

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

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

All members were present except.

Ms. Emalene Correll, Legislative Research - excused

Committee staff present:

Ms. Terry Munchmore, Legislative Research

Mr. Norm Furse, Revisor of Statutes

Mrs. Diana Lee, Revisor of Statutes

Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Ms. Phyllis Gilmore, Executive Director of the Behavioral Sciences Regulatory Board (BSRB)

Dr. Richard Maxfield, Behavioral Sciences Board Member

Others attending:

Please See Attached List.

Approval of Minutes

Upon calling the meeting to order, the minutes of February 2, 3, 4, and 5, 2004 were passed out to each member of the Committee. The Chair asked that the members notify Ms. Cianciarulo if changes are requested and if none are received by the end of the day Friday, February 13, 2004, they would stand approved.

Hearing on SB 443 - an act concerning the Behavioral Sciences Regulatory Board relating to disciplinary authority

The next order of business was a hearing on SB 443, an act concerning the Behavioral Sciences Regulatory Board relating to disciplinary authority. The Chair asked Mr. Norm Furse, Revisor of Statutes, to give an overview of the bill. Mr. Furse stated that, beginning on page 1, there are a series of sections in the bill which give the board the authority not only to suspend, refuse to renew or revoke a license, but also to place conditions on a license itself.

1) An overview of the disciplinary action sections are as follows:

- a) Sec.1 relates to professional counselors and in line 17 provides this extra language;
- b) on page 2, Sec. 2, relates to social workers and again authorizes the Board to condition a license (line 26);
- c) Sec. 3 relates to license psychologists and in line 12 inserts the word "conditions" relating to the Board's action against the licensee;
- d) Sec. 4 relates to the master level social workers and in line 32 provides for placing the conditions upon this license.

2) An overview of the powers of duties sections of the BSRB begin on page 4 and are as follows:

a) at the bottom of page 5, it lists the new duties, the first being the Board being able to assess an administrative fine not to exceed \$1,000, the second would be if an order is adverse to a practitioner, allowing the cost of the proceedings to be charged as an ordinary civil action in the district court in an amount not to exceed \$200, and the third, at the top of page 6, states that district court witness fees and costs may be taxed according to the statutes;

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b) Sec. 6 provides language in connection with investigations of the BSRB and language in current law that was just added recently relating to subpoena power and other authorities of the Board, but the new language appears on page 7, para. 3A providing that if the Board determines that an individual has practiced the behavioral sciences without a valid license in addition to any other penalties, the Board may issue a cease and desist order against such an individual; (B) line 13 provides that whenever in the judgement of the Board a person who has engaged or about to engage in an act which would constitute a violation, then it lists out the various acts and two statutes, and provides that the Board may make application to the courts for an order to enjoin to such acts of practices; and

C) On page 8, new (e) provides that in all matters before the board, the board has the power to revoke the license or registration of a licensee or register who voluntarily surrenders such person's license or registration and in all matters pending before the Board, it would have the option of censuring the practitioner holding the license in question. (This would be an alternative to their present authority to revoke or suspend, and new (f) states that in all matters pending, the board has the option of censuring the practitioner holding the license.

The Chair then asked Mr. Furse if this was the bill that if the Committee chose to pass, still needed some massaging on the language. Mr. Furse stated that if the Committee authorized him, he would like to meet with Board's administrator to refine a couple of points.

As there were no further questions of Mr. Furse, the Chair called upon the first proponent, Ms. Phyllis Gilmore, Executive Director of the Behavioral Sciences Regulatory Board (BSRB). A copy of her testimony is ([Attachment 1](#)) attached hereto and incorporated into the Minutes as referenced. Ms. Gilmore stated that:

- 1) the BSRB is the licensing Board for most of the state's mental health professionals and some of the drug and alcohol counselors;
- 2) with this bill, the ability to assess a fine of up to \$1,000 per violation, to issue a cease and desists order, and to revoke a license after it has been voluntarily surrendered would be new areas of authority to the BSRB and all of its professions; however, other Kansas licenser Boards hold these powers;
- 3) one area where the BSRB has made great progress is in the timeliness of disciplinary action and that a backlog no longer exists; and,
- 4) through the leadership of a diligent investigator, the Board has instituted a new complaint review committee process that has enhanced efficiency and consistency.

Questions of Ms. Gilmore came from Senators Wagle and Brownlee asking if the Board members and all of these health professions agreed to this, regarding page 7 line 14 why is this worded toward a future event and is it necessary?

As there were no opponents or neutral conferees, or written testimonies, the Chair announced this would conclude the hearing of the above bill.

Hearing on SB 452 - an act concerning the regulation of psychologists

The Chair then stated the Committee would be hearing testimony on **SB 452**, an act concerning the regulation of psychologists and again called upon Mr. Furse to give an overview of the bill. Highlights include:

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- 1) introduced by the Public Health & Welfare Committee and relates to the regulation of psychologists and unlicensed assistants,
- 2) this is language that is amendatory of existing law, so the change appears in the bill on page 2 lines 6 through 16, creating exceptions to those individuals in situations that don't fall under the licensure of psychologists act and makes it illegal to assistants to fall within the category unless they are licensed or unless they fall within one of the exclusions;
- 3) this bill would delete the exclusion that states that nothing in the act would currently prevent the employment by a person, association, or corporation, furnishing psychological services for remuneration and would not prevent the employment, in this context, of persons not licensed as psychologists under the provision of the act, but to practice if under the supervision of a psychologist or psychologist licensed under the provision of this act and not held out as any psychologist to the public and therefore any person who would fall within the language being deleted would be subject to the licensure of psychologists act; basically, this takes away the exclusion and would make these persons subject to the act rather than being excluded from the act.

As there were no questions of Mr. Furse, the Chair called upon the only proponent to testify, Dr. Richard Maxfield, Behavioral Sciences Board Member. A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced. Highlights of his testimony are as follows:

- 1) this section of the licensure of psychologists act was created in order to allow them to employ and to supervise "Unlicensed Assistants" and at the time of enactment, the only regulated professions in the mental health field were licensed psychologists and licensed social workers; in ensuing years, a number of other professionals have gained licensure or certification and fall under the regulation of the BSRB and now, professionals employed as unlicensed assistants would fall into one of these groups, thus making the exception to psychologists' practice act essentially irrelevant;
- 2) the Board is now capable of granting a temporary license to employed assistants who were completing their training or after moving to the state prior to full licensure; and
- 3) the psychology advisory committee to the BSRB recommended repeal of this section of statute beginning in July, 2007 to allow those very few currently employed unlicensed assistants to obtain retraining and allow them to continue practice in their current setting.

Again, as there were no opponents or neutral conferees, or written testimony, the Chair then asked for questions or comments from the Committee. Senators Salmans and Wagle, and Mr. Furse ranging from does this bill eliminate the psychologist one positions, which is entry level, that just perform studies, do these regulations relate to state hospitals, right to work laws, why did you not have a grandfather clause versus the far out date of 2007, clarification of Dr. Maxfield's statement that he has asked the questions of all the practitioners (do they have an unlicensed assistant), suggestion made to put this survey question in the renewal for license, isn't this a clean up of an old statute, allowing corporations, etc. to employ unlicensed associates, if you were to grandfather again would you know who you would be grandfathering, with the elimination of the authority of psychologists to delegate to unlicensed people is there any other alternative authority, prison health services (contracts for prisons, temporary help, etc.)

As there were no more questions of the Committee, the Chair asked Ms. Gilmore to look over the questions raised by the Committee and get back with them.

A discussion ensued between Ms. Gilmore, Senators Salmans and Wagle, and Mr. Furse when Ms. Gilmore asked Senator Salmans if he knew of any unlicensed assistants out in his area, or does Larned have any? (Ex college students working during the summer, primarily administering tests using the

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MMPI and the MCMI, and temporary help) Do these personnel fall outside of this? Mr. Furse referred the Committee to the bottom of page 2 through the top of page 3, stating the exclusion was still there. Senator Salmans said that the personnel he was referring to were people who were working for a company that did contracting work.

As there was no further discussion, the Chair told Ms. Gilmore that the Committee would wait to hear back from her since the first bill needed to be amended and in the second bill to review the questions that were brought up. The Chair announced the hearing was closed.

Adjournment

The meeting was adjourned at 2:25 p.m. with the next meeting scheduled for Wednesday, February 11, 2004.