

Approved: 3-31-93  
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 March 18, 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  
Emalene Correll, Legislative Research Department  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Action and discussion on **HB 2072** - Licensure of nurses  
and **HB 2073** - Licensure of nurses and mental health technicians, discipline.

The Chair called upon Senator Hardenburger, Chair of the subcommittee with Senators Jones and Ramirez, members, for a report and recommendation on **HB 2072** and **HB 2073**. Senator Hardenburger reported the subcommittee met on March 11th and March 15th with additional testimony provided from the two nursing groups. The subcommittee recommended the two bills be combined, and a balloon of the subcommittee's recommendations was distributed to the Committee with explanation by staff showing **HB 2072** merged into **HB 2073** with deletions and new language. (Attachment 1) Senator Ramirez pointed out that the attorney general's appointee of an attorney on the board would be paid by the Attorney General's office, and the other attorney on the board would be paid by fees from the board of nursing fee fund. Explanation of the deletion of language relating to the ARNP was provided by staff. Senator Jones made a motion to adopt the subcommittee's report and recommendations to incorporate the changes of **HB 2072** into **HB 2073**, seconded by Senator Hardenburger. The motion carried. Senator Hardenburger made a motion to recommend **HB 2073 as amended** favorably for passage, seconded by Senator Ramirez. The motion carried. Senator Jones made a motion to recommend **HB 2072** be reported unfavorably, seconded by Senator Papay. The motion carried.

Action and discussion on **SB 410** - Creating a medicaid drug utilization review board. (Attachment 2)

The Chair outlined the provisions of **SB 410**, and staff provided information on the statute pertaining to those instances where meetings may be closed with recommendation that language similar to K.S.A. 75-4319 (7) or (8) be amended into the bill on page 3, line 3 (f) that would read "The board in considering matters relating to identifiable patients and providers may go into executive session" and then amend 75-4319 into the bill, "matters permitted to be discussed in closed or executive meetings pursuant to Sub (f) of Sec. 2". Senator Langworthy made a motion to adopt the recommended language, seconded by Senator Hardenburger. Clarification was made of K.S.A. 74-8804, which referred to the Kansas Racing Commission, and concern was expressed by a member regarding the make-up of the DUR board. A call was made for the question. The motion carried. Senator Salisbury made a motion to recommend **SB 410 as amended** favorably for passage, seconded by Senator Langworthy. The motion carried. Senator Walker requested his "No" vote be recorded.

Discussion and Action on **HB 2136** - Smoking prohibited in all public places.

The Chair reviewed **HB 2136** with the floor amendment from the House of Representatives that prohibited smoking in day care homes and on the entire premise of the home. Concern was expressed regarding the homeowner prohibited from smoking in his own yard or basement, and it was also pointed out the homeowner was using his home as a place of business for caring for children. It was suggested the bill remain intact and possibly worked on next year.

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

The next meeting is scheduled for March 19, 1993.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE

DATE: 3-18-93

[illegible]

HOUSE BILL No. 2073

By Committee on Public Health and Welfare

Subcommittee Recommendations

HB 2073 and HB 2072

1-20

AN ACT concerning licensure of nurses and mental health technicians; state board of nursing; investigations and proceedings; unlawful acts and crimes; amending K.S.A. 65-1120, 65-1122, 65-1134, 65-1162, 65-4209 and, 65-4214 and 74-1106 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 65-1120 is hereby amended to read as follows: 65-1120. (a) *Grounds for disciplinary actions.* The board shall have the power to ~~may publicly or privately censure~~ deny, revoke, limit or suspend any license or, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse or, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for in accordance with the provisions of under this act in the event that if the applicant ~~or licensee~~ is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or ~~misdemeanor~~ to have been guilty of a misdemeanor involving an illegal drug offense, if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(3) to have committed an act of professional incompetency as defined in subsection (c);

(4) to be habitually intemperate in the use of alcohol or addicted to the use of habit-forming drugs to be unable to practice with skill and safety due to ~~physical or mental disabilities, including loss of motor skills or~~ abuse of drugs or alcohol;

(5) to be mentally incompetent;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) (5) (6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization,

, licensee or holder of a certificate of qualification or authorization

current

Senate PH file  
Attachment #1  
5-18-93

(7) (6) (7) to have willfully or repeatedly violated any of the provisions of the Kansas nurse practice act or any rule and regulation rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto; or

(8) (7) (8) to have a license to practice nursing as a registered nurse or as a practical nurse ~~publicly or privately censured~~ denied, revoked, limited or suspended by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8) (7) (8).

(b) *Proceedings.* Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate such the charges, or the board may designate and authorize an employee or employees of the board to conduct such an investigation. After investigation, the board may institute charges. In the event such if an investigation, in the opinion of the board, shall reveal reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings thereon, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) *Witnesses.* No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against such the person for any the prosecution for of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) *Costs.* If final agency action of the board in a proceeding pursuant to under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according

, or to be publicly or privately censured,

to the statutes relating to procedure in the district court. All costs accrued ~~at the instance of~~ *by* the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid ~~out of any available moneys in~~ from the board of nursing fee fund.

(e) *Professional incompetency defined.* As used in this section, "professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

Sec. 2. K.S.A. 65-1122 is hereby amended to read as follows: 65-1122. It ~~shall be a misdemeanor is a violation of law~~ for any person, firm, corporation or association to:

(a) Sell or fraudulently obtain or furnish any nursing diploma, license, record or certificate of qualification or aid or abet therein;

(b) practice professional nursing, practical nursing or practice as an advanced registered nurse practitioner, unless duly licensed or certified to do so;

(c) use in connection with such person's name any designation implying that such person is a licensed professional nurse, a licensed practical nurse or an advanced registered nurse practitioner unless duly licensed or certified so to practice under the provisions of *this the Kansas nurse practice act*, and such license or certificate is then in full force;

(d) practice professional nursing, practical nursing or as an advanced registered nurse practitioner during the time a license or certificate issued under the provisions of *this the Kansas nurse practice act* shall have expired or shall have been suspended or revoked;

(e) represent that a school for nursing is accredited for educating either professional nurses or practical nurses, unless such school has been duly accredited by the board and such accreditation is then in full force; ~~or~~

(f) violate any provisions of the Kansas nurse practice act or ~~any rule and regulation~~ *rules and regulations* adopted pursuant to that act; ~~or~~

(g) *represent that a provider of continuing nursing education is approved* ~~for educating either professional nurses or practical nurses,~~ unless the provider of continuing nursing education has been ap-

by the board

1 *proved by the board and the approval is in full force.*

2 Any person who violates this section ~~shall be~~ is guilty of a class  
3 ~~C A B~~ misdemeanor, except that, upon conviction of a second or  
4 subsequent violation of this section, such person ~~shall be~~ is guilty  
5 of a class ~~B misdemeanor~~ *class E felony* A misdemeanor.

6 Sec. 3. K.S.A. 65-1134 is hereby amended to read as follows:  
7 ~~65-1134. K.S.A. 65-1130 to 65-1134, inclusive, and The acts con-~~  
8 ~~tained in article 11 of chapter 65 of the Kansas Statutes Annotated~~  
9 ~~and any acts amendatory thereof~~ *amendments thereto* or made  
10 specifically supplemental thereto shall be construed together and may  
11 be cited as the Kansas nurse practice act.

12 Sec. 4. K.S.A. 65-1162 is hereby amended to read as follows:  
13 ~~65-1162. (a) On and after January 1, 1987, Except as otherwise~~  
14 ~~provided in K.S.A. 65-1151 to 65-1163, inclusive, and~~ *amendments*  
15 *thereto* any licensed professional nurse or licensed practical nurse  
16 who engages in the administration of general or regional anesthesia  
17 without being authorized *by the board* to practice as a registered  
18 nurse anesthetist ~~by the board~~ *shall be* is guilty of a class A  
19 misdemeanor.

20 (b) ~~On and after January 1, 1987, Any person, corporation,~~  
21 ~~association or other entity, except as otherwise provided in K.S.A.~~  
22 ~~65-1151 to 65-1163, inclusive, and~~ *amendments thereto* who engages  
23 in any of the following activities ~~shall be~~ is guilty of a class A  
24 misdemeanor:

25 (1) Employing or offering to employ any person as a registered  
26 nurse anesthetist with knowledge that such person is not authorized  
27 *by the board* to practice as such ~~by the board~~ *a registered nurse*  
28 *anesthetist;*

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

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

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

40 (c) ~~Upon~~ Any person who violates *this section* is guilty of a class  
41 B misdemeanor except that upon conviction of a second or subse-  
42 quent violation of this section, the person is guilty of a class ~~E~~  
43 *felony* A misdemeanor.

subsection (b) of

Sec. 5. K.S.A. 65-4209 is hereby amended to read as follows:

65-4209. (a) The board shall have the power, after notice and an opportunity for hearing, to withhold, ~~may~~ ~~publicly or privately~~ ~~censure,~~ deny, revoke, limit or suspend any license to practice as a mental health technician issued or applied for in accordance with the provisions of this act ~~or otherwise to~~ discipline a licensee upon proof that the licensee:

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

(2) ~~is habitually intemperate or is addicted to the use of habit forming drugs is unable to practice with reasonable skill and safety due to physical or mental disabilities, including loss of motor skills or abuse of drugs or alcohol;~~

(3) is mentally incompetent;

(3) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(4) ~~(3)~~ (4) is incompetent or grossly negligent in carrying out the functions of a mental health technician;

(5) ~~(4)~~ (5) has committed unprofessional conduct as defined by rules and regulations of the board; or

(6) ~~(5)~~ (6) has been convicted of a felony or of any misdemeanor involving moral turpitude, in which event the record of the conviction shall be conclusive evidence of such conviction. The board may inquire into the circumstances surrounding the commission of any criminal conviction to determine if such conviction is of a felony or misdemeanor involving moral turpitude. ~~misdemeanor~~ has been convicted of a misdemeanor involving an illegal drug offense, if the board determines, after investigation, that the person has not been sufficiently rehabilitated to warrant the public trust;

(7) has committed an act of professional incompetency as defined in subsection (e);

(6) (8) to have willfully or repeatedly violated the provisions of the mental health technician's licensure act or rules and regulations adopted under that act and amendments thereto; or

(7) (9) to have a license to practice mental health technology ~~publicly or privately censured,~~ denied, revoked, limited or suspended by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States

, may publicly or privately censure a licensee or may otherwise

, or to be publicly or privately censured,

1 government, territory of the United States or country. A certified  
2 copy of the record or order of public or private censure, denial,  
3 suspension, limitation, revocation or other disciplinary action of the  
4 licensing authority of another state, agency of the United States  
5 government, territory of the United States or country shall constitute  
6 prima facie evidence of such a fact for purposes of this paragraph  
7 (7) (9).

8 (b) Upon filing a sworn complaint with the board charging a  
9 person with having been guilty of any of the unlawful practices  
10 specified in subsection (a), two or more members of the board shall  
11 investigate the charges, or the board may designate and authorize  
12 an employee or employees of the board to conduct an investigation.  
13 After investigation, the board may institute charges. If an investi-  
14 gation, in the opinion of the board, reveals reasonable grounds to  
15 believe the applicant or licensee is guilty of the charges, the board  
16 shall fix a time and place for proceedings, which shall be conducted  
17 in accordance with the Kansas administrative procedure act.

18 (c) No person shall be excused from testifying in any proceedings  
19 before the board under the mental health technician's licensure act  
20 or in any civil proceedings under such act before a court of com-  
21 petent jurisdiction on the ground that the testimony may incriminate  
22 the person testifying, but such testimony shall not be used against  
23 the person for the prosecution of any crime under the laws of this  
24 state except the crime of perjury as defined in K.S.A. 21-3805 and  
25 amendments thereto.

26 (d) If final agency action of the board in a proceeding under  
27 this section is adverse to the applicant or licensee, the costs of the  
28 board's proceedings shall be charged to the applicant or licensee as  
29 in ordinary civil actions in the district court, but if the board is the  
30 unsuccessful party, the costs shall be paid by the board. Witness  
31 fees and costs may be taxed by the board according to the statutes  
32 relating to procedure in the district court. All costs accrued by the  
33 board, when it is the successful party, and which the attorney general  
34 certifies cannot be collected from the applicant or licensee shall be  
35 paid from the board of nursing fee fund.

36 (e) As used in this section, "professional incompetency" means:

37 (1) One or more instances involving failure to adhere to the  
38 applicable standard of care to a degree which constitutes gross neg-  
39 ligence, as determined by the board;

40 (2) repeated instances involving failure to adhere to the appli-  
41 cable standard of care to a degree which constitutes ordinary neg-  
42 ligence, as determined by the board; or

43 (3) a pattern of practice or other behavior which demonstrates



1 *a manifest incapacity or incompetence to practice mental health*  
2 *technology.*

3 ~~(b)~~ (f) All proceedings under this section shall be conducted in  
4 accordance with the provisions of the Kansas administrative proce-  
5 dure act.

6 Sec. 6. K.S.A. 65-4214 is hereby amended to read as follows:  
7 65-4214. (a) ~~It shall be a class A misdemeanor is a violation of~~  
8 *law* for any person, including any corporation, association, partner-  
9 ship to:

10 (1) Fraudulently obtain, sell, transfer, or furnish any mental  
11 health technician diploma, license, renewal of license, or record, or  
12 aid or abet another therein;

13 (2) advertise, represent, or hold ~~himself~~ *oneself* out in any man-  
14 ner as a mental health technician or to practice as a mental health  
15 technician without having a license to so practice issued under ~~this~~  
16 *the mental health technician's licensure act*, except as provided in  
17 K.S.A. 65-4212 *and amendments thereto*;

18 (3) use in connection with ~~his one's~~ name any designation in-  
19 tending to imply that ~~he such person~~ is a licensed mental health  
20 technician without having such license issued as herein provided;

21 (4) practice as a mental health technician during the time ~~his~~  
22 *such person's* license shall ~~be~~ is suspended or revoked; or

23 (5) otherwise violate any of the provisions of ~~this the mental~~  
24 *health technician's licensure act; or*

25 ~~(b)~~ In any prosecution under this act it shall be necessary  
26 to prove only a single violation of the provisions of this act or  
27 a single holding out, without proving a general course of con-  
28 duct, in order to constitute a violation.

29 (6) *represent that a provider of continuing education is approved*  
30 *for educating mental health technicians, unless the provider of con-*  
31 *tinuing education has been approved by the board and the approval*  
32 *is in full force.*

33 (b) Any person who violates this section is guilty of a class A B  
34 misdemeanor, except that, upon conviction of a second or subsequent  
35 violation of this section, such person is guilty of a class E felony  
36 A misdemeanor.

37 New Sec. 7. (a) In connection with any investigation by the  
38 board of nursing, the board or its duly authorized agents or  
39 employees shall at all reasonable times have access to, for the  
40 purpose of examination, and the right to copy any document,  
41 report, record or other physical evidence of any person being  
42 investigated, or any document, report, record or other evidence  
43 maintained by and in possession of any clinic, office of a prae-

1 titioner of the healing arts, laboratory, pharmacy, medical care  
2 facility or other public or private agency if such document,  
3 report, record or evidence relates to competence, unprofes-  
4 sional conduct or the mental or physical ability of a licensee  
5 safely to practice.

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

8 (1) The board may issue subpoenas compelling the atten-  
9 dance and testimony of witnesses or the production for ex-  
10 amination or copying of documents or any other physical  
11 evidence if such evidence relates to competence, unprofes-  
12 sional conduct or the mental or physical ability of a licensee  
13 safely to practice. Within five days after the service of the  
14 subpoena on any person requiring the production of any evi-  
15 dence in the person's possession or under the person's control,  
16 such person may first petition the board to revoke, limit or  
17 modify the subpoena. The board shall revoke, limit or modify  
18 such subpoena if in its opinion the evidence required does not  
19 relate to practices which may be grounds for disciplinary action,  
20 is not relevant to the charge which is the subject matter of the  
21 proceeding or investigation, or does not describe with sufficient  
22 particularity the physical evidence which is required to be  
23 produced. Any member of the board, or any agent designated  
24 by the board, may administer oaths or affirmations, examine  
25 witnesses and receive such evidence.

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

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

31 (A) Requiring such person to appear before the board or  
32 the board's duly authorized agents to produce evidence relating  
33 to the matter under investigation; or

34 (B) revoking, limiting or modifying the subpoena if in the  
35 court's opinion the evidence demanded does not relate to prac-  
36 tices which may be grounds for disciplinary action, is not rel-  
37 evant to the charge which is the subject matter of the hearing  
38 or investigation or does not describe with sufficient particu-  
39 larity the evidence which is required to be produced and the  
40 board has refused to revoke, limit or modify pursuant to a  
41 request in subsection (b)(1).

42 (c) Patient records, including clinical records, medical re-  
43 ports, laboratory statements and reports, files, films, other re-

1 ports or any statements relating to diagnostic findings on  
2 treatment of patients; information from which a patient or a  
3 patient's family might be identified; peer review or risk man-  
4 agement records or information received and records kept by  
5 the board as a result of the investigation procedure outlined  
6 in this section are confidential and shall not be disclosed.

7 (d) Nothing in this section or any other provision of law  
8 making communications between a physician and the physi-  
9 cian's patient privileged communication shall apply to inves-  
10 tigations or proceedings conducted pursuant to this section. The  
11 board and its employees agents and representatives shall keep  
12 in confidence the names of any patients whose records are  
13 reviewed during the course of investigations and proceedings  
14 pursuant to this section.

15 (e) This section shall be part of and supplemental to the  
16 Kansas nurse practice act.

17 Sec. 7. K.S.A. 74-1106 is hereby amended to read as follows:  
18 74-1106. (a) *Appointment, term of office.* (1) The governor shall  
19 appoint a board consisting of 11 members of which five shall be  
20 registered professional nurses, two shall be licensed practical  
21 nurses, two shall be licensed mental health technicians and two  
22 shall be members of the general public, which shall constitute a  
23 board of nursing, with the duties, power and authority set forth in  
24 this act. The members of the board of nursing holding office on  
25 the effective date of this amendment shall continue as members  
26 until the expiration of their respective terms.

27 (2) Upon the expiration of the term of any registered profes-  
28 sional nurse, the Kansas state nurses association shall submit to the  
29 governor a list of registered professional nurses containing names  
30 of not less than three times the number of persons to be appointed,  
31 and appointments shall be made after consideration of such list for  
32 terms of four years and until a successor is appointed and qualified.

33 (3) On the effective date of this act, the Kansas federation of  
34 licensed practical nurses shall submit to the governor a list of li-  
35 censed practical nurses containing names of not less than three  
36 times the number of persons to be appointed, and appointments  
37 shall be made after consideration of such list, with the first ap-  
38 pointment being for a term of four years and the second appoint-  
39 ment being for a term of two years. Upon the expiration of the  
40 term of any licensed practical nurse, a successor of like qualifi-  
41 cations shall be appointed in the same manner as the original ap-  
42 pointment for a term of four years and until a successor is appointed  
43 and qualified.

(4) Upon the expiration of the term of any mental health technician, the Kansas association of human services technologies shall submit to the governor a list of persons licensed as mental health technicians containing names of not less than three times the number of persons to be appointed, and appointments shall be made after consideration of such list for terms of four years and until a successor is appointed and qualified.

(5) Each member of the general public shall be appointed for a term of four years and successors shall be appointed for a like term.

(6) Whenever a vacancy occurs on the board of nursing, it shall be filled by appointment for the remainder of the unexpired term in the same manner as the preceding appointment. No person shall serve more than two consecutive terms as a member of the board of nursing and appointment for the remainder of an unexpired term shall constitute a full term of service on such board.

(b) *Qualifications of members.* Each member of the board shall be a citizen of the United States and a resident of the state of Kansas. Registered professional nurse members shall possess a license to practice as a professional nurse in this state with at least five years' experience in nursing as such and shall be actively engaged in nursing at the time of appointment and reappointment. The licensed practical nurse members shall be graduated from an accredited practical nurse program, hold a diploma from an accredited high school or have otherwise obtained the equivalent of a high school education and be licensed to practice practical nursing in the state with at least five years' experience in practical nursing and shall be actively engaged in practical nursing at the time of appointment. Upon the expiration of the terms of the registered professional nurse members holding office on ~~the effective date of this act~~, the governor shall appoint successors so that the registered professional nurse membership of the board shall consist of ~~three~~ members who are engaged in nursing service ~~and~~ two members who are engaged in nursing education. The registered professional nurse members of the board holding office on the effective date of this act shall continue as members until the expiration of their respective terms. The licensed mental health technician members shall be high school graduates or shall have obtained the equivalent of a high school education and shall be licensed to practice as licensed mental health technicians in the state with at least five years' experience at the time of appointment. The consumer members shall represent the interests of the general public. Each member of the board shall take and subscribe the oath prescribed by

July 1, 1993,

two

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and one member who is engaged in practice as an advanced registered nurse practitioner or a registered nurse anesthetist

1 law for state officers, which oath shall be filed with the secretary  
2 of state.

3 (c) *Duties and powers.* (1) The board shall meet annually at  
4 Topeka during the month of July and shall elect from its members  
5 a president, vice-president and secretary, each of whom shall hold  
6 their respective offices for one year. The board shall employ an  
7 executive administrator, who shall be a registered professional  
8 nurse, who shall not be a member of the board and who shall be  
9 in the unclassified service under the Kansas civil service act, and  
10 shall employ such other employees, who shall be in the classified  
11 service under the Kansas civil service act as necessary to carry on  
12 the work of the board. As necessary, the board shall be represented  
13 by an attorney appointed by the attorney general as provided by  
14 law, whose compensation shall be determined and paid by the board  
15 with the approval of the governor. The board may hold such other  
16 meetings during the year as may be deemed necessary to transact  
17 its business.

18 (2) The board may adopt rules and regulations not inconsistent  
19 with this act necessary to carry into effect the provisions thereof,  
20 and such rules and regulations may be published and copies thereof  
21 furnished to any person upon application.

22 (3) The board shall prescribe curricula and standards for pro-  
23 fessional and practical nursing programs and mental health tech-  
24 nician programs, and provide for surveys of such schools and  
25 courses at such times as it may deem necessary. It shall accredit  
26 such schools and approve courses as meet the requirements of the  
27 appropriate act and rules and regulations of the board.

28 (4) The board shall examine, license and renew licenses of duly  
29 qualified applicants and conduct hearings upon charges for limi-  
30 tation, suspension or revocation of a license or accreditation of  
31 professional and practical nursing and mental health technician pro-  
32 grams and may limit, deny, suspend or revoke for proper legal  
33 cause, licenses or accreditation of professional and practical nursing  
34 and mental health technician programs, as hereinafter provided.  
35 Examination for applicants for registration shall be given at least  
36 twice each year and as many other times as deemed necessary by  
37 the board. The board shall promote improved means of nursing  
38 education and standards of nursing care through institutes, con-  
39 ferences and other means.

40 (5) The board shall have a seal of which the executive admin-  
41 istrator shall be the custodian. The president and the secretary  
42 shall have the power and authority to administer oaths in transacting  
43 business of the board, and the secretary shall keep a record of all

1 proceedings of the board and a register of professional and practical  
2 nurses and mental health technicians licensed and showing the cer-  
3 tificates of registration or licenses granted or revoked, which reg-  
4 ister shall be open at all times to public inspection.

5 (6) The board may enter into contracts as may be necessary to  
6 carry out its duties.

7 (7) The board is hereby authorized to apply for and to accept  
8 grants and may accept donations, bequests or gifts. The board shall  
9 remit all moneys received by it under this paragraph (7) to the  
10 state treasurer at least monthly. Upon receipt of any such remit-  
11 tance, the state treasurer shall deposit the entire amount thereof  
12 in the state treasury, and such deposit shall be credited to the  
13 grants and gifts fund which is hereby created. All expenditures  
14 from such fund shall be made in accordance with appropriation  
15 acts upon warrants of the director of accounts and reports issued  
16 pursuant to vouchers approved by the president of the board or a  
17 person designated by the president.

18 (8) A majority of the board of nursing including two professional  
19 nurse members shall constitute a quorum for the transaction of  
20 business.

21 (d) *Subpoenas.* In all matters pending before it investigations  
22 and proceedings, the board shall have the power to issue subpoenas  
23 and compel the attendance of witnesses and the production of all  
24 relevant and necessary papers, books, records, documentary evi-  
25 dence and materials. Any person failing or refusing to appear or  
26 testify regarding any matter about which such person may be law-  
27 fully questioned or to produce any books, papers, records, docu-  
28 mentary evidence or relevant materials in the matter to be heard,  
29 after having been required by order of the board or by a subpoena  
30 of the board to do so, may, upon application by the board to any  
31 district judge in the state, may be ordered by such judge to comply  
32 therewith. Upon failure to comply with the order of the district  
33 judge, the court may compel obedience by attachment for contempt  
34 as in the case of disobedience of a similar order or subpoena issued  
35 by the court. A subpoena may be served upon any person named  
36 therein anywhere within the state with the same fees and mileage  
37 by an officer authorized to serve subpoenas in civil actions in the  
38 same procedure as is prescribed by the code of civil procedure for  
39 subpoenas issued out of the district courts of this state.

40 (e) *Compensation and expenses.* Members of the board of nurs-  
41 ing attending meetings of such board, or attending a subcommittee  
42 meeting thereof authorized by such board, shall be paid compen-  
43 sation, subsistence allowances, mileage and other expenses as pro-

1-12

1-13

1 vided in K.S.A. 75-3223, and amendments thereto.

2 New Sec. 8. (a) Any complaint or report, record or other infor-  
3 mation relating to the investigation of a complaint about a person  
4 licensed by the board which is received, obtained or maintained by  
5 the board is confidential and shall not be disclosed by the board or  
6 its employees in a manner which identified or enables identification  
7 of the person who is the subject or source of such information except:  
8 (1) In a disciplinary proceeding conducted by the board pursuant  
9 to law or in an appeal of the order of the board entered in such  
10 proceeding, or to any party to such proceeding or appeal or such  
11 party's attorney;

12 (2) to the proper licensing or disciplinary authority of another  
13 jurisdiction, if any disciplinary action authorized by K.S.A. 65-1120  
14 and amendments thereto has at any time been taken against the  
15 licensee or the board has at any time denied a license certificate or  
16 authorization to the person; or

17 (3) to the person who is the subject of the information, but the  
18 board may ~~required~~ require disclosure in such a manner as to  
19 prevent identification of any other person who is the subject or source  
20 of the information.

21 (b) This section shall be part of and supplemental to the Kansas  
22 nurse practice act.

23 Sec. 9. K.S.A. 65-1120, 65-1122, 65-1134, 65-1162, 65-4209 and,  
24 65-4214 and 74-1106 are hereby repealed.

25 Sec. 10. This act shall take effect and be in force from and after  
26 its publication in the statute book.

## HOUSE BILL No. 2072

By Committee on Public Health and Welfare

1-20

9 AN ACT concerning the board of nursing; licensure, qualification  
10 and authorization; unlawful acts; amending K.S.A. 65-1114, 65-  
11 1115, 65-1116, 65-1117, 65-1118, 65-1118a, 65-1132, 65-1152, 65-  
12 1155, 65-4203 and 65-4205 and repealing the existing sections;  
13 also repealing K.S.A. 65-1156, 65-1157 and 65-1160.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 65-1114 is hereby amended to read as  
17 follows: 65-1114. (a) It shall be ~~is~~ unlawful for any person ~~to~~

18 (1) To Practice or to offer to practice professional nursing  
19 in this state; or

20 (2) to use any title, abbreviation, letters, figures, sign, card  
21 or device to indicate that any person is a registered professional  
22 nurse; or

23 (3) to practice or offer to practice practical nursing in this  
24 state; or

25 (4) to use any title, abbreviation, letters, figures, sign, card  
26 or device to indicate that any person is a licensed practical  
27 nurse;

28 unless such person has been duly licensed under the provisions  
29 of this act *Kansas nurse practice act*.

30 (b) It shall be ~~is~~ unlawful for any person ~~to~~:

31 (1) To Practice or offer to practice as an advanced registered  
32 nurse practitioner in this state; or

33 (2) to use any title, abbreviation, letters, figures, sign, card  
34 or device to indicate that any person is an advanced registered  
35 nurse practitioner, unless such person has been duly issued a  
36 certificate of qualification as an advanced registered nurse prac-  
37 titioner under the Kansas nurse practice act.

38 (c) *It is unlawful for any person to:*

39 (1) *Practice or to offer to practice as a registered nurse*  
40 *anesthetist in this state; or*

41 (2) *use any title, abbreviation, letters, figures, sign, card*  
*or device to indicate that any person is a registered nurse*  
*anesthetist;*



1-15

of this act, whether initial or renewal, shall expire every two years.

The expiration date shall be established by rules and regulations of the board. The board shall mail an application for renewal of a certificate of qualification to every advanced registered nurse practitioner at least 60 days prior to the expiration date of such person's license. Every person who desires to renew such certificate of qualification shall file with the board, on or before the date of expiration of such certificate of qualification, a renewal application together with the prescribed biennial renewal fee. *[The board shall require*

*every licensee with an active certification as an advanced registered nurse practitioner to submit with the renewal application evidence of satisfactory completion of a program of continuing education required by the board. The board shall adopt rules and regulations to establish the requirements for such program of continuing education. The continuing education requirements established by the board under this section shall not be in addition to continuing education requirements established for the renewal of a license under K.S.A. 65-1117 and amendments thereto. Out of the total hours of continuing education established by the board under K.S.A. 65-1117 and amendments thereto, the board may require certain categories of licensees with an active certification as advanced registered nurse practitioners to obtain a minimum number of continuing education hours in pharmacology, as established by rules and regulations of the board, but the board shall not require that the remaining number of required continuing education hours be in the area of specialty of the advanced registered nurse practitioner.]*

Upon receipt of such application and payment of any applicable fee, and upon being satisfied that the applicant for renewal of a certificate of qualification meets the requirements established by the board under K.S.A. 65-1130 and amendments thereto in effect at the time of initial qualification of the applicant, the board shall verify the accuracy of the application and grant a renewal certificate of qualification.

(b) Any person who fails to secure a renewal certificate of qualification prior to the expiration of the certificate of qualification may secure a ~~renewal reinstatement~~ of such lapsed certificate of qualification by making application therefor on a form provided by the board, upon furnishing proof that the applicant is competent and qualified to act as an advanced registered nurse practitioner and upon satisfying all of the requirements for ~~renewal set forth in subsection (a)~~; reinstatement including payment to the board of a reinstatement fee as established by the board.

(c) Any person who on June 20, 1982, held a certificate of

Subcommittee recommends that HB 2072 be merged into HB 2073

1 sole judge of the adequacy of the evidence so presented and  
2 of satisfying all the requirements for reinstatement.

3 (c) Each licensee shall notify the board in writing of a change  
4 in name or address within 30 days of the change. Failure to so  
5 notify the board shall not constitute a defense in an action relating  
6 to failure to renew a license, nor shall it constitute a defense in any  
7 other proceeding.

8 New Sec. 12-11. The board shall appoint a disciplinary  
9 counsel, with the duties set out in this act. The disciplinary  
10 counsel shall be an attorney admitted to practice law in Kansas.  
11 The disciplinary counsel shall have the power and the duty to  
12 investigate or cause to be investigated all matters involving  
13 professional incompetency, unprofessional conduct or any other  
14 matter which may result in disciplinary action against a licensee  
15 pursuant to the Kansas nurse practice act or the mental health  
16 technician's licensure act and amendments thereto. In the per-  
17 formance of these duties, the disciplinary counsel may apply  
18 to any court having power to issue subpoenas for an order to  
19 require by subpoena the attendance of any person or by sub-  
20 poena *duces tecum* the production of any records for the purpose  
21 of the production of any information pertinent to an investi-  
22 gation. Subject to approval by the board the executive admin-  
23 istrator shall employ clerical and other staff necessary to carry  
24 out the duties of the disciplinary counsel. The board may adopt  
25 rules and regulations necessary to allow the disciplinary coun-  
26 sel to properly perform the function of such position under this  
27 act. This section is made specifically supplemental to the Kan-  
28 sas nurse practice act.

29 New Sec. 11. (a) The attorney general shall appoint, with the  
30 approval of the board of nursing, an assistant attorney general who  
31 shall ~~be the attorney for the board of nursing~~. The attorney shall  
32 receive an annual salary fixed by the attorney general with the  
33 approval of the board of nursing. The salary shall be paid from  
34 moneys appropriated to the board of nursing in the board of nursing  
35 fee fund.

36 (b) The assistant attorney general appointed under subsection  
37 (a) shall ~~be the legal advisor for the board of nursing; shall~~ represent  
38 the board of nursing in any litigation that may arise in the discharge  
39 of the duties of the board of nursing and shall perform such other  
40 duties of a legal nature as may be directed by the board of nursing.

1 Sec. 13 12. K.S.A. 65-1114, 65-1115, 65-1116, 65-1117, 65-1118,  
2 65-1118a, 65-1132, 65-1152, 65-1155, 65-1156, 65-1157, 65-1160, 65-  
43 4203 and 65-4205 are hereby repealed.

carry out the duties under subsection (b)

proceedings or

1-16

v. Public Employee Relations Board, 249 K. 163, 170, 815 P.2d 66 (1991).

**75-4317a.**

**Attorney General's Opinions:**

Open meetings act; executive sessions; applicability; persons entitled to attend; actions taken. 91-31.

Open meeting defined; quorum; impact of abstention on quorum; disqualified member. 91-73.

**75-4318.**

**Attorney General's Opinions:**

Executive sessions; acquisition of property. 89-92.

Chamber of commerce. 89-149.

Levees; powers of county commissioners. 90-69.

Open meetings act; executive sessions; applicability; persons entitled to attend; actions taken. 91-31.

**CASE ANNOTATIONS**

12. Act not violated where consensus only reached in executive session; advance preparation of resolution reflecting expected action not due process violation. O'Hair v. U.S.D. No. 300, 15 K.A.2d 52, 66, 805 P.2d 40 (1991).

**75-4319.** Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited. [See Revisor's Note] (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except

that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto; and

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (J)[\*] of K.S.A. 38-1507 and amendments thereto or subsection (f) of K.S.A. 38-1508 and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

**History:** L. 1972, ch. 319, § 3; L. 1977, ch. 301, § 3; L. 1981, ch. 344, § 1; L. 1988, ch. 315, § 4; L. 1992, ch. 318, § 9; Jan. 1, 1993.

\* Reference is presumably intended to subsection (a)(2)(j).

**Revisor's Note:**

Section was amended twice in 1992 session, see also 75-4319a.

**Attorney General's Opinions:**

Executive sessions; acquisition of property. 89-92.

Open meetings act; executive sessions; applicability; persons entitled to attend; actions taken. 91-31.

Open public meetings; contents of motion for executive session. 91-78.

Open public meetings; executive sessions; subjects for discussion; persons in attendance; attorney-client privileged communications. 92-56.

**CASE ANNOTATIONS**

4. Act not violated where consensus only reached in executive session; advance preparation of resolution reflecting expected action not due process violation. O'Hair v. U.S.D. No. 300, 15 K.A.2d 52, 56, 66, 805 P.2d 40 (1991).

**75-4319a.** Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited. [See Revisor's Note] (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during

*Senate P.H.C.  
Attachment #2*

*3-18-93*