

Approved April 26, 1991
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley at
Chairperson

9:10 a.m./~~p.m.~~ on March 26, 1991 in room 526-S of the Capitol.

All members were present except:

Rep. Douville - excused
Rep. Webb - excused

Committee staff present:

Jim Wilson, Revisor
Jerry Donaldson, Research Assistant
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Steven M. Dickson, Kansas Chiropractic Assn.
Joe Furjanic, Kansas Chiropractic Assn.
James P. Schwartz, Kansas Employer Coalition on Health
Terry Leatherman, KCCI

The meeting was called to order at 9:10 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley opened the hearing on House Bill No. 2196, providing for employee choice, in the first instance, of health care provider in workers' compensation cases. He introduced conferees as proponents of the bill:

Steven M. Dickson, legal counsel, Kansas Chiropractic Association, stated that recent studies have shown the cost of chiropractic treatment is 40% less than other kinds of medical treatment. He said injured workers receiving chiropractic care lose only 5.8 days on the job rather than a loss of 13.1 days for non-chiropractic treatment. He said that despite these findings chiropractors lose between 4 to 8 patients per week because the insurance company wants the patient to be treated by an insurance company doctor.

Mr. Dickson said that by not allowing injured workers to seek treatment from their own health care provider, litigation and insurance costs increase. He said employers should not be concerned about allowing the employee to choose his or her health care provider because the Legislature has adopted a medical fee schedule which will hold down medical treatment rates (attachment #1). Mr. Dickson answered questions from several committee members.

Joe Furjanic, Executive Director, Kansas Chiropractic Association, read a statement by Tom Blair of Wichita who was unable to attend the hearing. In this statement, Mr. Blair described his personal situation involving a herniated disk injury on the job. He was treated by a chiropractor for approximately \$1,200. His insurance company refused to pay the bill. He hired an attorney who filed a workers' compensation claim. The administrative law judge in Mr. Blair's case awarded him \$60,000 and authorized his chiropractor to treat him. His attorney appealed the case for more money. Mr. Blair won the appeal and the director awarded him \$75,000, the maximum allowable claim. Mr. Blair stated that he "would never have hired a lawyer or filed a claim if I had been allowed to see my own doctor." (attachment #2).

The chairman introduced conferees as opponents of House Bill No. 2196:

James P. Schwartz, Jr., Consulting Director, Kansas Employer Coalition on Health, stated that House Bill No. 2196 will be detrimental to the Legislature's previous efforts to contain costs of medical care. He said that the medical fee schedule approved by the 1990 Legislature helps small employers, who are less likely to have access to a preferred provider list. On the other hand, choosing the health care provider in workers' compensation cases in the "main cost-containment tool" used by larger employers. He said all employers need both the fee

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:10 a.m./~~p.m.~~ on March 26, 1991.

schedule and the right to choose health care provider for their employees (attachment #3). Mr. Schwartz answered questions from committee members.

Terry Leatherman, Executive Director of the Kansas Industrial Council, Kansas Chamber of Commerce and Industry (KCCI), stated his opposition to House Bill No. 2196. He said the workers' compensation system has "checks and balances." He stated that one of the most important "checks" in the system is to allow employers to choose the health care provider for their employees. Mr. Leatherman answered questions from members of the committee.

The chairman announced that the hearing on House Bill No. 2196 would be continued tomorrow, March 27, 1991.

The meeting was adjourned at 10:00 a.m. The next meeting will be March 27, 1991, at 9:00 a.m. in room 526-S.

TESTIMONY OF STEVEN M. DICKSON
BEFORE THE HOUSE LABOR AND INDUSTRY COMMITTEE
MARCH 26, 1991

TESTIMONY IN SUPPORT OF H.B. 2196

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE MY NAME IS STEVE DICKSON. I AM LEGAL COUNSEL FOR THE KANSAS CHIROPRACTIC ASSOCIATION. I AM DELIGHTED TO FINALLY BE HERE TO SPEAK IN SUPPORT OF H.B. 2196.

CHIROPRACTIC IS THE SECOND LARGEST GROUP OF LICENSED HEALTH CARE PROVIDERS IN THE STATE OF KANSAS. ACCORDING TO FIGURES BEGRUDGINGLY SUPPLIED BY BLUE CROSS AND BLUE SHIELD IT APPEARS THAT CHIROPRACTIC WAS THE FASTEST GROWING FIELD OF HEALTH CARE DURING 1984-1988. FOR THAT PERIOD OF TIME CHIROPRACTIC IN KANSAS ALMOST QUADRUPLED FROM 3 MILLION DOLLARS TO ALMOST 12 MILLION DOLLARS OF ALLOWED CLAIMS BY BC/BS FOR CHIROPRACTIC SERVICES.

RECENT STUDIES HAVE SHOWN THAT CHIROPRACTIC IS THE MOST COST EFFECTIVE AND EFFICIENT METHOD OF TREATMENT FOR WORK RELATED INJURIES. EVEN OLD STUDIES FROM THE KANSAS DIVISION OF WORKERS' COMPENSATION PROVE THE COST EFFECTIVENESS AND EFFICIENCY OF CHIROPRACTIC TREATMENT FOR WORKERS' COMPENSATION INJURIES. THAT STUDY SHOWED CHIROPRACTIC TREATMENT COST 40% LESS THAN OTHER TREATMENT AND THE AVERAGE EMPLOYEE LOST ONLY 5.8 WORKDAYS FOR THE INJURY VERSUS 13.1 DAYS FOR NON-D.C. TREATMENT.

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YET, DESPITE THE EVIDENCE, OLD BIASES STILL PREVAIL. CHIROPRACTORS LOSE AS MANY AS 4 TO 8 WORKERS COMPENSATION PATIENTS PER WEEK BECAUSE THE INSURANCE ADJUSTOR WANTS THE PATIENT TO GO TO ONE OF THE INSURANCE COMPANY DOCTORS. NATURALLY IT IS FRUSTRATING FOR THE CHIROPRACTIC PHYSICIAN TO LOSE THE PATIENT THEY ARE MAKING PROGRESS WITH. IT ALSO HAS AN IMPACT ON THE FINANCIAL PICTURE OF THE DOCTOR AS WELL AS THE CLAIMANT AND INSURANCE CARRIER.

THE REASON WE SEE THE IMPACT ON THE CLAIMANT AND THE INSURANCE CARRIER IS THAT THESE ARE THE CASES THAT ARE LITIGATED. WHEN THE CLAIMANT IS TOLD BY THE INSURANCE CARRIER THAT HE OR SHE CAN NO LONGER SEE THE DOCTOR THAT HAS HELPED THEM FOR YEARS, THEY LOOK AROUND TO FIND OUT WHAT THEY CAN DO ABOUT IT. USUALLY THEY FIND A LAWYER. THE LAWYER FILES A CLAIM. WE THEN SEE THE FRUSTRATION OF THE CLAIMANT AS THEY GO THROUGH THE LITIGATION PROCESS. WE SEE THE ATTORNEY'S FEES EATEN UP IN DEPOSITIONS AND HEARINGS. WE SEE THE INCREASED PREMIUMS AND MORE COMPLAINTS FROM THE CARRIERS ABOUT THE INCREASED COST OF WORKERS' COMPENSATION.

WHAT WE REALLY SEE IS THAT A CLAIMANT WHO WOULD NOT HAVE MADE A CLAIM NOW HAS ON FILE A CLAIM WHICH MAY COST SEVERAL THOUSAND DOLLARS IN COMPENSATION AND SEVERAL THOUSAND MORE IN ATTORNEY'S FEES WHEN ALL IT WOULD HAVE COST IN THE FIRST PLACE WAS A THREE TO SEVEN HUNDRED DOLLAR DOCTOR BILL. THE RECORD BREAKING REQUEST BY THE WORKERS COMPENSATION CARRIERS SHOULD BE PROOF ENOUGH THAT THERE ARE TOO MANY LITIGATED CLAIMS.

WHEN A WORKER IS INJURED, HE OR SHE BECOMES SKITTISH, NERVOUS AND DISTRUSTFUL. THEY WORRY ABOUT THEIR JOB, THEIR FAMILY, THEIR HOUSE PAYMENT AND WHETHER THEY WILL EVER BE COMPLETELY "WELL" AGAIN. THEY NATURALLY BECOME CONCERNED WHEN THE INSURANCE COMPANY WILL ONLY LET THEM SEE A CERTAIN DOCTOR. THEY WONDER IF THEY ARE BEING SET UP. THIS IS ESPECIALLY TRUE WHEN THEY LIVE IN LOST SPRINGS KANSAS AND THE ONLY DOCTOR THE INSURANCE COMPANY WILL AUTHORIZE IS OVER 150 MILES AWAY IN KANSAS CITY, MISSOURI. IT HAPPENS ALL THE TIME AND THOSE CASES ARE LITIGATED.

WE ARE CONCERNED ABOUT LOSING CHIROPRACTIC PATIENTS. BUT WE ARE ALSO CONCERNED ABOUT THE SYSTEM ITSELF AND WHAT IT DOES TO PEOPLE WHO HAPPEN TO BE CHIROPRACTIC PATIENTS. THE SYSTEM WAS ORIGINALLY DESIGNED TO BE AN ADMINISTRATIVE PROCEDURE WHERE PEOPLE COULD THEORETICALLY GET ADEQUATE COMPENSATION AND MEDICAL CARE ON THEIR OWN WITHOUT THE NEED FOR AN ATTORNEY. WHEN THEY ARE IN A VULNERABLE POSITION AND CAN'T GET THE MOST BASIC MEDICAL CARE ON THEIR OWN, THE SYSTEM TURNS INTO A LITIGIOUS MESS.

THE ONLY ARGUMENT THE EMPLOYER HAS EVER HAD FOR BEING ALLOWED TO CHOOSE THE PHYSICIAN WAS THAT THEY HAD TO PAY THE BILLS AND THEY SHOULD HAVE SOME CONTROL OVER THEM. LAST YEAR THIS COMMITTEE AND THEN THE ENTIRE LEGISLATURE PASSED A FEE SCHEDULE BILL. NOW IT LOOKS LIKE WITHIN 30-60 DAYS THERE WILL BE A FEE SCHEDULE SO THAT THE EMPLOYER WON'T HAVE TO WORRY ABOUT HIGH DOCTOR'S BILLS. THEY WILL ALL BE CHARGING THE SAME.

IN REALITY CHIROPRACTIC PHYSICIANS AND ALL OTHER HEALTH CARE PROVIDERS HAVE ALWAYS BEEN SUBJECT TO REGULATION BY THE DIRECTOR OF WORKERS' COMPENSATION REGARDING THEIR RATES. EVEN BEFORE THE FEE SCHEDULE WAS ADOPTED LAST YEAR, K.S.A. 44-510(a) STATED, "IN EVERY CASE, ALL FEES, TRANSPORTATION COSTS AND CHARGES UNDER THIS SECTION AND ALL COSTS AND CHARGES FOR MEDICAL RECORDS AND TESTIMONY SHALL BE SUBJECT TO APPROVAL BY THE DIRECTOR AND SHALL BE LIMITED TO SUCH AS ARE FAIR, REASONABLE AND NECESSARY." THUS, THERE WAS REALLY NO REASON THE EMPLOYER SHOULD EVER HAVE FEARED AN OVERCHARGING DOCTOR. THEY HAD A REMEDY. NOW THEY HAVE AN EVEN STRONGER REMEDY AND AN EVEN WEAKER REASON TO CONTROL THE CHOICE OF PHYSICIAN.

WE SUPPORT THE CONCEPT THAT EVERYONE SHOULD BE ALLOWED TO CHOOSE THEIR OWN PHYSICIAN IN ANY SETTING. THE CHOICE OF A DOCTOR IS A VERY PERSONAL CHOICE. THE SAME COULD BE SAID OF THE CHOICE OF A LAWYER OR A CLERGYMAN. THESE THINGS ARE VERY PRIVATE AND IMPORTANT MATTERS. THEY ARE AMONG THE CHOICES THAT EACH OF US SHOULD BE FREE TO MAKE UNLESS THERE IS SOME OVERRIDING REASON THAT THAT FREEDOM SHOULD BE TAKEN AWAY. IN THIS CASE THERE IS NONE.

WE HAVE HEARD THAT THERE IS SOME OPPOSITION TO THIS MEASURE. WE CAN'T BELIEVE THE OPPOSITION IS COMING FROM INFORMED SOURCES. MY FIRM REPRESENTS INSURANCE CARRIERS, SELF INSUREDS, CLAIMANTS AND DOCTORS. SPEAKING FROM THAT BACKGROUND, I CAN TELL YOU FROM AN INSIDERS PERSPECTIVE THAT THIS MEASURE WILL BENEFIT ALL OF THOSE

GROUPS THAT I REPRESENT. THE CARRIERS WILL SEE LESS LITIGATION AND THEREFORE LOWER PREMIUMS. THE DOCTORS WILL NOT HAVE TO WATCH AS THE STRESS OF LITIGATION HAMPERS THEIR PATIENTS RECOVERY. AND THE INJURED WORKER WON'T HAVE TO WORRY ABOUT WHETHER THE INSURANCE COMPANY DOCTOR IS TRYING TO GET HIM BACK TO WORK OR FORCE HIM OUT OF WORK WITH A LOW DISABILITY RATING.

I WILL STAND FOR QUESTIONS.

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TESTIMONY OF TOM BLAIR
BEFORE THE HOUSE COMMITTEE
ON LABOR AND INDUSTRY
March 26, 1991

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS TOM BLAIR. I AM A WALLPAPER HANGER FROM WICHITA KANSAS. I AM NOT VERY COMFORTABLE SPEAKING IN FRONT OF PEOPLE LIKE THIS SO I HAVE WRITTEN ALL OF THIS DOWN SO I CAN JUST READ IT. WHEN I HEARD OF WHAT YOU PEOPLE WERE CONSIDERING I THOUGHT IT WAS IMPORTANT BECAUSE OF MY EXPERIENCES TO COME HERE AND TALK TO YOU IN FAVOR OF HOUSE BILL 2196.

I HAVE MY OWN BUSINESS IN WICHITA. IT IS CALLED BLAIR WALLPAPERING. FOR SEVERAL YEARS I WAS THE ONLY REGULAR EMPLOYEE OF THE BUSINESS. I WOULD HIRE HELP OCCASIONALLY BUT NOT VERY OFTEN. ON JULY 9, 1986 I STEPPED DOWN BACKWARDS OFF A LADDER AND HURT MY BACK. THE DOCTORS TOLD ME I HERNIATED A DISK IN MY LUMBAR SPINE. I WENT TO MY CHIROPRACTOR, DR. BETT. HE TREATED ME WITH MANIPULATION AND CONSERVATIVE CARE. I GOT BETTER.

I WAS VERY HAPPY WITH THE TREATMENT I RECEIVED FROM DR. BETT. I DID NOT WANT SURGERY BECAUSE I HAVE KNOWN SEVERAL PEOPLE WHO HAD HAD BACK SURGERY AND THEY WOUND UP WORSE THAN BEFORE THE OPERATION. DR. BETT'S BILLS AT THAT TIME TOTALLED ABOUT \$1200. I HAD WORKER'S

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COMPENSATION INSURANCE BECAUSE AT THAT TIME I WAS HIRING HELP OCCASIONALLY. I TURNED THE BILLS IN TO MY INSURANCE COMPANY.

TWO THINGS HAPPENED. FIRST, THEY TOLD ME THAT EVEN THOUGH I WAS THE EMPLOYER, THEY WERE GOING TO CHOOSE MY TREATING DOCTOR BECAUSE UNDER THE WORKER'S COMPENSATION LAWS THEY HAD THAT RIGHT. THEY SAID I COULDN'T SEE DR. BETT ANY MORE AND IF I DID THEY WOULDN'T PAY FOR IT. SECOND THEY SAID THEY THOUGHT THE BILLS WERE TOO HIGH AND THEY WERE ONLY GOING TO PAY ABOUT \$800 OF THE \$1200 BILL. I TRIED TO ARGUE WITH THEM ABOUT BOTH OF THESE THINGS, BUT EVEN THOUGH I WAS THE ONE PAYING THE PREMIUM I GOT NO WHERE. I CAN IMAGINE THE HASSLE THE EMPLOYEE GETS WHEN THEY ARE NOT THE ONE PAYING THE PREMIUM.

I FINALLY CONTACTED A LAWYER. I TOLD THE LAWYER I HAD JUST SAVED THIS COMPANY ABOUT \$10,000 ON A BACK OPERATION BUT THEY WOULDN'T PAY. I WAS TOLD I HAD A GOOD CASE FOR GETTING DISABILITY BENEFITS IF I WANTED TO FILE A CASE. I TOLD HIM I DIDN'T WANT ANY MONEY FROM MY OWN INSURANCE CARRIER I JUST WANTED MY DOCTOR'S BILL PAID AND I WANTED THEM TO PAY MY CHIROPRACTOR IF I HAD TO GO TO HIM. HE CALLED THE INSURANCE COMPANY. HE WROTE TO THIS COMPANY. HE TOLD THEM THAT I HAD A GOOD CASE BUT I WOULDN'T FILE IT IF THEY WOULD JUST PAY THE \$400 TO THE DOCTOR AND AUTHORIZE THAT DOCTOR.

THEY REFUSED. IT LOOKED LIKE THE ONLY WAY I COULD GET MY DOCTOR WHO HAD SAVED ME FROM SURGERY AUTHORIZED WAS TO FILE A CLAIM AND SEE IF WE COULD GET THE JUDGE TO ORDER THEM TO LET ME KEEP TREATING

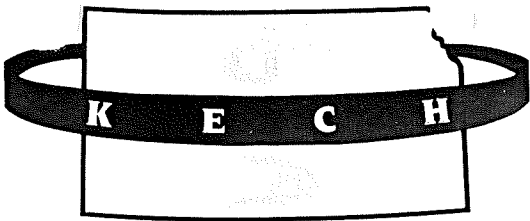
WITH THE MAN WHO HAD SAVED THE INSURANCE COMPANY SO MANY THOUSANDS OF DOLLARS. THAT IS WHAT I DID. THE ADMINISTRATIVE LAW JUDGE AWARDED ME ABOUT \$60,000.00 AND AUTHORIZED MY CHIROPRACTOR TO TREAT ME WHEN I NEED IT. HE ALSO ORDERED THEM TO PAY THE \$400 BILL.

MY LAWYER TOLD ME HE THOUGHT HE COULD GET ME MORE MONEY IF HE APPEALED. I THOUGHT HE WAS CRAZY BUT I TOLD HIM TO GO AHEAD. HE GOT AN AWARD FROM THE DIRECTOR OF \$75,000, THE MAXIMUM ALLOWABLE AT THAT TIME. AFTER ALL THAT HAD HAPPENED THE INSURANCE COMPANY STILL ARGUED THAT I SHOULD HAVE TO GO TO THEIR DOCTOR INSTEAD OF MY OWN. THEY LOST THAT ARGUMENT TOO.

BECAUSE OF MY BACK I HAVE HAD TO HIRE SEVERAL PEOPLE TO HELP IN MY BUSINESS. IF ANY OF THEM WERE HURT ON THE JOB I THINK IT WOULD BE EASIER AND CHEAPER FOR EVERYONE IF THEY WERE ALLOWED TO CHOOSE THEIR OWN DOCTOR. I CAN TELL YOU THAT I WOULD NEVER HAVE HIRED A LAWYER OR FILED A CLAIM IF I HAD BEEN ALLOWED TO SEE MY OWN DOCTOR. I WOULD HAVE ARGUED WITH THEM ABOUT THE \$400 BILL BUT I DON'T THINK I WOULD HAVE FILED AS A RESULT OF THAT. BUT I KNEW THEN THAT I WOULD NEED MORE CARE FOR MY BACK. MY DOCTOR HELPED ME AND HE SAVED THEM MONEY. IT DIDN'T SEEM RIGHT THAT THEY SHOULD TRY TO CHOOSE SOMEONE ELSE THAT I MIGHT NOT BE COMFORTABLE WITH. WHEN YOU ARE IN THAT MUCH PAIN AND ARE ANXIOUS ABOUT YOUR FUTURE AND WONDERING IF YOU WILL BE ABLE TO WORK AGAIN IT ONLY MAKES THINGS WORSE IF YOU HAVE TO WORRY ABOUT WHETHER THE INSURANCE COMPANY IS TRYING TO RAILROAD YOU WITH ONE OF THEIR DOCTORS.

SPEAKING FROM MY EXPERIENCE I DON'T THINK A LOT OF PEOPLE OUT THERE WANT TO HIRE LAWYERS AND FILE CLAIMS. THEY JUST WANT TO GO TO THEIR DOCTOR THAT THEY FEEL COMFORTABLE WITH AND GET BACK TO WORK. BUT WHEN THE INSURANCE COMPANY CONTROLS THAT DECISION AT A TOUGH TIME IN THEIR LIVES, THEY ARE GOING TO LOOK FOR HELP SOMEWHERE. THEY ARE GOING TO HIRE LAWYERS AND FILE CLAIMS. THEY SHOULDN'T HAVE TO DO THAT. I SHOULDN'T HAVE HAD TO DO THAT. AND I WOULDN'T HAVE IF I COULD HAVE CHOSEN MY OWN DOCTOR.

EVEN THOUGH I HAVE A HERNIATED DISK I HAVE STILL NOT HAD SURGERY. MY CHIROPRACTOR HAS HELPED ME KEEP WORKING WITHOUT IT. AS A BUSINESS OWNER AND A WORKER'S COMPENSATION CLAIMANT I URGE YOU TO PASS H.B.2196. I DON'T KNOW MUCH ABOUT THE LEGAL SIDE OF THIS BUT I WILL ANSWER ANY QUESTIONS I CAN ABOUT MY CASE.



Kansas Employer Coalition on Health, Inc.

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Testimony to House Labor and Industry Committee

on

HB 2196

(Giving W.C. claimants free choice of medical provider)

by James P. Schwartz Jr.
Consulting Director
March 26, 1991

I am Jim Schwartz, consulting director for the Kansas Employer Coalition on Health. The Coalition is 100 employers across Kansas who share concerns about the cost-effectiveness of healthcare purchased for our 350,000 Kansas employees and dependents.

The Kansas Employer Coalition on Health strongly opposes HB 2196. Of all the healthcare legislation we've monitored in Kansas during the past eight years, it would be hard to cite an example with more long-range potential for damage to employers' cost-containment efforts than HB 2196.

On the surface HB 2196 seems a desirable bill. After all, who wouldn't like unrestrained choice of medical provider? The reality of present-day healthcare, though, is that completely unrestrained choice of provider has become a luxurious expense that fewer and fewer purchasers can afford. For that reason health insurance plans are gravitating toward HMOs, PPOs and similar arrangements that restrict patients' choice of provider. It's estimated that by 1995 the vast majority of health insurance plans will involve some form of "managed care" arrangement. For the same reasons, work-comp insurance is heading in the same direction.

Now you are contemplating a move in the opposite direction for work comp. If enacted, this measure would represent a huge step backward. And it is being sought at a time when premium rates for work-comp policies are facing record increases.

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Some may argue that the passage of the medical fee schedule for work comp last year removes the need for directing patients to preferred providers. Let's be clear about this. The fee schedule helps small employers, who are less likely to have access to a preferred provider network. On the other hand, the authority to direct care is the **main cost-containment tool of large employers**, who increasingly negotiate contracts with a limited panel of cost-effective providers. All employers, large and small, desperately need help containing healthcare costs. That's why we need both the fee schedule **and** employer authority to designate providers.

Perhaps employers wouldn't feel so strongly about this bill if workers' compensation were just another fringe benefit that companies could place on the bargaining table. We realize, though, that we can't negotiate this type of entitlement, and we can't walk away. The state relies on corporate Kansas to maintain this type of social insurance, and we, in turn, rely on government to do its share to keep it affordable.

The minimum we need from you is to refrain from passing this bill.