

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:37 P.M. on February 9, 2006 in Room 231-N of the Capitol.

All members were present.

Late Arrivals:

Journey	2:00
Wagle	1:40

Committee staff present:

Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Diana Lee, Office of Revisors of Statutes
Morgan Dreyer, Committee Secretary

Conferees appearing before the committee:

Dr. Richard Maxfield, licensed psychologist
Sky Westerlund, Kansas Chapter, National Association of Social Workers
Michael Donnelly, Director of Policy and Outreach, Disability Rights Center of Kansas
Phyllis Gilmore, Executive Director, Behavioral Science Regulatory Board
Vicki Arnett, Kansas Chapter, National Association of Social Workers

Others attending:

See attached list.

Hearing on SB-469—An act concerning the behavioral regulatory board; relating to impaired licenses

Chairman Barnett called upon the only proponent conferee, Dr. Richard Maxfield, licensed psychologist, stated to urge the Committee to favor the legislation as it recognizes the reality that the Behavioral Science Board licensees are not immune from physical, mental, or substance problems which might impair their practice. A copy of his testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chairman Barnett asked for questions or comments from the Committee. Questions came from Senators Wagle, and Schmidt, regarding licensing fees, differentiation of licensed pharmacist in their way of regulations. Chairman Barnett asked research, and Emalene clarified more information, Emalene, then asked to be excused from the meeting.

The first opponent conferee to testify was, Sky Westerlund, Executive Director of the Kansas Chapter National Association of Social Workers, stated that SB 469 causes concern because the basic architecture of the law cannot be altered through regulation. She offered recommendations to the bill that would welcome the opportunity to work closely and collaboratively with the Behavioral Science Regulatory Board on this legislation. A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chairman Barnett asked for questions or comments from the Committee. Questions came from Senator Haley, regarding the suggestion of a balloon amendment, and betterment to understand language of bill request from research.

Chairman Barnett called upon the second opponent conferee, Michael Donnelly, Director of Policy and Outreach, Disability Rights Center of Kansas, stated that treating social workers who have disabilities differently than social workers without disabilities is discrimination. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

The Chairman Barnett asked for questions or comments from the Committee. Questions came from Senators Haley, and Barnett, regarding if Sky's recommendations would benefit what she would want to

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:37 P.M. on February 9, 2006 in Room 231-N of the Capitol.

be changed, and if research could review language for the Committee to better understand the bill.

Hearing on SB-470—An act concerning the behavioral sciences; relating to temporary licenses

Chairman Barnett called upon the first proponent conferee, Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board, stated the SB-470 amends the practice acts for four master level professions to restrict the issuing of temporary licenses, and that the bill would also shorten the length of time an individual may hold a temporary license and would disallow renewal or reissuing of a temporary license except for extenuating circumstances. A copy of his testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

The Chairman Barnett asked for questions or comments from the Committee. Questions came from Senators V. Schmidt, and Brungardt, regarding continued ability to take a temporary license exam, and to clarify and close the door on facts about licensee who are ill or have left to which their license will become void. Norm Furse asked questions, regarding the effective dates needed on page 7, line 22 concerning the difference of 6 months, 12 months, and 24 months

The final proponent conferee was Vicki Arnett, Kansas Chapter, National Association of Social Workers, stated that social workers work with some of the most vulnerable persons in Kansas, and that these clients and the public are best served when the social worker is fully licensed. A copy of his testimony is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

Norm Furse clarified language on page seven and page nine, relating to the expiration of a temporary license.

The motion was made by Senator V. Schmidt that the amendment be made as stated by Norm Furse to clarify language relating to the expiration of a temporary license. It was seconded by Senator Jordan and the motion carried.

The motion was made by Senator V. Schmidt that the bill be moved out favorable as amended. It was seconded by Senator Wagle and the motion carried.

Adjournment

As there was no further business, the meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for Thursday, February 15, 2006.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Feb. 9, 2006

NAME	REPRESENTING
Daphne Brown	KASSW
Carmilla Mbatia	KSNA - Bethel College
Michelle Marks	KSNA - Baker School of Nursing
Leslie Allen	BSRB
Richard MAXFIELD	BSRB
Dyella Gilmore	BSRB
Vicki Arnett	KNASW Bal.
Sty Westlund	KNASW
Jay Massey	Butler Comm College, KSNA
Ali Sultani	Senate Intern
Whitney James	KS Psychological Assn

Richard B. Maxfield, Ph.D.
LICENSED PSYCHOLOGIST

**Testimony
Senate Bill #469**

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to testify in favor of passage of Senate Bill #469. I am Richard B. Maxfield. I am a licensed psychologist in independent practice in Topeka, Kansas. In addition, I am one of the psychology representatives on the Behavioral Sciences Regulatory Board.

As you know, Senate Bill #469 pertains to "impaired" professionals regulated by the Behavioral Sciences Board. In addition, the bill gives the Board authority to deal with such practitioners with a variety of methods.

Simply put, the bill allows the Behavioral Sciences Board to receive reports concerning impaired professionals. It specifies methods by which the alleged impairment can be evaluated and methods of reporting those evaluations to the Board. In addition, the Board itself can raise the issue of impairment based on a disciplinary complaint filed against a licensee.

Based on those evaluations and recommendations of professionals who have directly evaluated the licensee, the Board has authority to enter into an agreement with the licensee so that treatment can be undertaken in order to rehabilitate the licensee, if possible. There are stipulations for the ongoing receipt of information in regard to the licensee's compliance with treatment and his or her benefiting from that treatment. Thus, the Board under this legislation would be able to allow licensees to receive amelioration of their difficulties without the necessity of going through disciplinary actions of the Board. The Board is free to limit or modify a licensee's practice in order to protect the public during this period of treatment.

I urge you to favor this legislation as it recognizes the reality that the Behavioral Science Board licensees are not immune from physical, mental, or substance problems which might impair their practice. It allows for more humane treatment of such licensees and simultaneously protects the public, both through oversight of the licensee's professional functioning and, hopefully, rehabilitation of the licensee. The provisions of this bill closely parallel already existing legislation concerning other similar professions in terms of management of impaired providers. In addition, it makes available to the public more providers of professional services.

I will be happy to stand for questions.

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Senate Public Health & Welfare
Committee

Date: Feb. 9, 2006
Attachment # 1

February 9, 2006

Kansas Senate Public Health and Welfare committee

SB 469**Concerning the Behavioral Sciences Regulatory Board; relating to impaired licensees.**

Good afternoon. My name is Sky Westerlund. I serve as the Executive Director of the Kansas Chapter, National Association of Social Workers (KNASW). KNASW works on behalf of the profession of social work in Kansas.

Social workers have been licensed to practice at three levels of expertise in Kansas since 1976. These are the baccalaureate (LBSW), the master (LMSW), and the clinical social worker (LSCSW). There are over 5500 social workers practicing and serving persons in Kansas. Social workers work in a wide variety of settings, such as community mental health centers, schools, juvenile justice system, private practice, military bases, hospitals, hospices, disaster events, community programs and more. Social workers perform a range of activity from casework to psychotherapy and specialize in a multitude of areas including everything from adoption to genetics to rehabilitation to family functioning, to substance abuse, to health crisis, mental illness, and other life circumstances.

Life can change in a second and social workers are there to help.

In the profession and practice of social work, there are practitioners who have life experience in the very crisis and vulnerability similar to the persons that they now serve as a professional social worker. In most situations, this life experience can add to the depth and ability to help another person. In other situations these life experiences or circumstances can manifest to the point that there is a personal impairment. Sometimes, it is possible that, if unaddressed, a personal impairment could cause potential harm to the client. The Behavioral Sciences Regulatory Board (BSRB) is the government agency charged with protecting the public through the licensure and regulation of social workers, as well as other disciplines. **KNASW supports the concept and goal of the BSRB to have some way to compel a licensee into treatment, if the licensee's condition is such that it has or is very likely to cause harm to a client.** SB 469 was created with this goal in mind. However, KNASW does not support SB 469 as it is written.

As it is written, KNASW is uneasy with SB 469. SB 469 creates a basic structure from which details and implementation would be worked out through the writing of regulations. It is anticipated that KNASW would be invited to work fully with the BSRB to help write the regulations. Nevertheless, SB 469 causes concerns because the basic architecture of a law cannot be altered through regulation.

Senate Public Health & Welfare
Committee

Date: Feb 9, 2006

Attachment # 2

The potential administration of SB 469 causes concern.

SB 469 creates a direct business relationship between the regulatory board and an individual person or business as an impaired licensee treatment provider. The impaired licensee treatment provider could potentially be a BSRB licensee, such as a clinical social worker specializing in substance abuse or a psychologist working with mental health issues, or any clinically authorized BSRB practitioner. The potential business agreement between BSRB and a BSRB licensee, for example, an LCSW, *then also creates a potential for a dual relationship between the BSRB and a BSRB licensee.* A dual relationship could occur because the BSRB licensee, who could become a “board approved person,” (page one, lines 24 and 25) would be entering into a business or contractual agreement with the board that regulates him or her. This licensee, as now an agent of the BSRB and given immunity through SB 469, would be responsible for evaluating potential impairment of another BSRB licensee. Should there be unprofessional conduct or other complaint against the same licensee in his or her role as a board approved person, it could become confusing about the board’s authority and jurisdiction to address the situation. Working in the capacity of a BSRB contracted impaired treatment provider, it could potentially create a gap of regulatory jurisdiction, enabling a licensee to practice evaluating, assessing, diagnosing, and monitoring, but not be held to the very practice act that gives the licensee the authority to perform the work.

Recommendation: Reconstruct SB 469 so that the contractual relationship is not a direct relationship between the BSRB and a BSRB licensee.

SB 469 appears to create two levels of assessment for impairment. One level suggests that the board itself could act to “preliminarily” assess for impairment (page one, lines 35 to 39), and then the next formal assessment for impairment would occur when the licensee is referred to a treatment program “for the purpose of determining whether the licensee is impaired.” (page two, lines 1 to 3) This could expose a licensee to two assessments, something that seems duplicative and unreasonable. If BSRB staff or even board members are conducting some type of preliminary assessment, they are essentially acting as a mental health provider and not in the capacity of a regulatory board. It creates the potential for a dual role of the BSRB staff and board members which is potentially inappropriate, as the only role of BSRB staff and board members is in their regulatory capacity, not as a mental health provider.

Recommendation: Reconstruct SB 469 so that the assessment of impairment occurs within a professional relationship (professional/client relationship) and not between BSRB staff or board and a BSRB licensee.

Another structural concern of SB 469 has to do with the BSRB authority to discipline. The authority to discipline social workers comes from the social work practice act, KSA 65-6311. The authority is specific. There is nothing within the current law that specifically states grounds for suspension, limitation, condition, revocation, or refusal to issue or renew a license *as it has to do with an identified professional impairment.* Other similar regulatory boards have specific language within their practice acts authorizing disciplinary intervention if there is a professional impairment.

In contrast, SB 469 creates the ability to condition, suspend, or cancel the license, “in accordance with the Kansas administrative procedure act” (page two, lines 27 to 39). KNASW believes this could be problematic for licensees in that it introduces a new and complex law into the authority of BSRB over the licensee. As licensees, all social workers are accountable to the practice act and laws that govern the profession. Adding the Kansas Administrative Procedure Act as a component of disciplinary authority related to a professional impairment seems far more complex than is probably necessary.

Recommendation: Reconstruct SB 469 so that the social work practice act (KSA 65-6311) be amended to include an additional authority to discipline based on an impairment.

Recommendation: Add: If a report to the licensing agency pursuant to (*would need correct citation to language of ‘reportable incident’*) or any other report or complaint is filed with the licensing agency relates to a licensee’s inability to practice the licensee’s profession with reasonable skill and safety, the agency may refer the matter to an impaired licensee treatment provider.

Other recommendations for improving SB 469:

- There is a sense of stigmatization in the suggested citation that the law be referred to as the “impaired licensee treatment act.” (page one, lines 13 and 14)

Recommendation: A less stigmatizing identifier could be “behavioral sciences support act.”

- SB 469 creates two legal definitions, both of which are problematic. “Impairment” (page one, line 17) is specifically defined as a person with a physical or mental condition that renders a licensee unable or unfit to practice with reasonable skill, safety or competence. With this definition, the impairment results in a person being unable or unfit to practice. This language suggests that intervention and treatment is not possible, because the licensee is unable or unfit. If a licensee is unable or unfit, they should not be practicing at all. The definition of “impairment” also adds *competence* as a component of defining impairment. If a person is *incompetent* to practice, it may or may not have anything to do with an impairment. The question of competency must not be tied to impairment. A well designed program for impairment works from the foundation that with appropriate intervention and monitoring, the licensee can practice their profession safely and with reasonable skill. An incompetent licensee, no matter the reason for the incompetence, should not be allowed to practice at all—that is for the protection of the public.

Recommendation: (page one, lines 17 to 21) Delete the whole definition of (b) Impairment and replace with: “reportable incident” means an act by a BSRB licensee which: (1) is or may be below the applicable standard of care and has reasonable probability of causing harm to a client; or (2) may be grounds for disciplinary action by the BSRB.

Recommendation: (page one, line 19) Delete (*in italics*): the licensee can practice with reasonable skill and safety *and competence* during a course of treatment for the impairment. And delete the word “competence” or “competency” throughout the bill.

- The second legal definition in SB 469 is “Professional.” “Professional” is a generic term commonly used in many ways. SB 469 would make “professional” a legal term and has the likelihood of creating confusion, when the term “professional” is used in other statutes for other purposes.

Recommendation: (page one, lines 28 to 32) Delete the whole definition: (e) Professional

Recommendation: Delete any and all references to “board approved professional.”

- SB 469 makes reference to an “inactive status” (page two, line 37). There is no “inactive status” for a social work license within the social work practice act.

Recommendation: Delete (*in italics*): (b) (4) *place the licensee on inactive status either by voluntary request...*”

Or

Recommendation: Create a new licensure status of “inactive” in the profession’s practice act.

What is the anticipated cost for SB 469?

KNASW is concerned about the potential costs for SB 469. Other Kansas regulatory boards spend in the neighborhood of \$100,000.00 to \$200,000.00 a year for the contractual agreement with their impaired provider programs. These programs then contract with specific providers who provide the service to the licensee with an impairment. That amount is in addition to what the licensees pay for the services to address their issues. Last year, master social workers (LMSW) and clinical social workers (LSCSW) saw a 25% and 50% increase, respectively, in their licensure renewal fees. These fees are paid every two years for the life of the licensee’s career. Though social work licensees pay the lowest licensure renewal fees compared to the other disciplines, the volume of licensees makes up for the difference (5488 social workers compared to 2355 all other disciplines combined*). Since BSRB is funded solely from licensure fees (application, temporary, and renewal), social workers, as well as others will be responsible for the costs of SB 469.

KNASW believes that BSRB should have the ability to compel a licensee to seek treatment for problems, if such intervention can help maintain proper protection of the public and enable the licensee to practice with reasonable skill and safety. **KNASW would welcome the opportunity to work closely and collaboratively with the BSRB on this legislation.**

Thank you for your consideration and assistance to build a strong piece of legislation.

*These numbers of licensees are taken from the BSRB website, www.ksbsrb.org, January 25, 2006.



EQUALITY ♦ LAW ♦ JUSTICE

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Testimony to the
Senate Public Health & Welfare Committee
Testimony in Opposition to SB 469

February 9, 2006

Chairman Barnett and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach of the Disability Rights Center of Kansas. The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws.

SB 469, if enacted, would legalize discrimination against persons licensed by the Behavioral Sciences Regulatory Board (BSRB) who have disabilities. The Bill, as proposed, establishes a special / separate licensure for “impaired” social workers. As defined by the Bill, “ ‘Impairment’ means a physical or mental condition, or both, that renders a licensee unable or unfit to practice with reasonable skill, safety or competence due to a physical or mental disability or incapacity, or both, including, but not limited to, deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol.” SB 469 targets social workers who have a physical or mental disability, including those persons who are aging and incur some type of disability as a result.

*Senate Public Health & Welfare
Committee*

DRC does not disagree with the BSRB that the Board needs the ability to discipline, and hold social workers accountable who are “unable or unfit to practice with reasonable skill, safety or competence,” however, there is no reason to target persons with disabilities specifically. Any social worker who is practicing and causing harm to their client, regardless of whether they have a disability must be held accountable.

A prime example is the recent case of Arlan Kaufman who abused clients in his care for more than 20 years. Finally, the BSRB suspended his license to practice. He was not a person with a “physical or mental condition, or both”, nor was he found to be “unable or unfit to practice with reasonable skill, safety or competence due to a physical or mental disability or incapacity, or both, including, but not limited to, deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol,” but he was found to be unfit to practice social work.

This example demonstrates that the BSRB has the ability to hold social work licensees accountable for their work. To treat social workers who have disabilities differently than social workers without disabilities is plain and simple discrimination. Strengthen the accountability laws and regulations for the behavior of all social workers, but do not enact legislation that discriminates against any singular population.

State of Kansas
Behavioral Sciences Regulatory Board



KATHLEEN SEBELIUS
Governor

PHYLLIS GILMORE
Executive Director

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HOUSE TESTIMONY
HEALTH AND HUMAN SERVICES
February 9, 2006

SB 470

Mr. Chairman and Committee Members:

Thank you for the opportunity to testify today in support of SB 470. I am Phyllis Gilmore the Executive Director of the Kansas Behavioral Sciences Regulatory Board (BSRB).

The BSRB is the licensing board for most of the state's mental health professionals, the doctoral level psychologists, the master level psychologists, the clinical psychotherapists, the bachelor, master and clinical level social workers, the master and clinical level professional counselors, and the master and clinical level marriage and family therapists. Additionally, some of the drug and alcohol counselors are registered with the board, although most of them are certified with SRS at the present time.

SB 470 amends the practice acts for our four master level professions to restrict the issuing of temporary licenses. These changes are being requested by unanimous vote of the board. Each profession considered what was best for itself and those ideas were presented to and voted on by the full board.

SB 470 would shorten the length of time an individual may hold a temporary license and It disallows renewal or reissuing of a temporary license except for extenuating circumstances.

We are correcting the current situation of individuals receiving a temporary license, not sitting for the examination and then renewing their temporary license, sometimes repeatedly. Under current law this is possible. Individuals also sit for the exam close to the end of the licensure cycle, fail the exam, and then renew their license. SB 470 would no longer allow individuals to practice indefinitely on a temporary license.

This does not limit the number of times an individual may take the exam, only how long one may hold the license and the number of times an individual may receive a temporary license.

Thank you for the opportunity to speak to you this afternoon. I will be happy to stand for questions.

Senate Public Health & Welfare
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Date: Feb. 9, 2006
Attachment # 4

February 9, 2006
Kansas Senate Public Health and Welfare committee

SB 470**Concerning the Behavioral Sciences Regulatory Board; relating to temporary licenses.**

Good afternoon. My name is Vicki Arnett. I am a licensed specialist clinical social worker (LSCSW). I currently serve on the Kansas Chapter, National Association of Social Workers (KNASW) board of directors. KNASW works on behalf of the profession of social work in Kansas.

Social workers have been licensed to practice at three levels of expertise in Kansas since 1976. These are the baccalaureate (LBSW), the master (LMSW), and the clinical social worker (LSCSW). There are about 5500 social workers practicing and serving persons in Kansas. Social workers work in a wide variety of settings, such as community mental health centers, schools, juvenile justice system, private practice, military bases, hospitals, hospices, disaster events, community programs and more. Social workers perform a range of activity from casework to psychotherapy and specialize in a multitude of areas including everything from adoption to genetics to rehabilitation to family functioning, to substance abuse, to health crisis, mental illness, and other life circumstances.

Life can change in a second and social workers are there to help.

SB 470 is a multi disciplinary bill including all of the disciplines regulated by the Behavioral Sciences Regulatory Board (BSRB). A temporary license typically means that an individual has met the qualifications for licensure except passage of the examination. SB 470 is designed to close the ability of persons to practice for a long time under a temporary license. KNASW supports this goal.

Until several years ago, the three different national social work examinations were offered in the state only three times a year and in one location. A temporary social work license was necessary to secure a job and to be held accountable for professional conduct through the jurisdiction of the BSRB. Since the social work examinations are offered six days a week and at multiple locations throughout Kansas, it should be only the rare circumstance that a person must obtain a temporary social work license.

SB 470 gives a very generous window of six months time to hold the temporary license to practice social work before passing the national examination. We further acknowledge that there may be an even rarer situation of extenuating circumstances that preclude an individual from taking the examination within the already generous six month time frame. KNASW trusts that the BSRB would be cautious and deliberative in granting a board approved extenuating circumstance.

Social workers work with some of the most vulnerable persons in our state. These clients and the public are best served when the social worker is fully licensed.

KNASW encourages you to support SB 470.

Senate Public Health & Welfare
Committee
Date: Feb. 9, 2006
Attachment # 5