

Approved _____

Date

2/14/90

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at _____
Chairperson

10:00 a.m./p.m. on February 8, 1990 in room 526 of the Capitol

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Norman Furse, Revisor's Office
Sandra Nash, Committee Secretary

Conferees appearing before the committee:

The Chairman opened the meeting requesting approval of the minutes of the meetings on January 30 and 31, 1990. Senator Hayden made a motion to approve the minutes. Senator Walker seconded the motion. The motion carried.

The Chairman asked for persons wishing to have bills introduced.

Pat Goodson, Right-to-Life, asked a bill to be introduced which was an abortion reporting bill. (Attachment 1) The bill also has an expansion for reporting follow-up treatment, such as post-abortion trauma. The penalty, as listed, would be for unprofessional conduct.

Senator Reilly made a motion to introduce the proposed bill. There appeared no seconds. The bill will not be introduced on the lack of a second.

The Chairman called Tim Owens, General Counsel for S.R.S. He offered testimony requesting seven bills as listed (Attachment 2):

1. (Attachment 3) A bill which allows the Secretary of SRS to promulgate regulations regarding the awarding of special purpose grants for community mental retardation assistance.
2. (Attachment 4) A bill ^{which} with adds intermediate care facilities for mental retardation to the list of facilities that may utilize the services of certified medical aides.
3. (Attachment 5) A bill which allows, after initial court-approved placement of a mentally ill ward in a treatment facility, subsequent placements pursuant to a plan of treatment in other treatment facilities without requiring separate court approvals, unless the ward requests a hearing.
4. (Attachment 6) A bill which clarifies when the alleged juvenile offender is in the custody of the Secretary of SRS, the cost of transporting the offender to and from the court is an expense of the proceeding and shall be paid from the general fund of the county.

Senator Kanan asked if this bill would place a burden on the counties.

Mr. Owens replied he didn't know if a heavy burden would be placed on the counties. On occasion, primarily out of one judicial district, where it is more prevalent. When we are ordered to

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transport juvenile offenders, it could be dangerous. We have had orders for our social workers to transport these people across the state and it could put our people in jeopardy. We're having to hire outside people to do it or we're having use some other means. It isn't a real common occurrence, but it's common enough that it causes concern for the safety of our workers. It'll cost usually for one or two sheriff's officers. SRS transports most of the offenders.

5. (Attachment 7) A bill which clarifies the circumstances under which mentally ill persons are committed to a period of treatment.
6. (Attachment 8) A bill which designates specific investigator positions within the agency as certified law enforcement officers to allow agency access to additional information and allow officers to receive training.

Senator Salisbury asked what would be the function of the investigator positions.

Mr. Owens said primarily the problem that we run into is that with no investigator in our agency having law enforcement credentials, we are not allowed access to certain crime statistics and that sort of thing. We feel it is necessary for us to have a flexibility with the KBI and other law enforcement agencies. I wouldn't want every investigator in the agency to be a law enforcement officer and I wouldn't want our people carrying weapons or anything like that. It is just an information access capability that we don't have right now.

7. (Attachment 9) A bill authorizing purchase of insurance for volunteers participating in family foster care program.

The Chairman asked for the wishes of the Committee on the proposed bills. Senator Reilly made a motion that the Committee sponsor the proposed bills. Senator Langworthy seconded the motion. The motion carried.

The Chairman asked for proponents to S.B. 543. The first proponent was Carolyn Bloom, president of the Kansas Physical Therapy Association. The organization represents about 90 percent of the physical therapists practicing in Kansas and feel physical therapist assistants would provide better and quicker service to patients. (Attachment 10) The concern is about maintaining physical therapist being in the rural hospitals.

Senator Reilly asked what insurance do physical therapists carry now?

Ms. Bloom said each physical therapist has a mal-practice liability insurance policy specific to their own person and we do pay into the Health Care Stabilization Fund. We also have to have insurance covering the Physical Therapist Assistants we supervise if we employ that Physical Therapist Assistant.

Senator Reilly asked if they buy the insurance.

Ms. Bloom responded yes.

The next proponent called was Jennie Atwood, a former instructor at Washburn and a current employee of Capper's Foundation. Ms. Atwood discussed the education requirements of the Physical Therapist and the Physical Therapist Assistant. (Attachment 11)

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Senator Hayden asked what the fee normally charged by a physical therapist for this telephone call of a minute or two.

Ms. Atwood said there would be no fee until that physical therapist evaluated that patient.

The next proponent called by the Chairman was Elva Strand, a Physical Therapist Assistant from Herington who works at the Herington Municipal Hospital. She stated she was in favor of the bill in its original language which maintains the supervisory position of the physical therapist rather than delegating it to the physician. (Attachment 12)

The Chair called the next proponent, Karla Jo Raveling, a Physical Therapist Assistant from Council Grove who works in the Morris County Hospital. She stated she is in favor of the bill in its original language. Ms. Raveling pointed out the education which is required to be a Physical Therapist Assistant and the lack of availability of a Physical Therapist in a rural hospital all the time. (Attachment 13)

The Chairman called the next proponent to S.B. 543, Steve Chandler, a Physical Therapist of Hiawatha. He has been a Physical Therapist for 11 years and has used Physical Therapist Assistants all during this time. The bill would allow quicker and more efficient treatment of his patients. (Attachment 14)

Senator Hayden asked if a person comes into the hospital and he has a back problem. The medical doctor prescribes traction. Now he and he alone is involved with that patient up to what point? Do the physical therapist come when the doctor indicates traction?

Mr. Chandler said the doctor would prescribe the patient to come to physical therapy and at that time we would also do an evaluation and assess the patient's needs and assist with establishing a planning care with the physician. At that time when we do the evaluation, then that patient would become our responsibility.

Senator Hayden asked if the Physical Therapist Assistant would be able to assess the progress of the patient by the third treatment.

Mr. Chandler said they would be able to assess rather there was progress or rather there was a need to alter the treatment. They would advise the physical therapist and then the physical therapist would discuss with the physician any alterations needed.

The next proponent for S.B. 543 was Barbara Hanschu of Ramona who is a Physical Therapist and works in Herington Municipal Hospital. She states that she is uncomfortable during the time when she isn't at the hospital because she can't provide care for new patients and this bill would allow her to use a Physical Therapist Assistant to start treatment when she physically isn't present. (Attachment 15)

The Chairman stated that a letter from Christy Ziegenhirt has been submitted as proponent testimony for S.B. 543. (Attachment 16) Ms. Ziegenhirt said the physical therapist assistant was needed to help provide immediate care of persons who need gait treatment and cannot wait three or five days to start the treatment.

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The next proponent called by the Chairman was John Holmgren, Executive Director of the Catholic Health Association. Mr. Holmgren said he wanted to commend the Physical Therapy Association for considering revision of the original act which no longer can prevail in a shortage situation which we have in Kansas. Mr. Holmgren offered a balloon amendment on Page 1, line 29, eliminating lines 29 through line 32. and inserting "with the approval and supervision of the attending physician. The physician must continue to evaluate the patient and supervise the plan of treatment, periodically." Attachment 17

Mr. Holmgren stated he felt that contact between the physical therapist and the physical therapist assistant should be made some other way than by telephone because it leaves it too open to liabel. He suggested closed circuit TV or something along that line.

Mr. Holmgren offered another amendment starting at line 23 following word "except", the following change is recommended: "...in a hospital setting when the physical therapist is not immediately available, the physical therapist assistant may initiate patient care with specific physican orders. A physical therapist or a physician must then evaluate the patient and establish a plan of treatment no later than the third treatment with a minimum weekly review."

The Chairman called the next proponent, Mr. Harold Riehm of the Kansas Association of Osteopatic Medicine. He said he appeared in support of S.B. 543 and with Mr. Tom Bell who will offer a couple amendments. (Attachment 18) Mr. Riehm said that there have been questions whether a physical therpist assistant could begin treatment without actually contacting a physical therapist first if the physician had ordered the treatment for the patient. The offered amendment would help this situation.

The Chairman called Mr. Tom Bell with the Kansas Hospital Association. He stated Kansas statutes create a problem of access to care for certain people needing physical therapy. The concern is taken care of through the balloon of the language which is being proposed, on Line 30 after the word "instruction" add "or pursuant to a physician's order." The currently law says the physical therapist cannot initiate treatment without approval of the physician so it makes sense to have them be able to order some treatment by a physical therapist assistant. We are not asking the physician to supervise this treatment, there is nothing in this bill that would require the physician to supervise the physical therapy part of the treatment. This amendment would allow the physician when the physical therapist isn't available, to initiate certain types of treatment. (Attachment 19)

The second suggestion is the language on Line 31, after "treatment" be taken out of there: "no later than the third treatment". There are a number of types of treatment that there can be three of them in one day. And if you have that language in there, in some cases, you will not be helping the situation.

He added the requirement of the minimum weekly review is not in the current law and it is a good thing to include.

He stated that there is a lot of concern over the liability. However, when the hospital hires the physical therapist assistant, the hospital is responsible for the liability for that person, and the treatment given and the doctor, who approves the treatment also has liability concerns. If the physician makes the order, that is in line with the concern of "safe care."

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The Chairman called Mr. Chip Whelan of the Kansas Medical Society. Mr. Whelan appeared as a proponent to S.B. 543 and support the proposed amendments recommended by the Kansas Hospital Association. (Attachment 20)

He stated that it is important for the physical therapist to consult with a physician because it is so essential to have inferential medical diagnosis. And that means that you eliminate the possibility that the problem you are dealing with, the sore joint, etc., may not be attributable to something else like cancer. So, that's why it's very important to have physician input.

The Chairman called for opponents to S.B. 543. Mr. Larry Buening appeared for Mr. Richard G. Gannon, Executive Director of the Board of Healing Arts. He stated eventho the Board has not seen S.B. 543, they have had the opportunity to discuss proposed legislation which had been presented to the Board by the American Physical Therapy Association, Kansas Chapter. The position is supportive of the legislation which would have a physician have the authority to order physical therapy without having a registered physical therapist first evaluate the patient. (Attachment 21)

Senator Hayden asked if the Board is in support of physical therapy being performed by a physical therapist under the physician's orders or by a physical therapist assistant under the physician's orders.

Mr. Buening said by direct physician order.

Senator Langworthy asked if he thought the Board of Healing Arts would approve of the proposed amendments.

Mr. Buening said he had just seen Mr. Holmgren's and Mr. Bell's first time today. But he said based on how they explained it and what the Board decision was earlier, he felt the Board would accept the changes and support the bill with the amendments. He will present the two balloons to the Board when they meet February 10 for their formal position.

Mrs. Langworthy asked that Mr. Buening get back with the Committee on what the decision of the Board of Healing Arts is.

Mr. Bueaning said he would.

The Committee meeting adjourned at 11:00a.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2/8/90

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Rita Burman P.O. Box 229 Sabetha, KS 66534	Sabetha Comm. Hospital
John Swifigan	
FRANCES KASTNER - Topeka	Physical Therapy Assn
Robbin A. Hartman 343N Parkwood Wichita	KS Physical Therapy Assoc.
Michael J. Chapman Lawrence, Ks.	KS Physical Therapy Assoc.
Carolyn Bloom Topeka, KS	KS Physical Therapy Assoc
Steve Chandler Herculais KS	KS Physical Therapy Assoc
JOHN H HOLMGREN	Catholic Health Assn
Chip Wheeler	Ks Medical Soc
KAROL KIEHM	Ks. OSTEOPATHIC ASSN
GARY Robbins	Ks Optometric Assn
LARRY BUENING	BD OF HEALING ARTS
Tom Bell	Ks. Hosp. Assn.
Jennie Atwood, Topeka	Ks. Physical Therapy Ass.
Barbara Hansch - Rt 1, Ramona, Ks	Physical Therapist - Herndon Municipal Hospital
Elna Strand Herington	HMA CPTA
Karla Jo Rowling Council Grove Ks	Morris County Hosp. Cert. Phys Therapist Assn
Carl Schmittner	Ks. Dentac Assn
CRAIG S. OWENS	INTER-SON. BURE

Please continue on next page.

SENATE BILL NO. _____

By

AN ACT requiring certain reports concerning the termination of pregnancies; amending K.S.A. 65-445 and K.S.A. 1989 Supp. 65-430, 65-2837, 65-5809, 65-6311 and 74-5324 and repealing the existing sections.

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

Section. 1. K.S.A. 65-445 is hereby amended to read as follows: 65-445. (a) Every hospital medical care facility shall keep written records of all pregnancies which are lawfully terminated within such-hospital the medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by said the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each such report shall include the number of pregnancies terminated within-such-hospital during said such period of time, and-such-other-information-as-may-be-required-by-the-secretary-of health-and-environment,-but-said and shall include, but shall not be limited to, the following information:

- (1) The county and state in which the woman whose pregnancy has been terminated resides;
- (2) the woman's age, race and marital status;
- (3) the number of prior pregnancies and prior abortions of the woman;
- (4) the gestational age of the unborn child;
- (5) the type of procedure performed or prescribed; and

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(6) the length and weight of the aborted unborn child, when measurable.

(c) The report shall not include the names of the persons whose pregnancies were so terminated. The names and addresses of medical care facilities and persons required to report under this section shall be confidential and shall not be disclosed by the secretary.

New Sec. 2. (a) Every person licensed to practice medicine and surgery who is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication or complications resulting, in the good faith judgment of the person licensed to practice medicine and surgery, from having undergone an abortion or attempted abortion shall prepare a report thereof and file the report with the secretary of health and environment within 30 days of the date of such person's first examination of the woman. Such report shall be on forms prescribed by the secretary and shall contain the following information:

- (1) Age of patient;
- (2) number of pregnancies the patient may have had prior to the abortion;
- (3) number and type of abortions the patient may have had prior to this abortion;
- (4) name and address of the facility where the abortion was performed;
- (5) gestational age of the unborn child at the time of the abortion, if known;
- (6) type of abortion performed, if known;
- (7) nature of complication or complications;
- (8) medical treatment given;
- (9) the nature and extent, if known, of any permanent condition caused by the complication; and
- (10) such other information as the secretary may require.

(b) Every board-certified psychiatrist, licensed psychologist, licensed social worker or registered professional

counselor who is called upon to provide psychiatric, psychological, psychotherapy, social work consultation or counseling to a woman who, in the good faith judgment of the psychiatrist, psychologist, social worker or counselor is in need of care or counseling as a result of undergoing an abortion or attempted abortion shall prepare a report thereof and file the report with the secretary of health and environment within 30 days of the date of the interview with the woman. Such report shall be on forms prescribed by the secretary and shall contain the following information:

(1) Age of the woman;

(2) number of pregnancies the woman may have had prior to the abortion;

(3) number and type of abortions the woman may have had prior to this abortion;

(4) a diagnostic evaluation of the woman's condition; and

(5) such other information as the secretary may require.

(c) A report under subsection (a) or (b) of this section to the secretary of health and environment shall not contain the name of the patient. The names and addresses of persons required to report under this section shall be confidential and shall not be disclosed by the secretary.

New Sec. 3. The secretary of health and environment shall on or before December 31 each year report to the governor and the legislature a statistical summary of information obtained by the secretary under K.S.A. 65-445 and section 2, and amendments to such section. Such statistical information shall be presented in a manner so as not to identify directly or indirectly any individual, medical care facility or other medical facility.

Sec. 4. K.S.A. 1989 Supp. 65-430 is hereby amended to read as follows: 65-430. The licensing agency may deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law, a failure to report any information required to be reported by K.S.A. 65-445, including the failure

to report such information under K.S.A. 65-445 and amendments thereto at the time required for the reporting, 65-28,121 or 65-4216 and amendments to such sections, or a failure to maintain a risk management program as required by K.S.A. 1987 Supp. 65-4922 and amendments thereto, after notice and an opportunity for hearing to the applicant or licensee in accordance with the provisions of the Kansas administrative procedure act. In addition to any other licensing action which may be imposed for a violation of this section, any medical care facility which willfully fails to report information required to be reported under K.S.A. 65-445 and amendments thereto shall for the first failure to report have its license suspended for a period of six months, for a second failure to report have its license suspended for a period of one year and for a third failure to report have its license revoked.

Sec. 5. K.S.A. 1989 Supp. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836 and amendments thereto and in this section:

(a) "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.

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

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

(2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.

(3) Assisting in the care or treatment of a patient without

the consent of the patient, the attending physician or the patient's legal representatives.

(4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.

(5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.

(6) Willful betrayal of confidential information.

(7) Advertising professional superiority or the performance of professional services in a superior manner.

(8) Advertising to guarantee any professional service or to perform any operation painlessly.

(9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.

(10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107 and amendments thereto.

(11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a and amendments thereto.

(12) Conduct likely to deceive, defraud or harm the public.

(13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.

(14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.

(15) Allowing another person or organization to use the licensee's license to practice the healing arts.

(16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.

(17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts.

(18) Obtaining any fee by fraud, deceit or misrepresentation.

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer medical records to another physician when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering, distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(29) Failure to report information required to be reported under K.S.A. 65-445 or section 2, and amendments to such sections including the failure to report such information at the time required for its reporting. In addition to any other disciplinary action which may be imposed for a violation of this subsection, any person who willfully fails to report information required to be reported under K.S.A. 65-445 or section 2, and amendments to such sections, shall for the first failure to report have such person's license suspended for a period of six months, for a second failure to report have such person's license suspended for a period of one year and for a third failure to report have such person's license revoked.

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

Sec. 6. K.S.A. 1989 Supp. 65-5809 is hereby amended to read

as follows: 65-5809. The board may refuse to issue, suspend, limit, refuse to renew or revoke any registration or specialty designation granted under the professional counselors registration act for any of the following reasons:

(a) Use of drugs or alcohol, or both, to an extent that impairs the individual's ability to engage in the practice of professional counseling;

(b) the individual has been convicted of a felony and, after investigation, the board finds that the individual has not been sufficiently rehabilitated to merit the public trust;

(c) use of fraud, deception, misrepresentation or bribery in securing any registration issued pursuant to the provisions of the professional counselors registration act or in obtaining permission to take any examination given or required pursuant to the provisions of the professional counselors registration act;

(d) obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(e) incompetence, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor;

(f) violation of, or assisting or enabling any individual to violate, any provision of the professional counselors registration act or any rule and regulation adopted under such act;

(g) impersonation of any individual holding a registration or allowing any individual to use a registration or diploma from any school of a person registered under the professional counselors registration act or a diploma from any school of an applicant for registration under the professional counselors registration act;

(h) revocation or suspension of a registration or other authorization to practice counseling granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized by the professional

counselors registration act;

(i) the individual is mentally ill or physically disabled to an extent that impairs the individual's ability to engage in the practice of professional counseling;

(j) assisting or enabling any person to hold oneself out to the public or offer to hold oneself out to the public as a registered professional counselor who is not registered under the provisions of the professional counselors registration act;

(k) the issuance of the registration was based upon a material mistake of fact;

(l) violation of any professional trust or confidence;

(m) use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(n) unprofessional conduct as defined by rules and regulations adopted by the board; or

(o) the registrant has had a registration, license or certificate as a professional counselor revoked, suspended or limited, or has had other disciplinary action taken, or an application for a registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof; or

(p) failure to report information required to be reported under section 2 and amendments thereto, including the failure to report such information at the time required for its reporting.

In addition to any other disciplinary action which may be imposed for a violation of this section, any registered professional counselor who willfully fails to report information required to be reported under section 2 and amendments thereto shall for the first failure to report have such person's license suspended for a period of six months, for a second failure to report have such person's license suspended for a period of one year and for a third failure to report have such person's license

revoked.

Sec. 7. K.S.A. 1989 Supp. 65-6311 is hereby amended to read as follows: 65-6311. (a) The board may suspend, limit, revoke or refuse to issue or renew a license of any social worker upon proof that the social worker:

(1) Has been convicted of a felony and, after investigation, the board finds that the licensee has not been sufficiently rehabilitated to merit the public trust;

(2) has been found guilty of fraud or deceit in connection with services rendered as a social worker or in establishing needed qualifications under this act;

(3) has knowingly aided or abetted a person, not a licensed social worker, in representing such person as a licensed social worker in this state;

(4) has been found guilty of unprofessional conduct as defined by rules established by the board;

(5) has been found guilty of negligence or wrongful actions in the performance of duties; or

(6) has had a license to practice social work revoked, suspended or limited, or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof; or

(7) has failed to report information required to be reported under section 2 and amendments thereto, including the failure to report such information at the time required for its reporting.

(b) Proceedings to consider the suspension, revocation or refusal to renew a license shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) In addition to any other disciplinary action which may be imposed for a violation of this section, any licensed social worker who willfully fails to report information required to be reported under section 2 and amendments thereto shall for the first failure to report have such person's license suspended for

a period of six months, for a second failure to report have such person's license suspended for a period of one year and for a third failure to report have such person's license revoked.

Sec. 8. K.S.A. 1989 Supp. 74-5324 is hereby amended to read as follows: 74-5324. The board may suspend, limit, revoke or refuse to issue or renew a license of any psychologist upon proof that the psychologist: (a) Has been convicted of a felony involving moral turpitude; or (b) has been guilty of fraud or deceit in connection with services rendered as a psychologist or in establishing qualifications under this act; or (c) has aided or abetted a person, not a licensed psychologist, in representing such person as a psychologist in this state; or (d) has been guilty of unprofessional conduct as defined by rules and regulations established by the board; or (e) has been guilty of negligence or wrongful actions in the performance of duties; or (f) has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement; or (g) has had a registration, license or certificate as a psychologist revoked, suspended or limited, or has had other disciplinary action taken, or an application for registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof; or (h) has failed to report information required to be reported under section 2 and amendments thereto, including the failure to report such information at the time required for its reporting.

In addition to any other disciplinary action which may be imposed for a violation of this section, any licensed psychologist who willfully fails to report information required to be reported under section 2 and amendments thereto shall for the first failure to report have such person's license suspended for a period of six months, for a second failure to report have such person's license suspended for a period of one year and for a third failure to report have such person's license revoked.

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New Sec. 9. Any person who willfully delivers or discloses to the secretary of health and environment any report, record or information under K.S.A. 65-445 and amendments thereto which is known by such person to be false is guilty of a class C misdemeanor.

New Sec. 10. Nothing in this act shall be construed as creating or recognizing a right to legal abortion.

New Sec. 11. If any provision, word, phrase, or clause of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or application of this act which can be given effect without the invalid provision, word, phrase, clause or application, and to this end the provisions, words, phrases, and clauses of this act are declared to be severable.

Sec. 12. K.S.A. 65-445 and K.S.A. 1989 Supp. 65-430, 65-2837, 65-5809, 65-6311 and 74-5324 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Kansas Department of Social and Rehabilitation Services

Testimony Before
The Senate Committee on Public Health and Welfare
Regarding the
Committee's Introduction
of Agency Bills
in Room 526-S of the Capitol Building
at 10:00 a. m. on February 8, 1990

Tim Owens
Chief Legal Counsel
Telephone: 296-3967

Presented on behalf of:

Winston Barton
Secretary
Telephone: 296-3274

SPH & W
Attachment #2
2/8/90

Kansas Department of Social and Rehabilitation Services

Request Of The
Senate Committee on Public Health and Welfare
To Introduce Agency Bills

Mr. Chairperson and members of the Committee: I am Tim Owens, Chief Legal Counsel, Kansas Department of Social and Rehabilitation Services.

We respectfully request that the Committee introduce the following draft bills on behalf of the agency. We have provided the Committee and its staff with 17 packets which contain copies of my statement and the bills which have been drafted by the Revisor of Statutes.

We will summarize each draft bill. If the Committee introduces the bill, agency officials will testify in more detail at the hearing on each bill.

We will summarize the draft bills in the order which they appear in the packets. We understand the Committee will act separately on each draft bill. After summarizing each draft bill, we will pause for Committee action on the bill.

- o The first draft bill allows the Secretary of Social and Rehabilitation Services to promulgate regulations regarding the award of special purpose grants for community mental retardation assistance.

(Pause)

- o The second draft bill adds intermediate care facilities for mental retardation to the list of facilities that may utilize the services of certified medical aides.

(Pause)

- o The third draft bill allows, after initial court-approved placement of a mentally ill ward in a treatment facility, subsequent placements pursuant to a plan of treatment in other treatment facilities without requiring separate court approvals, unless the ward requests a hearing.

(Pause)

- o The fourth draft bill clarifies when the alleged juvenile offender is in the custody of the Secretary of Social and Rehabilitation Services, the cost of transporting the offender to and from the court is an expense of the proceeding and shall be paid from the general fund of the county.

(Pause)

- o The fifth draft bill clarifies the circumstances under which mentally ill persons are committed to a period of treatment.

(Pause)

- o The sixth draft bill designates specific investigator positions within the agency as certified law enforcement officers to allow agency access to additional information and allow officers to receive training.

(Pause)

o The seventh draft bill assures that the agency has permanent authorization to purchase insurance for volunteers in the foster care program.

(Pause)

We thank the Committee for introducing the agency's draft bills. We look forward to working with this Committee and other committees to which the bills are assigned.

SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT relating to special purpose community mental retardation assistance grants.

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

Section 1. The secretary of social and rehabilitation services may adopt rules and regulations regarding the awarding of special purpose community mental retardation assistance grants. This act shall be known and may be cited as the Kansas special purpose community mental retardation assistance act.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT concerning administration of medications in institutions for mentally retarded persons; amending K.S.A. 1989 Supp. 65-1124 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 65-1124 is hereby amended to read as follows: 65-1124. No provisions of this law shall be construed as prohibiting:

- (a) Gratuitous nursing by friends or members of the family;
- (b) the incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) caring for the sick in accordance with tenets and practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;
- (d) nursing assistance in the case of an emergency;
- (e) the practice of nursing by students enrolled in accredited schools of professional or practical nursing nor nursing by graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following such graduation;
- (f) the practice of nursing in this state by legally qualified nurses of any of the other states as long as the engagement of any such nurse requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, and as long as such nurses do not represent or hold themselves out as nurses licensed to practice in this state;
- (g) the practice by any nurse who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of official duties;

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(h) auxiliary patient care services performed in medical care facilities, adult care homes or elsewhere by persons under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry or the supervision of a registered professional nurse or a licensed practical nurse;

(i) the administration of medications to residents of adult care homes or to patients in hospital-based long-term care units, including state operated institutions for the mentally retarded, by an unlicensed person who has been certified as having satisfactorily completed a training program in medication administration approved by the secretary of health and environment and has completed the program on continuing education adopted by the secretary, or by an unlicensed person while engaged in and as a part of such training program in medication administration;

(j) the practice of mental health technology by licensed mental health technicians as authorized under the mental health technicians' licensure act;

(k) performance in the school setting of selected nursing procedures, as specified by rules and regulations of the board, necessary for handicapped students;

(l) performance in the school setting of selected nursing procedures, as specified by rules and regulations of the board, necessary to accomplish activities of daily living and which are routinely performed by the student or student's family in the home setting; or

(m) performance of attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 1989 Supp. 65-6201 and amendments thereto.

Sec. 2. K.S.A. 1989 Supp. 65-1124 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT concerning guardians and wards; procedure to change treatment; amending K.S.A. 1989 Supp. 59-3018 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 59-3018 is hereby amended to read as follows: 59-3018. (a) A guardian shall be subject to the control and direction of the court at all times and in all things. It is the general duty of an individual or corporation appointed to serve as a guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, the guardian shall assure that personal, civil and human rights of the ward or minor whom the guardian services are protected.

(b) The guardian of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support and maintenance.

(c) A limited guardian shall have only such of the general duties and powers herein set out as shall be specifically set forth in the dispositional order pursuant to K.S.A. 59-3013 and amendments thereto and as shall also be specifically set forth in "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014 and amendments thereto.

(d) A guardian shall have all of the general duties and powers as set out herein and as also set out in the dispositional order and in the letters of guardianship.

(e) The general powers and duties of a guardian shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance and to file an annual accounting. The powers and

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duties shall include, but not be limited to, the following:

(1) Assuring that the ward resides in the least restrictive setting reasonably available;

(2) assuring that the ward receives medical care or nonmedical remedial care and other services that are needed;

(3) promoting and protecting the care, comfort, safety, health and welfare of the ward;

(4) providing required consents on behalf of the ward;

(5) exercising all powers and discharging all duties necessary or proper to implement the provisions of this section.

(f) A guardian of a ward is not obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(g) A guardian shall not have the power:

(1) To place a ward in a facility or institution, other than a treatment facility, unless the placement of the ward has been approved by the court.

(2) To place a ward in a treatment facility unless approved by the court, except that a ward shall not be placed in a state psychiatric hospital or state institution for the mentally retarded unless authorized by the court pursuant to K.S.A. 1986 Supp. 1989 Supp. 59-3018a and amendments thereto. Once placement has been approved under this section, subsequent placements in other treatment facilities pursuant to and in furtherance of a plan of treatment of the ward shall not require separate court approvals unless the ward shall request, in writing to the court, a hearing to review such subsequent placement.

(3) To consent, on behalf of a ward, to psychosurgery, removal of a bodily organ, or amputation of a limb unless the procedure is first approved by order of the court or is necessary, in an emergency situation, to preserve the life or prevent serious impairment of the physical health of the ward.

(4) To consent on behalf of the ward to the withholding of life-saving medical procedures, except in accordance with provisions of K.S.A. 65-28,101 through 65-28,109, and amendments

thereto.

(5) To consent on behalf of a ward to the performance of any experimental biomedical or behavioral procedure or to participation in any biomedical or behavioral experiment unless:

(A) It is intended to preserve the life or prevent serious impairment of the physical health of the ward; or

(B) it is intended to assist the ward to develop or regain that person's abilities and has been approved for that person by the court.

(6) To prohibit the marriage or divorce of a ward.

(7) To consent, on behalf of a ward, to the termination of the ward's parental rights.

(8) To consent, on behalf of a ward, to sterilization of the ward, unless the procedure is first approved by order of the court after a full due process hearing where the ward is represented by a guardian ad litem.

(h) The guardian shall at least annually file a report concerning the personal status of the ward as provided by K.S.A. 59-3029 and amendments thereto.

Sec. 2. K.S.A. 1989 Supp. 59-3018 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT concerning payment of the cost of transportation of alleged juvenile offenders to and from hearings; amending K.S.A. 38-1613 and repealing the existing section.

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

Section 1. K.S.A. 38-1613 is hereby amended to read as follows: 38-1613. (a) Docket fee. The docket fee for proceedings under this code, if one is assessed as provided by this section, shall be \$15. Only one docket fee shall be assessed in each case.

(b) Expenses. The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys and the transportation of juveniles alleged to be offenders to and from hearings on the allegation, shall be paid by the board of county commissioners from the general fund of the county.

(c) Assessment of docket fee and expenses. (1) Docket fee. The docket fee may be assessed or waived by the court conducting the initial dispositional hearing and may be assessed against the complaining witness, the person initiating the prosecution, the juvenile offender or the parent of the juvenile offender. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362 and amendments thereto.

(2) Waiver and assessment. Expenses may be waived or assessed against the complaining witness, the person initiating the prosecution, the juvenile offender or a parent of the juvenile offender. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery.

(3) Prohibited assessment. Docket fees or expenses shall not be assessed against the state, a political subdivision of the

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state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state.

(d) Cases in which venue is transferred. If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportion of the expenses is collected by the receiving court. All amounts collected shall first be applied toward payment of the docket fee.

Sec. 2. K.S.A. 38-1613 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT concerning persons who may be mentally ill; procedure; amending K.S.A. 1989 Supp. 59-2917 and 59-2919a and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 59-2917 is hereby amended to read as follows: 59-2917. The hearing shall be held at the time and place specified in the court's order unless a continuance as provided in K.S.A. 59-2914, 59-2916a or 59-2918, and amendments thereto, has been granted. The hearing shall be held to the court only, unless the proposed patient shall, at least four days prior to the time of the hearing, demand in writing a hearing before a jury.

The jury, if one is demanded, shall consist of six persons. The jury panel shall be selected as provided by law and from such panel 12 qualified jurors, who have been passed for cause, shall be empaneled. Prior service as a juror in any court shall not, for that reason, exempt any person from jury service hereunder. From the panel so obtained, the proposed patient or the proposed patient's attorney shall strike one name; the applicant, or the applicant's attorney, one; and so on alternately until each shall have stricken three names. If either party neglects or refuses to aid in striking the names, the court shall strike a name on behalf of such party. If 12 qualified jurors cannot be so empaneled, the court shall draw from such panel or list, by lot, sufficient additional names to empanel 12 qualified jurors.

The applicant and the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearings shall be conducted in as informal a manner as may be consistent with

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orderly procedure and in a physical setting not likely to have a harmful effect on the proposed patient. The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the treatment facility or examiner who has examined or evaluated the proposed patient and the testimony or written findings and recommendations of the investigator appointed pursuant to K.S.A. 59-2914 and amendments thereto. Such evidence shall not be privileged for the purpose of this hearing.

The rules governing evidentiary and procedural matters at hearings under this section shall be applied so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties.

If the applicant is not represented by counsel, the county or district attorney shall represent the applicant, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney shall determine to be of aid to the court in determining whether the proposed patient is a mentally ill person.

Upon the completion of the hearing, if the court or jury finds by clear and convincing evidence that the proposed patient is a mentally ill person, the court shall order treatment for such person at a treatment facility for a period not to exceed 90 days. Thereafter the court may periodically renew its order for treatment for a period not to exceed those consistent with the provisions of K.S.A. 1989 Supp. 59-2919a and amendments thereto.

An order for treatment in a treatment facility, except a state psychiatric hospital, shall be conditioned upon the consent of such facility.

When the court orders treatment, it shall retain jurisdiction to modify, change or terminate such order.

If, upon the completion of the hearing the court or jury finds by clear and convincing evidence that the proposed patient is a mentally ill person has not been shown, the court shall enter the finding in the record and by an appropriate order shall

terminate the proceedings.

Sec. 2. K.S.A. 1989 Supp. 59-2919a is hereby amended to read as follows: 59-2919a. (a) When treatment has been ordered for a person pursuant to K.S.A. 59-2917 and amendments thereto, the patient shall be entitled to request a hearing each 90 days during the first six months of treatment and every 180 days thereafter to determine whether or not such patient continues by clear and convincing evidence to be a mentally ill person. The district court having jurisdiction to modify, change or terminate the order of treatment shall conduct the hearings. At least two weeks prior to the end of each period of treatment, the head of the treatment facility furnishing treatment to the patient shall provide to the court a summary of the medical records of the patient. Upon the receipt of the summary, the court shall notify the patient's attorney of record that the summary has been received. If there is no attorney of record for the patient, the court shall appoint an attorney and notify such attorney that the summary has been received.

(b) When the attorney for the patient has received notice that the treatment facility has provided the district court with a summary of the medical records of a patient, the attorney shall consult with the patient to determine whether the patient desires a hearing. If the patient desires a hearing, the attorney shall file a written request for a hearing with the district court, which request shall be filed not later than the end of the ninety-day or one-hundred-eighty-day period of treatment. Upon receiving a written request for a hearing, the district court shall set the matter for hearing and give notice of such hearing in the manner provided for notice under K.S.A. 59-2916 and amendments thereto. The hearing shall be held as soon as reasonably practical, but in no event more than 10 days following the filing of the written request for a hearing. The district court shall give notice of the time and place of the hearing to the treatment facility to which the patient was ordered for treatment. The district court shall proceed with the hearing in the same manner and with the same powers as if an application

pursuant to K.S.A. 59-2913 and amendments thereto had been filed in the court.

(c) The hearing shall be conducted in the same manner as hearings provided for in K.S.A. 59-2917 and amendments thereto, except that the hearing shall be to the court and the patient shall not have the right to demand a jury.

(d) Upon completion of the hearing, if the court finds by clear and convincing evidence that the patient continues to be a mentally ill person, the court shall order continued treatment. If the court finds that it has not been shown by clear and convincing evidence that the patient continues to be a mentally ill person, it shall discharge the patient. A copy of the court's order shall be sent by mail to the patient, the patient's attorney, the patient's guardian or other person in loco parentis and the treatment facility to which the patient had been ordered.

(e) If the patient does not request a hearing as provided for herein, the court shall review the summary of medical records to determine if the patient continues by clear and convincing evidence to be a mentally ill person. The court having jurisdiction to modify, change or terminate the order of treatment shall conduct such review of medical records. Upon the completion of the review, if the district court finds that it has not been shown by clear and convincing evidence that the patient continues to be a mentally ill person, it shall order that the patient be discharged. If the court finds that it has been shown by clear and convincing evidence that the patient continues to be a mentally ill person, it shall order the patient committed for an additional period of treatment not to exceed those consistent with the provisions of subsection (a). The court's order shall be sent by mail to the patient, the patient's attorney, the patient's guardian or other person in loco parentis and the treatment facility to which the patient has been ordered.

Sec. 3. K.S.A. 1989 Supp. 59-2917 and 59-2919a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT concerning special investigators of the department of social and rehabilitation services; requiring compliance with law enforcement officer training; amending K.S.A. 1989 Supp. 74-5602 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603 and amendments thereto.

(b) "Commission" means the Kansas law enforcement training commission, created by K.S.A. 74-5606 and amendments thereto.

(c) "Director" means the dean of the division of continuing education of the university of Kansas.

(d) "Associate director," as created in K.S.A. 74-5603 and amendments thereto, means the associate director of the division of continuing education of the university of Kansas who shall serve as the director of police training at the law enforcement training center.

(e) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; conservation officers of the Kansas

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department of wildlife and parks; special investigators of the legal division of the department of social and rehabilitation services designated by the secretary; campus policemen at all state educational institutions; law enforcement agents of the director of alcoholic beverage control; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol area security guards, existing under the authority of K.S.A. 75-4503 and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524 and amendments thereto; and school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the secretary of corrections or any security officer employed at a state institution operated by the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(f) "Full-time" means employment requiring at least 1,000 hours of work per year.

(g) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of work per year.

Sec. 2. K.S.A. 1989 Supp. 74-5602 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By Committee on Public Health and Welfare

AN ACT authorizing purchase of insurance for volunteers participating in family foster care program; amending K.S.A. 1989 Supp. 74-4702 and repealing the existing section.

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

New Section 1. The secretary of the department of social and rehabilitation services may procure a policy of accident, personal liability and excess automobile liability insurance insuring volunteers participating in the family foster care program against loss in accordance with specifications of department of administration guidelines. Such agency may purchase such policy of insurance independent of the committee on surety bonds and insurance without complying with K.S.A. 75-3738 to 75-3744, inclusive, and amendments thereto.

Sec. 2. K.S.A. 1989 Supp. 74-4702 is hereby amended to read as follows: 74-4702. No state agency shall purchase or carry insurance on any property owned by the state agency or the state except as expressly and specifically authorized by K.S.A. 72-4342, 74-4703, 74-4705 and, 74-4707, 75-2728 ~~and K.S.A. 1986 Supp. 72-4342, 76-391, 76-747, 76-748 and 76-749 and as required by K.S.A. 74-4707~~ section 1 and amendments to these sections.

Sec. 3. K.S.A. 1989 Supp. 74-4702 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.



AMERICAN PHYSICAL THERAPY ASSOC., INC.

February 8, 1990
Carolyn Bloom, PT
1045 SW Gage Blvd.
Topeka, KS 66604

Senate Bill 543

Mr. Chairman and Members of the Senate Public Health Committee:

My name is Carolyn Bloom and I am President of the Kansas Physical Therapy Association which represents about 90 percent of the Physical Therapists practicing in the State.

It is commonly recognized that there is a shortage of health care providers in Kansas, especially in the rural areas. Small hospitals have been especially affected with difficulty in locating or competing in reimbursement for full time professionals.

The Kansas Physical Therapy Association recognizes the problem of the current health care manpower shortage. Our Association has taken steps to help alleviate the situation. We supported legislation, passed last year, that increases the numbers of Physical Therapy students at the University of Kansas Medical Center, and that provides for scholarships for nursing students. Our Association provides free job placement services for small or rural hospitals including a "job board" at our state meetings and educational seminars held two or three times a year. Our officers speak to students on the merits of rural practice. We have allowed time at state forums for speakers who represent rural hospitals, and printed their articles in our state professional newsletter.

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An issue that has come before the Kansas Legislature in the past several years is the concern of initiating Physical Therapy services to patients in small hospitals quickly by allowing Certified Physical Therapist Assistants to provide patient care before the Physical Therapist evaluates the patient and establishes a plan of care.

The Kansas Physical Therapy Association has been opposed to this concept for the following reasons:

1. Concern of maintaining safety of all patients in receiving care
2. Certified Physical Therapist Assistants are not trained in evaluation techniques.
3. This changes the traditional supervisory role of the Physical Therapist to the Certified Physical Therapist Assistant which is clearly outlined in the Kansas Physical Therapy Practices Act and the accompanying rules and regulations.
4. Increases potential problems with malpractice liability
5. May pose difficulty with insurance reimbursement for the patient
6. This concept still does not address the problem of finding a Physical Therapist for rural or small hospitals that do not have such services.

In response to a directive of the Senate Public Health Subcommittee during the 1989 session to reach a compromise, our Association's representatives met numerous times with representatives of the Kansas Hospital Association, the Kansas Association of Osteopathic Medicine, the Kansas Medical Society and the Kansas Board of Healing Arts. The compromise language in SB 543 is now being presented for your review.

This language will allow patient care to be started even if the Physical Therapist is not at the hospital for several days. There are several considerations as follows:

1. Since the Certified Physical Therapist Assistant is not trained in evaluation techniques or in interpreting data regarding the patient, the phone consultation with the Physical Therapist may allow direction in proper initiation of treatment.
2. If the patient's condition warrants intense care, the phone call will alert the Physical Therapist of the need to modify the schedule and personally treat that patient.
3. If the Physical Therapist is ill or on vacation, the Physical Therapist will have another therapist "cover" and accept such phone calls from the Certified Physical Therapist Assistant.
4. The required phone consultation will keep the Physical Therapist knowledgeable of the patient care being given for which that Physical Therapist is liable.
5. The requirement for the Physical Therapist to evaluate the patient on or before the third treatment will maintain the Physical Therapist's responsibility of adequate supervision of the patient's care and the services of the Certified Physical Therapist Assistant.
6. With the shorter allowed length of stay in hospitals these days, the patient may be discharged prior to seeing the Physical Therapist if more than three treatments are allowed.

The membership of the Kansas Physical Therapy Association still presents the concerns expressed on this issue in the past years, and stated on the second page of this testimony. However, our Association has reached the compromise language in SB

543, without additional amendments, and is presenting this language for
consideration.

I will be pleased to answer any questions.

February 8, 1990

Jennie Atwood, PT, MA
3741 Stonybrook Drive
Topeka, Kansas

To: Mr. Chairman and Members of the Senate Public Health
and Welfare Committee

My name is Jennie Atwood. As a Physical Therapist, I have worked in a variety of settings over the last twelve years. I have worked clinically with Physical Therapist Assistants and have had the opportunity as Assistant Professor at Washburn University to teach Physical Therapist Assistant students.

Let me discuss briefly the difference in education and clinical skills between the Physical Therapist and Physical Therapist Assistant. To become a Physical Therapist today, a person must complete three to four years in an accredited college, then be accepted into a Physical Therapy program for two or three years of intensive study in anatomy, physiology and neurology, and must complete a clinical internship at which time they receive a Master's Degree. One of the most important aspects of the Physical Therapist's education is learning to evaluate the condition of the patient. Evaluation skills enable the Physical Therapist to determine what the Physical Therapy problem is, thereby allowing the therapist to safely and effectively develop a treatment program for the patient.

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Physical Therapist Assistants complete a two year program, receiving an Associate Degree. This education includes limited study in anatomy, physiology and neurology. The student completes a clinical internship under the direction of a Physical Therapist. The Physical Therapist Assistant receives excellent technical training in physical therapy skills but is not trained in evaluation skills, and thus must work under the direction and supervision of the Physical Therapist.

Typically, the clinical scenario goes something like this. The Physical Therapist evaluates the patient to determine the appropriate treatment and designs the treatment program. He or she may then treat the patient or supervise and direct the Physical Therapist Assistant as they treat the patient. It is the Therapist's responsibility to re-evaluate the patient as often as necessary. It is also the Physical Therapist's responsibility to determine which patients should not be seen by a Physical Therapist Assistant. Specifically, any patient whose medical condition requires constant re-evaluation should not be treated by the Physical Therapist Assistant. In a hospital setting, many patients fall into this category. For example, a patient with a recently unstable cardiac condition or a patient with a complicated fracture should not be treated by the Physical Therapist Assistant.

Our goal as Physical Therapists is to provide safe, effective care in a timely fashion. In some situations in rural or small hospitals where the Physical Therapist is unable to immediately evaluate the patient, I believe that it is appropriate for the Physical Therapist Assistant, given their education and training, to initiate certain treatments but only after receiving instructions from the Physical Therapist. I also believe that requiring the Physical Therapist to evaluate the patient and establish a plan of treatment no later than the third treatment, with a minimum weekly review of the Physical Therapist Assistant will help to assure continued safe and quality Physical Therapy care for Kansans.

Thank you for your time. I would be happy to answer any questions at this time.



100 E. Helen • Herington, Kansas 67449 • 913-258-2207

Elva Strand CPTA
1600 W. Walnut
Herington, KS 67449
(913) 258-2480

Senators,

I am from a rural community and I am very much in favor of bill no.#543 in its original language. This bill maintains the supervisory position of the Physical Therapist rather than delegating it to the physicians as past bills have attempted, which I feel is very important.

I graduated from an accredited (2) year P.T.A. Program, passed State Boards, and have (11) years of experience. As the law stands now I cannot even put a hot pack, cold pack, or do a massage on a patient that has not been seen by a Physical Therapist. I was taught indications and contra-indications for all P.T. procedures in school and I feel any CPTA under the phone direction of the P.T. is qualified to apply any modality that the P.T. is comfortable with, until the evaluation can be made. I would prefer having the evaluation made sooner and definitely no later than the third treatment.

I work in a small hospital in Herington with only one Physical Therapist. As dedicated as she is she needs a day off once in awhile and it never fails that when she does we get a new patient that I have to turn away. This is very hard to do in a small community where you know everyone and you have to look at hem in pain, knowing you could do something to make them more comfortable and yet the law doesn't allow it. Please help us, help our patients. Thank-you.

Elva D. Strand CPTA

*SPH + W
Attachment #12
2/9/90*

Karla Jo Raveling, PTA
Morris County Hosp.
Council Grove, Ks

I'm from a rural community and am in favor of this bill in its original form. I graduated from Colby Community College and recieved my certification in 1983. The curriculum for Physical Therapy assistants included Anatomy & Physioloey, Kinesiology, Survey of Human diseases and 2 years of Physical Therapy Procedures which covered the indications, contraindications and techniques used for heat, cold, ultrasonic, microwave, electrical, ultraviolet and hydro modalities. We were also trained in therapeutic exercise, gait training and traction techniques.

For three and a half years I was the sole fulltime Physical Therapy employee. A Registered Physical Therapist come two times a week to evaluate and consult on patients. There are times when Doctors would order Physical Therapy for an acute in-patient and if it happened to be friday the patient would have to wait 48 hours or more if the therapist could not physically evaluate him/her. Fortunately for me, the consulting therapist was very dedicatated to patient care and would drive 25 miles to evaluate a patient in acute pain, give me orders for the modalities she felt would offer the most relief at the time, and drive 25 miles back.

Another case in point is gait training. Often times Physical Therapy receives orders for crutch or walker training, especially in acute ankle sprains or fractures. As the law stands now Physical Therapy assistants are not allowed to show these patients safe techniques for using crutches or walkers. We are forced to send these patients out without any official instruction.

I believe the passing of this bill will enhance the quality of patient care in rural communities where there is a shortage of Registered Physical therapists. In some emergency cases where the Physical Therapist is not available to evaluate, a Physical Therapist assistant could initiate treatment after contacting the Physical Therapist by phone and thereby offer the patient some relief and still remain under the supervision of the Physical therapist.

SPH & W
Attachment #13
2/8/90

Steve Chandler, P.T.
R. R. 5
Hiawatha, KS 66434

Senate Public Health Committee
Testimony on Senate Bill 543
February 8, 1990

Mr. Chairman and Members of Senate Public Health Committee:

My name is Steve Chandler. I am a Physical Therapist practicing in rural hospitals in Northeast Kansas. I am here today to speak in support of Senate Bill 543 in its current language.

I have worked in small hospitals for the past eleven years and for most of those years have utilized Physical Therapy Assistant in the provision of Physical Therapy Services.

The term underserved is usually used in the context of a shortage of physicians in a specific rural area. I feel the same can also be very true for the provision of physical therapy services in some areas of our State. The physical therapy needs of a rural hospital and community are many and complex. They include but are not limited to providing home health visits, nursing home consultations, visits to schools to treat special education students and being responsible for inpatient and outpatient physical therapy care in a hospital.

The hospitals I serve are small, not larger than 25 beds, and at present would probably not be able to support a full-time physical therapist even if one could be recruited and retained. I am able to visit each hospital two or three times weekly at which time I evaluate and plan patient programs and provide more inclusive and specialized care, as well as interpreting results of procedures to establish realistic goals for each patient. The Physical Therapist Assistant provides excellent routine patient care in accordance with our established program. They are trained to recognize problems and warning signs as well as signs that would indicate that a patient is ready to progress. The Physical Therapy Assistant knows the justification for these changes and can readily report these signs to the Physical Therapist.

Our problem is one that Senate Bill 543 addresses when a new patient comes for treatment and I am unavailable, possibly for 24 to 48 hours, and no care can be initiated. In its present language this Bill would provide an opportunity to initiate treatment by the Physical Therapy Assistant prior to my evaluation following telephone contact by the Physical Therapy Assistant with myself.

This Bill may provide some immediate relief for timely initiation of Physical Therapy treatments in those rural and underserved areas; and most importantly leaves the responsibility both legally and ethically for the initiation provision of Physical Therapy treatments by the Physical Therapy Assistant with the Physical Therapist.

In a letter from the Department of Health and Human Services dated February, 1986, "Supervision of physical therapy services by a physician, regardless of his/her specialty (physiatry included), is not an acceptable alternative to supervision by a qualified physical therapist. A copy of this letter is included with my testimony. *(not included)*

I would be happy to respond to any questions at this time. SPHF-2/8/90
Attachment #14



100 E. Helen • Herington, Kansas 67449 • 913-258-2207

Barbara Hanschu, RPT
RR 1, Box 78
Ramona, KS 67475
(913) 965-2602

Senators,

This letter is written in support of Senate Bill No.# 543.

I personally favor this bill as a physical therapist, who works out of a small rural hospital. I am the only therapist, but am fortunate enough to have an assistant. The portion of the treatment load that she participates in enables me to see more patients and allows me more time to think about the patient response to treatment and what changes need to be made. However, I still need time away. Two weeks ago I attended an educational conference that started on a Friday. The week following, it was necessary for me to make my own physician's visit. This week I needed to attend a funeral. I am uncomfortable during those times knowing that a patient who needs to enter physical therapy care has to be denied. I also do not like leaving my assistant in the very awkward position of having to deny the patient, whose question is often, "What shall I do then?" and of having to refuse the physician, who is trying to provide every avenue of care for his patient.

As a representative of our hospital, I would like to say that the bill would help to provide the service to the community that the hospital wants to provide. Hospitals want to meet as many needs of their patrons as they can. Rural hospitals can't afford to send patients that might be served out of their doors. It is also not feasible to pay consultation wages to a therapist to be there for two or three hours just in case there is a new patient, if a consultant can even be found.

SPH + W
Attachment #15
2/8/90

Barbara Hanschu Page 2

However, the ultimate concern of this bill is what benefit it will be to the patients. Urban patients will not be affected because there are therapists available to be on the premises with the assistants. Rural hospitals are fortunate if they have a physical therapist assistant, even more fortunate if they have a full time therapist. I feel that Senate Bill No.# 543 will benefit the rural patrons because they will have increased access to entering the physical therapy system. A complete evaluation by the therapist as soon as possible will be necessary to assess the cause of the patient's symptoms, so that the patient can be assisted in reducing that element. However, if the therapist is not immediately available, the physical therapist assistant will be able to start breaking the pain-tension cycle by initiating use of physical agents such as heat and cold. They can apply the skills in which they were trained during their two year course to obtain their associate degree.

I can support this bill because the assistant must establish telephone contact with the therapist. I know my assistant and I know that she has many capabilities. However, I can restrict her activities during the telephone consultation to what she and I are comfortable with. I cannot work in a situation where I am to assume responsibility for a patient who has had physical therapy procedures initiated under physician's orders without evaluation, or consultation by a therapist.

In conclusion, I feel that it is imperative that Senate Bill No.# 543 be passed in its original form so that:

1. The care that rural patients need can be started as soon as possible.
2. Rural hospitals can provide the service to their community that they want to provide.

Barbara Hanschu Page 3

3. Rural physicians with their heavy patient loads have this physical therapy available to their patients.
4. Therapists can serve rural communities without feeling quite as burned out because they feel guilty about disrupting service to their patients even when attending a funeral or educational conferences.
5. Physical therapy assistants can serve their hospital, physicians, and patients by using skills they learned in their two years of training without being forced to accept responsibilities that they aren't trained for because they still are directed to initiate pt. care after telephone contact with the physical therapist for documented instruction.

Barbara Hanschu, PT

Christy Ziegenhirt, RPT
Morris County Hosp.
Council Grove, Ks

I am a physical therapist in a rural community working as a team with one other physical therapist assistant. I have just recently graduated with a BS in Physical Therapy in August, 1989 from Wichita State University.

I am in favor of Bill No.543 in its original form. This bill is set up to aid physical therapy in rural communities where a shortage of physical therapists exist.

Physical therapist assistants are certified to assist physical therapists and I must stress they are trained in contraindications of treatment. Therefore I feel when the physical therapist is not available, the physical therapist assistant may initiate patient care, but only after telephone contact with the physical therapist for documented instruction. (as the bill states)

If the physical therapist does not feel comfortable at the time with the assistant initiating treatment, then they should express so and say no.

This bill is written to benefit those patients who need gait training, or a form of modality for acute care that cannot wait three to five days for an initial evaluation by Registered Physical Therapist. As long as there is at least telephone contact with an RPT, I see no reason why this situation could not be handled as it is stated in this bill. (No. 543)

Sincerely,

Christy Ziegenhirt, RPT.

SPH + W

*Attachment #16
2/8/90*



Catholic Health Association of Kansas

John H. Holmgren • Executive Director
Jayhawk Tower, 700 Jackson, Suite 801 / Topeka, KS 66603 / (913) 232-6597

TESTIMONY

SENATE HEALTH AND WELFARE COMMITTEE
THURSDAY, FEBRUARY 8, 1990

RE: SENATE BILL 543

My name is John Holmgren and I am Executive Director of the Catholic Health Association, with membership involving over 30% of the hospital beds in Kansas - 17 hospitals, 11 nursing homes, and 5 charity health clinics.

Our hospitals are both urban and rural. We are concerned about SB 543 because we believe it is unrealistic. I supervised a major rehabilitation program at St. Joseph in Wichita for a number of years. There is a great need for flexibility among para-professionals in rehabilitation because of the acute shortages.

Registered Physical Therapists are in short supply, and to even suggest a telephone contact may be difficult because of this fact. It may also be unrealistic because there is no viewing of the patient in a modality with a high degree of one-on-one patient care.

The original bill, KS Statute 65-2914 required physical therapists assistants to "be under the direction of a registered physical therapists." In this instance, the word "direction" meant that all physical therapists "shall see all patients and evaluate them periodically." This has not been realistic or operational for a number of hospitals particularly in the rural areas, because 1) physical therapists are attracted to the larger cities and

SPH W
Attachment # 17
2/8/90

towns in Kansas; 2) there is a shortage of PT's statewide, particularly in the 75 counties of Kansas having less than 10,000 population.

Our suggestion is a revision of KS Statute 65-2914 to permit the attending physician who is required to give the original order for treatment to monitor this plan of treatment and its execution. This will retain quality of care as well as the necessary "direction of a physical therapist assistant." We have, therefore, executed the proposed revision of SB 543 for your consideration, as attached.

Lastly, although a parallel has been drawn in the need for a registered nurse to supervise Nursing Assistants and LPA's this parallel is not as germane, as physical therapy is not involved in life or death situations. Their efforts are rehabilitative and remedial, utilizing the orders of either a Physiatrist MD, an Internist, a Family Practice Physician, or an Orthopedic Surgeon, usually, and they monitor the plan and treatment protocol.

We appreciate very much your efforts to streamline and make KS Statute 65-2914 but because of the reasons I've given, I would like to suggest another look at the methodology in SB 543.

Thank you for this opportunity to express our concern and interest.

John H. Holmgren
February 8, 1990

attachment: Balloon re SB 543

SPHvw
2/8/90 17-2

SENATE BILL No. 543

By Committee on Public Health and Welfare

1-23

9 AN ACT concerning physical therapy; relating to treatment by a
10 physical therapist assistant; amending K.S.A. 65-2914 and
11 repealing the existing section.
12

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

14 Section 1. K.S.A. 65-2914 is hereby amended to read as follows:
15 65-2914. (a) No person shall employ fraud or deception in applying
16 for or securing a certificate of registration as a physical therapist.

17 (b) A person registered under this act as a physical therapist shall
18 not treat ailments or other health conditions of human beings other
19 than by physical therapy unless duly licensed or registered to provide
20 such treatment under the laws of this state.

21 (c) A person certified under this act as a physical therapist
22 assistant shall not treat ailments or other health conditions of human
23 beings except under the direction of a physical therapist duly
24 registered under this act. The word "direction" as used in this
25 subsection (c) shall mean that the physical therapist shall see all
26 patients initially and evaluate them periodically *except in those cases*
27 *in a hospital setting when the physical therapist is not immediately*
28 *available, the physical therapist assistant may initiate patient care*
29 ~~*after telephone contact with the physical therapist for documented*~~
30 ~~*instruction. The physical therapist must then evaluate the patient*~~
31 ~~*and establish a plan of treatment no later than the third treatment*~~
32 ~~*with a minimum weekly review.*~~

33 (d) Any person violating the provisions of this section shall be
34 guilty of a class B misdemeanor.

35 Sec. 2. K.S.A. 65-2914 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after
37 its publication in the statute book.

with the approval and supervision of
the attending physician. The physician
must continue to evaluate the patient
and supervise the plan of treatment,
periodically.

17-3

ST. ANTHONY HOSPITAL

Feb 2, 1990

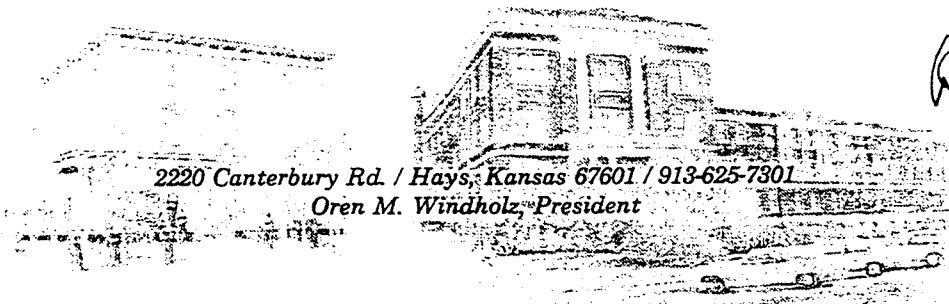
John Holmgren
Jayhawk Downs, Rm 801
5th & Jackson
Topeka, Ks. 66601

Dear John,

With respect to your recent phone call and our mutual concerns about proposed requirements regarding physical therapists and their role in providing patient care in small rural hospitals. One of our primary concerns is the inability of accredited and recognized physical therapy programs in Kansas to supply a sufficient number of trained physical therapists.

If possible, such schools need to consider expanding enrollment to interested and qualified students. The shortage of such therapists is a very serious problem in Western Kansas. Recruitment is difficult enough for a small community hospital, and without the overall supply of such specialists increasing in the very near future their valuable patient service may not be available to hospitals and nursing homes in the years ahead.

Sincerely,
Oren M. Windholz





Catholic Health Association of Kansas

John H. Holmgren • Executive Director
Jayhawk Tower, 700 Jackson, Suite 801 / Topeka, KS 66603 / (913) 232-6597

Revision Proposed

KSA 65-2914

....except in those cases
in a hospital setting when the physical therapist
is not immediately available, the physical
therapist assistant may initiate patient care
with specific physician orders. A physical
therapist or a physician must then evaluate the
patient and establish a plan of treatment no later
than the third treatment with a minimum weekly
review.

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

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

February 8, 1990

KAOM TESTIMONY ON S.B. 543

Mr. Chairman and Members of the Senate Public Health Committee:

My name is Harold Riehm and I represent The Kansas Association of Osteopathic Medicine. I appear in support of the concept of S.B. 543, though also in support of two amendments to be recommended by The Kansas Hospital Association.

We appreciate the interest of the physical therapists and The Physical Therapy Association in working with us and in introducing this Bill. It is, we think, in simple recognition that there is a problem that needs to be addressed, concerning the availability of health care in rural parts of our State.

KAOM first asked for introduction of a bill dealing with this matter in the 1986 Session. It grew out of a problem in a few rural settings in which there was available a physical therapist assistant on a regular basis, but a physical therapist only on less than a full time basis. At times, this created a delay in the commencement of therapy ordered by a physician because the patient could not be seen by a physical therapist before the physical therapist assistant began treatment. The conditions that prompted this concern expressed by some of our physician members, i.e., a shortage of physical therapists in some rural hospital settings, remain with us today and show few signs of improving.

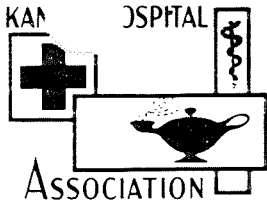
Throughout several years of consideration of this issue, a difference has always been whether or not a physical therapist assistant could begin treatment pursuant to a physician's order without actually contacting a physical therapist first. Though this would no doubt be of infrequent occurrence, we continue to think this an advisable change in current law.

The Kansas Hospital Association will be presenting two short amendments to the Bill. KAOM endorses both of the amendments that KHA suggests.

Thank you for the opportunity to appear on this Bill.

SPH + W
Attachment # 18
2/8/90

Memorandum



Donald A. Wilson
President

February 8, 1990

TO: Senate Public Health and Welfare Committee
FROM: Kansas Hospital Association
RE: SENATE BILL 543

The Kansas Hospital Association appreciates the opportunity to comment on the provisions of Senate Bill 543, relating to physical therapists and physical therapist assistants. The issue has been discussed during past legislative sessions and, unfortunately, it remains unresolved at the current time.

Senate Bill 543 would amend the physical therapy statutes to create an exception to the rule that the physical therapist must see all patients initially. The exception would be created in those cases in a hospital setting where the physical therapist is not immediately available. When that happens, the physical therapist assistant may initiate treatment after telephone conversation with the physical therapist. The physical therapist must then evaluate the patient and establish a plan of treatment no later than the third treatment, with a minimum weekly review.

We would like to commend the Kansas Physical Therapy Association for introducing this bill. We realize that in the past there has been a great amount of resistance by physical therapists with regard to this issue, and we think the introduction of Senate Bill 543 indicates a greater willingness on the part of the Physical Therapy Association to discuss this issue.

Current Kansas statutes create a problem of access to care for certain people needing physical therapy services. Our law says that the physical therapist must see all patients before any treatment is started by a physical therapist assistant. In some cases, the physical therapist may not be available to see the patient when necessary, and that patient will not receive the necessary care until such time as the physical therapist is available. Obviously, this is not a desirable situation, and something must be done to develop a plan to take care of these difficulties. The problem here is largely a rural one and is related to the significant shortage of physical therapists in our state. Our most recent Kansas Hospital Association personnel survey showed a vacancy rate for physical therapists of 3 percent in urban areas and 16 percent in rural areas. Clearly, *SPH+W*

*Attachment #19
2/8/90*

there is a problem in rural areas that could be helped if more flexibility was built into the statutes to ensure patients could receive treatment when it is needed, instead of having to wait.

We think Senate Bill 543 is a good start in building in this flexibility. We do, however, have two suggestions. First, we think it is a good idea to allow the physical therapist assistant to begin treatment either after telephone contact with the physical therapist or an order from a physician. Current Kansas law states that a physical therapist may not initiate treatment until approval by a physician. If a physician must approve treatment by a physical therapist, it makes sense to allow that same physician to order the physical therapist assistant to begin treatment, especially on a limited basis. By inserting this language, it adds more flexibility to the statute and will provide for greater access to care, especially in rural areas. In addition, however, the situations in which the physician could order treatment would still be limited to those when the physical therapist is not immediately available, and the physical therapist would still be responsible for evaluating the patient and establishing a plan of treatment.

The second suggestion we have is that the language related to establishing the plan of treatment "no later than the third treatment" be eliminated. In some cases, there may be a need for more than one treatment in a certain day. In fact, the third treatment could take place on the same day the treatments are initiated. In such cases, the language in the bill would provide no help at all. If that language were removed, the physical therapist would still have the responsibility for establishing the plan of treatment and would also be required to review that treatment on a weekly basis. Again, this essentially leaves the physical therapist in charge of that treatment, which is understandably important to the physical therapy profession.

Attached to our testimony is a copy of our suggested amendments to the bill. We appreciate the committee's consideration of our comments.

TLB:pj
Attachment

SENATE BILL No. 543

By Committee on Public Health and Welfare

1-23

9 AN ACT concerning physical therapy; relating to treatment by a
10 physical therapist assistant; amending K.S.A. 65-2914 and
11 repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

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16 for or securing a certificate of registration as a physical therapist.

17 (b) A person registered under this act as a physical therapist shall
18 not treat ailments or other health conditions of human beings other
19 than by physical therapy unless duly licensed or registered to provide
20 such treatment under the laws of this state.

21 (c) A person certified under this act as a physical therapist
22 assistant shall not treat ailments or other health conditions of human
23 beings except under the direction of a physical therapist duly
24 registered under this act. The word "direction" as used in this
25 subsection (c) shall mean that the physical therapist shall see all
26 patients initially and evaluate them periodically *except in those cases*
27 *in a hospital setting when the physical therapist is not immediately*
28 *available, the physical therapist assistant may initiate patient care*
29 *after telephone contact with the physical therapist for documented*
30 *instruction. The physical therapist must then evaluate the patient*-----or pursuant to a physician's order.
31 *and establish a plan of treatment no later than the third treatment*
32 *with a minimum weekly review.*

33 (d) Any person violating the provisions of this section shall be
34 guilty of a class B misdemeanor.

35 Sec. 2. K.S.A. 65-2914 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after
37 its publication in the statute book.

19-3



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

February 8, 1990

TO: Senate Committee on Public Health and Welfare
FROM: Kansas Medical Society *Chip Steelon*
SUBJECT: Senate Bill 543; Physical Therapy Assistants

Thank you for this opportunity to make a brief statement regarding SB 543. The Kansas Medical Society has no position on SB 543 in the form introduced. We do, however, wish to express our support of the amendment offered by the Kansas Hospital Association which would allow a physical therapist assistant to initiate treatment upon an order from a physician.

It may be helpful to recall that K.S.A. 65-2901 requires that a physical therapist (not assistant) initiate treatment "only after consultation with and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist or licensed dentist in appropriately related cases." The KHA amendment would simply expedite this process.

Thank you for considering our concerns.

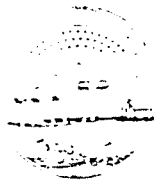
CW:lg

*SPH & W
Attachment #20
2/8/90*

State of Kansas

Office of

RICHARD G. GANNON, EXECUTIVE DIRECTOR
LAWRENCE T. BUENING, JR., GENERAL COUNSEL
JOSEPH M. FURJANIC, DISCIPLINARY COUNSEL
SUSAN LAMBRECHT, LICENSING SUPERVISOR



Kansas State Board of Healing Arts

235 S. TOPEKA BLVD.
TOPEKA, KS 66603
PHONE: 913 295 7411
DISCIPLINARY: 913 296 2442

Board of Healing Arts

MEMORANDUM

TO: Senate Committee on Public Health and Welfare
FROM: Richard G. Gannon, Executive Director
DATE: February 8, 1990
RE: Testimony on Senate Bill No. 543

Thank you for the opportunity to appear before you on behalf of the State Board of Healing Arts and express the Board's position on S.B. 543.

Over the last few years, there have been several attempts to amend K.S.A. 65-2914. I understand the primary motivation behind these past initiatives was to make physical therapy services more readily and immediately available in the more rural setting when a registered physical therapist was not present on a full-time basis. This past summer and fall, meetings were held with representative of various groups, including Board staff, to try to reach an appropriate compromise on the language of K.S.A. 65-2914. Therefore, at its meeting December 8-9, the Board had the opportunity to review a possible proposal which had been submitted by the Kansas Chapter of the American Physical Therapy Association.

After reviewing the physical therapy proposal, the Board took the position at its December meeting that it would support legislation which would enable physicians licensed to practice medicine and surgery to refer a patient for physical therapy and have the physical therapy initiated as ordered without the registered physical therapist having to first evaluate the patient.

It has been the understanding and interpretation of the Board that K.S.A. 65-2872(g) gives to licensees in the healing arts broad authority to delegate professional services. In the hospital setting, doctors are able to order a number of services which are then performed by individuals who are not credentialed by the State of Kansas. Laboratory and radiology services are often performed by technicians who have no credentials from the State of Kansas.

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JOHN P. WHITE, D.O., INTERIM PRESIDENT
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GLENN I. KERBS, D.D.S., DODGE CITY

CAMERON D. KNACKSTEDT, D.C., PHILLIPPS
GRACIELA MARON ENDOORA
R.W. WATMAN, D.P.M., PRAIRIE VILLAGE
KENNETH D. WEDEL, M.D., MINNEAPOLIS
REX A. WELLS, M.D., WICHITA

SPH + W
Attachment #21
2/8/90

Memo to Senate Committee on
Public Health and Welfare
February 8, 1990
Page Two

Phlebotomists, rehabilitation therapists and aides and other uncredentialed hospital employees often perform services as a result of a direct order from a licensed physician. It seems incongruous that a physician may order these services, but when it comes to physical therapy cannot direct a certified physical therapist assistant, who has met certain State qualifications to initiate the care and treatment ordered by the physician without the registered physical therapist first evaluating the patient and establishing the plan of treatment. Therefore, the State Board of Healing Arts is not supportive of Senate Bill No. 543. Rather, the Board would urge the Legislature to consider statutory language that would broaden even further the ability of physicians to direct physical therapy treatment to commence in the absence of a registered physical therapist without the limitations and restrictions which would still exist under the language of Senate Bill 543.

Thank you very much for allowing the Board to present its position on this bill. If there are any questions, I would be happy to attempt to respond.