Approved: 2-11-93
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 4, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Norman Furse, Revisor of Statutes
William Wolff, Legislative Research Department
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

State Senator Bill Wisdom
Yo Bestgen, Executive Director, Kansas Association of Rehabilitation Facilities
Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Chip Wheelen, Director of Public Affairs, Kansas Medical Society
Tom Bell, Kansas Hospital Association
Anthony J. Silvagni, D.O., University of Health Sciences, College of Osteopathic Medicine, KCMO

Others attending: See attached list

The Chair asked for Committee bill introduction requests. Senator Bill Wisdom requested legislation that would provide a special rate of reimbursement for not-for-profit nursing facilities with over 200 beds and a medicaid occupancy rate of over 75%. Senator Ramirez made a motion to approve the introduction of the bill, seconded by Senator Langworthy. No discussion followed. The motion carried.

Yo Bestgen, Kansas Association of Rehabilitation Facilities, requested introduction of a bill that would exempt Intermediate Care Facilities/Mentally Retarded (ICF/MR) from the provisions of KSA 39-936, Section 1, that require direct care employees be trained as Certified Nurses Aid (CNA). Senator Salisbury made a motion to approve the introduction of the bill, seconded by Senator Langworthy. No discussion followed. The motion carried.

The Chair called for discussion and action on the confirmation recommendation of Robert C. Harder, Secretary, Kansas Department of Health and Environment. Senator Salisbury made a motion Robert C. Harder be recommended for confirmation as Secretary of the Kansas Department of Health and Environment, seconded by Senator Ramirez. No discussion followed. The motion carried.

The Chair opened the hearing on **SB 16** - Prohibiting hospitals from discriminating in the selection of professional staff.

Harold E. Riehm, Kansas Association of Osteopathic Medicine, appeared before the Committee and submitted written testimony in support of the bill. **SB 16** would prohibit hospitals from discriminating against practitioners of general practice or family practice based solely on the practitioner's number of years of postgraduate training or specialist certification. (Attachment 1) Committee discussion related to the important for further training to keep up with the latest medicine and hospitals having control over their staff.

Chip Wheelen, Director of Public Affairs, Kansas Medical Society, appeared in opposition to **SB 16** stating the bill would set a dangerous precedent of interfering with a hospital's authority to make staff credentialing decisions which are consistent with their responsibility to assure quality services within their institution. (Attachment 2) Committee discussion related to the granting of a license to persons who have met minimum education and training requirements to be licensed to practice medicine and surgery and if there are statistics on whether malpractice rates would be lower with a residency training program.

Tom Bell, Kansas Hospital Association, appeared in opposition to **SB 16** and stated the intent embodied in the bill is already contained in KSA 65-431(b) and raises the question of how far the Legislature should go in essentially writing and rewriting medical staff bylaws. The bill would mandate staff membership to minimally trained individuals. (Attachment 3) Committee discussion related to "grandfathering" of certain doctors, and under this bill, hospitals would no longer be able to say they have a residency training requirement and still consider individual experience of the physician. The hospitals will do everything possible to ensure high quality care for their patients each time the courts tell them they are more and more responsible for what transpires in their institution.

Anthony J. Silvagni, D.O., College of Osteopathic Medicine of Kansas City, Missouri, appeared briefly before the Committee and stated osteopathic physicians are trained by mentors who are physicians on house staff, and that residencies are a series of experience, and one can obtain that experience in residency, internship or practice.

The meeting was adjourned at 11:00 A.M.

The next meeting is scheduled for February 9, 1993.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE DATE: 2-4-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Dr. Pat Barber	900 SW Jackson-Lwlcl	KS Laboratory Council
Josie Torrez	Topeka, KS	Families Together, Inc.
Sydney Hardman	Lawrence	KS Action for Children
MaryLee Bennett	Topeka KS	Observer - Washburn Univ.
George Wingert		Gov office
Sandra Hand	Lawrence	KINH
ALAN COBB	Wichita	Wichita Hospitals
Carrie LeBlanc	Topeka	Observer Washburn Student
Charlotte McAfee	3435 Indiana	Observer Washburn Student
Robert Epps	Topeka	SRS
Nancy Kendall	Topeka	LWV of Ks
Steven Wahl	Lawrence	KS Gov't Counseling
Larry Buening	Topeka	Bd of Healing Arts
KEITH R LAWRIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KS
Anthony J. Silvagni DO	Kansas City, MO	Univ of Health Sciences College of Osteopathic Medicine
Dr. James V. Ruben DO	Valley Falls KS	Private Physician
Harold Riegm	Topeka	KASA
Susan Alexander	Shawnee City	FNPS - Ft. Hays
David Hartwick	Topeka	KS Dental Assn
Bruce Luthis	Lawrence	KALPCCA
Jo Bertagen	Topeka	KARF
Shep. Wheelen	Topeka	KS Medical Soc.
Terry SLAUGHTER	TOPEKA	KS. MEDICAL SOCIETY

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE DATE: 2-4-83

NAME	ADDRESS	COMPANY/ORGANIZATION
Tom Bell	Topeka	Ks. Hosp. Ass'n.
Amy Hoch	Manhattan	Intern

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563
(913) 234-5564 Fax

KAOM TESTIMONY ON S.B. 16 FEBRUARY 04, 1993

Chairperson Praeger and Members, Senate Public Health Committee:

Thank you for this opportunity to present our views on S.B. 16. This Bill was introduced at the request of the Committee on Health Care Decisions for the Nineties, at KAOM's request. It follows a period of frustration on the part of some osteopathic physicians--and this Association--in obtaining medical staff privileges at certain Kansas hospitals.

Time permitting, in my oral testimony, I will offer a few comments on the history and nature of the osteopathic profession, as well as some definitions of terms relevant to S.B. 16. Suffice it to say here, that there are approximately 300 osteopathic physicians (D.O.s) practicing in Kansas, all but approximately 30 or so in general practice. Of those in general practice, we estimate that perhaps 20 or so are residency trained.

In recent years, and with increasing frequency, some Kansas hospitals, mostly in urban areas, have altered their Bylaws to require that either residency training or residency training and board certification are necessary qualifications for obtaining appointment to the medical staff. Unless there is a mechanism for exception, this precludes over 90 percent of general practice D.O.s practicing in Kansas from obtaining privileges in those hospitals. It furthermore makes ineligible for staff privileges those D.O.s who choose to enter practice after a one year internship (one year of post graduate training following medical school).

It is important to note that S.B. 16 addresses only family or general practice doctors. It does not address qualifications for privileges in specialty practices (other than general practice). While it primarily effects D.O.s, there are also M.D.s in practice in Kansas as family doctors who are not residency trained, primarily those who entered practice when that was not a requirement.

It is inevitable that, in consideration of this Bill, questions will arise concerning quality of care provided by residency trained vis-a-vis non-residency trained general practice doctors. That question should be addressed. However, it is the feeling of KAOM that there are other issues, such as patient choice, the availability of physician care in underserved areas, and a basic question of fairness.

It is unfortunate, perhaps, that the word discrimination is used in this disagreement. We are not suggesting that there is discrimination per se. We recognize that the same guidelines are being applied to M.D.s as well as D.O.s What we are suggesting, is that such requirements for residency training impact in a negative way primarily on one group of physicians, those licensed as osteopathic physicians. The State of Kansas licenses all physicians--D.O.s and M.D.s. All are required to have one year of post graduate training. All are licensed to practice medicine and surgery in Kansas. Other than title of profession and individual name of the physician, there are no other distinctions on the State license.

KAOM also wants to state that we do not view this as an M.D. against D.O. issue, nor do we view it as an adversarial relationship between hospitals and D.O.s--that would be disfunctional to all concerned, including patients. Were we in any way convinced that we could resolve these problems on a hospital by hospital basis, or through a general understanding will all hospitals, we would have pursued such objectives. At this time, we think that is not the case.

On page two of this written testimony, we list an outline of points we make in support of S.B. 16. Time permitting, I will elaborate and provide some examples illustrative of our concerns.

Senate P. H. & W.
Attachment #1
2-4-93

QUESTIONS, ISSUES AND OBSERVATIONS ON S.B. 16

1. WHAT IS THE INCIDENCE OF KANSAS HOSPITALS WITH RESIDENCY TRAINING REQUIREMENTS, AND WHAT HAS HAPPENED IN RECENT YEARS?

   Several Kansas Hospitals have such requirements, mostly in urban areas. The Hays Hospital is an exception, located in a non-urban setting. In varying degrees, restrictions exist in some Wichita Hospitals, some Johnson County Hospitals and the Topeka Hospitals. Recently a compromise was reached in Topeka. KAOM also notes that there are some urban hospitals that do not have such restrictions, Humana in Overland Park, for example, St. Joseph in Wichita and, of course, Riverside in Wichita. KAOM notes that it should not and does not follow that these hospitals without such requirements have lower quality control standards for medical care.

2. WHY NOT A HOSPITAL BY HOSPITAL SOLUTION, OR A GENERAL UNDERSTANDING WITH ALL HOSPITALS?

   The former has been tried by individual D.O.s with little success (note Topeka compromise). Many other D.O.s have been discouraged from even trying, due to little hope for success, expenses of hiring legal counsel, time involved, etc. (EXAMPLE OF HAYS, TOPEKA, OLATHE) The Olathe Medical Center has the most restrictive requirements. Were KAOM assured that all hospitals would feel bound by a multilateral agreement reached, perhaps, through the KHA, KAOM would proceed. We think that not the case.

3. IS THERE A QUALITY OF CARE ISSUE - RESIDENCY VIS-A-VIS NON-RESIDENCY TRAINED PHYSICIANS?

   The osteopathic profession today encourages and urges students to seek residency training. At the same time, the profession also recognizes entrance to practice after a one-year rotating internship. That "more is better" may be, at times, a valid assumption; this profession continues to think there are exceptions. There are persons ready to enter practice after one year of post graduate training. Admittedly, there are others who are not. One could make the same statement about products of general practice or family practice residency training programs. The osteopathic profession continues to think there are other valid factors--prior experience, learning curve, maturity, judgment, etc. For those many D.O.s in practice in Kansas--some with many years of quality practice--we think the application of this requirement is without defense. KAOM is not questioning other checks on quality--except this requirement. (See attachment for sample list of qualifications) Lastly, KAOM would ask if the difference is verified by any statistics--number of malpractice cases, number of complaints to the licensing Board?, etc. KAOM knows of none.

4. SHOULD THE STATE RESTRICT THE PREROGATIVES OF KANSAS HOSPITALS IN SETTING MEDICAL STAFF QUALIFICATIONS? AND, IF OSTEOPATHY PRIDES ITSELF ON PROVIDING RURAL PRIMARY CARE DOCTORS WHY THE CONCERN WITH THE POLICIES OF URBAN HOSPITALS?

   Ideally, the answer to the former is "no". In this case, however, KAOM feels there is. First, few if any D.O.s have been a party to formulating these restrictions. Also, KAOM feels there are other issues of a policy nature which place these restrictions under the umbrella of State concern, i.e., patient choice and physician services in underserved areas. These explain KAOM's concerns with urban hospital policies, added to the general concern of physican mobility within the State.

5. HOW DO THESE PRACTICES BY HOSPITALS IMPACT ON PATIENT CHOICE OR UNDERSERVED AREAS? SEE ATTACHMENT

   When patients seek admission to a hospital upon a physician's determination, but that hospital precludes their licensed physician admitting privileges due to lack of residency training, there is a restriction of patient choice. AND, when physicians are discouraged from locating in underserved area close to hospitals with such restrictions, underserved areas come into play. NOTE - IN THE FOUR COUNTIES IN WHICH HOSPITALS WITH RESTRICTIONS ARE LOCATED, FIFTEEN (15) COUNTIES WITH COMMON BORDERS WITH THOSE COUNTIES ARE UNDERSERVED--ELEVEN (11) OF THEM CRITICALLY UNDERSERVED. ONE OF THE COUNTIES ITSELF IS UNDERSERVED. (EXAMPLE OF WELLSVILLE, TOPEKA)

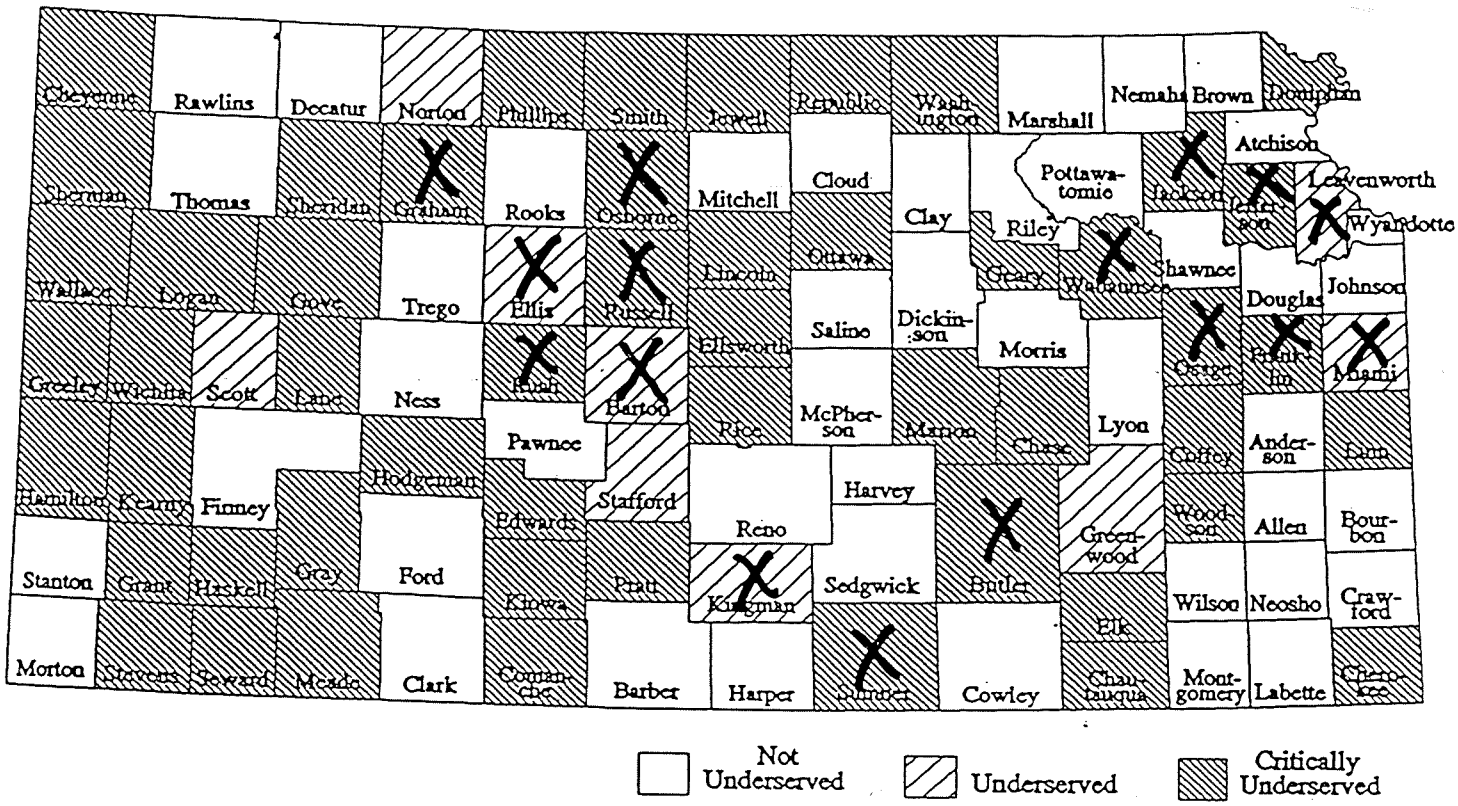
6. IN THE UNDERSERVED COUNTIES NOTED IN THE PRECEDING PARAGRAPH, IS NOT A LICENSED PHYSICIAN A PREFERRED ALTERNATIVE FOR FULL SERVICE CARE, TO THAT OF A PA OR ARNP?

   KAOM recognizes the valuable services of PA's and ARNP's, but answers this question "YES"

DISPLAY NO. 1

1991 UNDERSERVED AREAS

SOURCE: THE 1991 KANSAS MEDICALLY UNDERSERVED AREAS REPORT, KU MED ER



= COUNTIES UNDERSERVED OR CRICIALLY UNDERSERVED BORDERING COUNTIES IN WHICH HOPSITALS ARE LOCATED WITH RESIDENCY REQUIREMENT RESTRICTIONS (INCLUDES A COUNTY ITSELF, WITH RESTRICTIONS WHICH IS ALSO UNDERSERVED. PRIMARY CARE

DISPLAY NO. 2 QUALIFICATIONS FOR APPOINTMENT TO MEDICAL STAFF - OLATHE MEDICAL CENTER

SOURCE: MEDICAL STAFF BYLAWS, OLATHE MEDICAL CENTER P. 2

Section 2. Qualifications for Appointment

a. To qualify for appointment to the medical staff, physicians and dentists must be licensed to practice in the State of Kansas, must maintain professional liability insurance coverage in compliance with medical center policy, and must document their background, experience, training and demonstrated competence, their adherence to the ethics of their profession, their good reputation and their ability to work with others to the satisfaction of the medical staff and the governing board that any patient treated by them in the medical center will be given quality medical care. Physicians and dental specialists must have at least three (3) years of post-graduate medical/dental education in an approved residency or fellowship training program and must be certified or actively pursuing board certification by an approved certifying board in that particular specialty. [Approved certifying boards are listed in Appendix D of these bylaws.] No practitioner shall be entitled to appointment to the medical staff or to the exercise of particular clinical privileges in the medical center merely by virtue of the fact that he is duly licensed to practice medicine or dentistry in this or in any other state, or that he is a member of any professional organization, or that he had in the past, or presently has, such privileges at another hospital.

b. Acceptance of appointment to the medical staff shall constitute the staff member's agreement that he will abide by the Principles of Medical Ethics of the American Medical Association or by the Code of Ethics of the American Dental Association, whichever is applicable, as the same are appended to and made a part of these bylaws.

KANSAS MEDICAL SOCIETY
623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

February 4, 1993

TO: Senate Public Health and Welfare Committee

FROM: Chip Wheelen
Director of Public Affairs

SUBJECT: Senate Bill 16 as Introduced

Thank you for the opportunity to express our opposition to SB 16. We believe that if enacted, SB 16 would set a dangerous precedent of interfering with a hospital's authority to make staff credentialing decisions which are consistent with their responsibility to assure quality services are delivered within their institution.

It is important to keep in mind that hospitals are acute care facilities. A patient does not obtain routine primary care services at a hospital. The level of sophisticated medical care provided by a hospital demands that physicians who are granted practice privileges possess the clinical training necessary to provide safe, quality acute care. One of the best ways of assuring that a physician has obtained such clinical training is to establish postgraduate residency as a criterion for medical staff privileges.

When a student graduates from medical school, the new M.D. or D.O. has the opportunity to pursue residency training in order to acquire clinical skills beyond those skills learned from medical school curriculum. Most medical school graduates do engage in residency training but a few of them do not. Those who complete a brief internship in lieu of residency training make a conscious career choice to forego advanced clinical training. They are well aware that such a decision will preclude board certification by a medical specialty organization and will likely limit the physician's hospital privileges.

In today's climate of heightened litigiousness and accountability for quality patient care, all hospitals have an obligation to see that the physicians admitted to their medical staffs are prepared by training and experienced to deliver services which meet the applicable standard of care. In recent years the credentialing process which all physicians must go through has become much more strict and comprehensive as medical staffs and hospitals have continued to place greater emphasis on their quality assurance responsibilities. This bill will undermine those activities. For example, if this bill is passed,

Senate PHWC
Attachment 2
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a hospital may continue to reject applicants for general surgery privileges, if such applicants have not completed a residency in general surgery. However, a different standard would apply for physicians who seek general or family practice privileges. Conceivably, a physician who drops out of or does not successfully complete a residency in family practice could not be denied privileges at a hospital, because under this bill that would "discriminate" against such physicians. This will seriously jeopardize quality assurance efforts in hospitals and undermine the responsibility of medical staffs to assure that only qualified physicians are able to achieve staff privileges.

We believe that SB 16 establishes a dangerous precedent by supplanting the authority of hospitals to credential medical staff members with statutory criteria that may be below the applicable standard of care. Please remember that hospital medical staff membership is a privilege; not a right. It is a privilege earned by achieving the required training and should remain as such. Anything short of that would diminish our standards of quality in providing medical care to the people of Kansas.

Thank you for considering our concerns regarding SB 16. We urge you to recommend that SB 16 <u>not be passed</u>.

CW:cb

KANSAS HOSPITAL ASSOCIATION

Memorandum

Donald A. Wilson
President

February 4, 1993

TO: Senate Public Health and Welfare Committee

FROM: Kansas Hospital Association

RE: SENATE BILL 16

The Kansas Hospital Association appreciates the opportunity to comment regarding Senate Bill 16. This bill would amend current law to place additional restrictions on selection of hospital medical staff.

The Kansas Hospital Association is opposed to this bill for a number of reasons.

First, the intent embodied by SB 16 is already contained in Kansas law. K.S.A. 65-431(b) currently states that "in the selection of professional staff members, no hospital licensed under K.S.A. 65-425 et. seq. shall discriminate against any practitioner of the healing arts who is licensed to practice medicine and surgery in this State for reasons based solely upon the practitioner's branch of the healing arts or the school or health care facility in which the practitioner received medical schooling or postgraduate training." This provision was added in 1988 at the request of the Kansas Association of Osteopathic Medicine. The Kansas Hospital Association did not oppose this bill. Now, however, SB 16 proposes to go one step further by eliminating residency training requirements.

Second, and perhaps most importantly, this bill raises the question of how far the Legislature should go in essentially writing and rewriting medical staff bylaws. Traditionally, the content of such bylaws, including qualifications for medical staff membership, has been left up to the wisdom of those physicians who comprise the medical staff. This bill would change that and mandate staff membership to minimally trained individuals.

Senate P. HEW
Attachment #3
2-4-93

1263 Topeka Avenue • P.O. Box 2308 • Topeka, Kansas 66601 • (913) 233-7436 • FAX (913) 233-6955

A third, and related, issue concerns the responsibility of the hospital medical staff for the quality of care in that institution. The staff attempts to ensure such quality through the use of a number of tools. One such tool is to require residency training of medical staff members. As the president of the Kansas Academy of Family Physicians recently stated in testimony to the House Public Health and Welfare Committee, "completion of an accredited residency and continued Board certification is one way of ensuring physician quality."

A final reason to reject Senate Bill 16 is because it actually discriminates against family practice physicians. It is not clear why the restrictions of the bill apply only to those engaged in family practice. Indeed, family practice is as much a specialty as internal medicine or pediatrics.

For these reasons, we recommend that SB 16 be reported unfavorably. Thank you for your consideration of our comments.

TLB / pc