All proceedings conducted on an application for reinstatement shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the act for judicial review and civil enforcement of agency actions. The board, on its own motion, may stay the effectiveness of an order of revocation of license.

**History:** L. 1957, ch. 343, § 44; L. 1976, ch. 273, § 20; L. 1984, ch. 313, § 120; L. 1987, ch. 240, § 8; L. 1991, ch. 193, § 1; July 1.

**Research and Practice Aids:**

Physicians and Surgeons — 11.3.(4).

C.J.S. Physicians, Surgeons and Other Health-Care Providers § 50.

**65-2846. Costs of proceedings; assessment of costs incurred.** (a) If the board's order is adverse to the licensee or applicant for reinstatement of license, costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. If the board is the unsuccessful party, the costs shall be paid from the healing arts fee fund.

(b) For purposes of this section costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, witness fees and expenses, mileage, travel allowances and subsistence expenses of board employees and fees and expenses of agents of the board who provide services pursuant to K.S.A. 1990 Supp. 65-2878a and amendments thereto. Costs incurred shall not include presiding officer fees and expenses or costs of making and preparing the record unless the board has designated or retained the services of independent contractors to perform such functions.

(c) The board shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

**History:** L. 1957, ch. 343, § 46; L. 1965, ch. 382, § 10; L. 1973, ch. 309, § 22; L. 1991, ch. 193, § 2; July 1.

**65-2852. Fees; collection by board.** The following fees shall be established by the board by rules and regulations and collected by the board:

PNW  
1-28-3  
Attn: #3

Pg 17 of 17



# KSNA

the voice of Nursing in Kansas

For Further Information Contact:  
Terri Roberts J.D., R.N.  
Executive Director  
Kansas State Nurses Association  
700 SW Jackson, Suite 601  
Topeka, Kansas 66603-3731  
(913) 233-8638

## HB2073 Board of Nursing Licensure, Discipline

Chairperson Flower and members of the House Public Health and Welfare Committee, my name is Terri Roberts and I am the Executive Director of the Kansas State Nurses Association. The Kansas State Nurses Association supports the changes proposed in HB 2073.

The ones we are particularly please about include the addition of "public censorship" for licensees who violate the Nurse Practice Act. This appropriately expands the list of actions that the Board may use to discipline licensees. The current three "revoke, limit or suspend", are very limited. There may be wisdom in also adding "private censure" for those situations that may involve ethical issues or are in a gray areas.

We support **New Section (7)** which expands the authority of the Board for disciplinary related investigations. The Board should be permitted broad latitude for investigation of potentially incompetent licensees.

Additionally, we urge the adoption of **New Section (8)** which requires the Board to maintain confidentiality of any complaint received by the Board except for one of the three exceptions.

We would recommend that **New Section 8 (a)** be amended to reflect that the complaints or reports received apply only to licensees of the Board of Nursing relevant to discipline related matters.

This could be accomplished by excluding letters received from licensees related to decisions, operations and roles and functions of the Board.

If left as broadly as it is written this could effectively prohibit the Board of Nursing from public disclosure or public discussion of complaints sent to the Board of Nursing about it's own operations and functioning as it carries out its agency role.

We are confident the Board of Nursing did not intend this breadth of non-disclosure as they have been very open about disclosing complaints or discussing concerns related to its own operations and staffing.

Kansas State Nurses' Association Constituent of The American Nurses Association

700 S.W. Jackson, Suite 601 • Topeka, Kansas 66603-3731 • (913) 233-8638 • FAX (913) 233-5222  
Michele Hinds, M.N., R.N.—President • Terri Roberts, J.D., R.N.—Executive Director

*PHW*  
*1-28-93*  
*Attn # 4*



January 28, 1993  
Page 2

Another area that may warrant revisiting are the penalties sections (Page 3 Line 7). While we support appropriately strong penalties for Nurse Practice Act Violations, SB 479 New Section 10(b)(7) passed last session reclassifies Misdemeanor offenses and we would encourage the Committee to make sure the Nurse Practice Act violations are properly reclassified too.

a:hb2073

P.H.W.  
1-28-3  
Attn #4  
Pg 2 of 2