

Approved: February 23, 1999
Date

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 1:30 on February 16 at the Dillon House.

All members were present except:

Committee staff present: Emalene Correll, Kansas Legislative Research
 Norman Furse, Revisor of Statutes
 June Evans, Secretary

Conferees appearing before the committee: Carolyn Bloom, Kansas Physical Therapy Association
 Paul Silovsky, Kansas Physical Therapy Association
 Pauline Beatty, Kansas Physical Therapy Association
 Susan Grace, President, Kansas Physical Therapy Assn.
 R. E. "Tuck" Duncan
 Lawrence T. Buening, Executive Director, Kansas Board of
 Healing Arts
 Tom Bell, Sr VP, Legal Counsel, Kansas Hospital Assn.
 Rebecca Rice, Legislative Counsel, Kansas Chiropractic
 Assn.

Others attending: See Attached Sheet

The Chairperson opened the hearing on **HB 2235 - Physical therapist licensure.**

Norman Furse, Revisor of Statutes Office, gave a briefing on **HB 2235**, stating this bill changes "registered" to "license". On page 26, "nothing in this act shall prohibit persons whose services are performed pursuant to the delegation of or under the supervision of a licensed physical therapist from performing physical therapy. Nothing in this act shall prohibit students from practicing physical therapy as part of an approved educational program in physical therapy while under the supervision of a qualified instructor" has been added.

Carolyn Bloom, PT., testified as a proponent to **HB 2235**, stating physical therapists have been registered in Kansas for over 30 years, to protect the public from persons calling themselves 'physical therapists' who have not met the mandates of the law. It is now time to protect the term 'physical therapy' only to the care given or directed by a professional physical therapist. Physical therapists have a Master of Science degree from a school accredited to teach medicine and rehabilitation. Limit use of the term 'physical therapy' to the services of a physical therapist in Kansas. Kansas Physical Therapy Association offers an amendment to **HB 2235**. (See Attachment #1)

Paul Silovsky, testified as a proponent to **HB 2235**, giving a historical perspective of physical therapy education. (See Attachment #2)

Pauline Beatty testified as a proponent to **HB 2235**, stating she had received physical therapy care several times in the past, and benefitted from this service. She stated she was very surprised to learn that all physical therapy care was not necessarily given by a professional physical therapist. Other patients may have been enticed to the offices of other health providers or nursing homes where care was given by someone with on-the-job training, but still billed at professional rates until the insurance dollars run out. This is not ethical. (See Attachment #3)

Susan Grace, PT, President, Kansas Physical Therapy Association, testified as a proponent to **HB 2235**, stating definitions from the Federation as published in the "Model Practice Act for Physical Therapy." "Physical Therapy" is defined as the care and services provided by or under the direction and supervision of a physical therapist *licensed* by the state. The American Physical Therapy Association (APTA) holds that, examination, evaluation, or intervention - unless provided by a physical therapist or under the direction and supervision of a physical therapist - *is not physical therapy*, nor should it be represented or reimbursed as such.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, at the Dillon House 1:30 p.m. on February 16, 1999.

Kansas law defines "licensure" as a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without a license is unlawful. In contrast, our state credentialing regulations define "*registration*" as the process by which the state identifies and lists on an official roster those persons who meet predetermined qualifications and who will be the only persons permitted to use a designated title. See Ms Grace's suggested amendment. (See Attachments 4 & 5)

R. E. "Tuck" Duncan, Kansas Occupational Therapy Association, testified stating that physical therapists and occupational therapists are, in a manner of speaking, "partners in rehabilitation services." Both professions make unique contributions to health care outcomes. There are parallels, albeit differences, thus, licensure of both professions should proceed together to ensure continuity in the law for these "partners in rehabilitative services" Respectfully ask that the bill be amended to include the profession of occupational therapy. (See Attachment #6)

Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts, testified as an opponent to **HB 2235**, stating the Board currently licenses four professions—doctors of medicine surgery, doctors of osteopathic medicine and surgery, doctors of chiropractic and doctors of podiatry. Persons licensed in any of these four professions have earned an academic doctorate degree and are able to independently examine, diagnose and treat patients without the order or supervision of any other health care professional. Conversely, the other seven professions regulated by the Board, including physical therapists, are not licensed and cannot independently diagnose and treat individuals without authority from a licensee of the Board. The Board urges your consideration of the provisions of the Kansas Act on Credentialing as set forth in K.S.A. 65-5001 et seq. That act specifies that credentialing regulation should be consistent with the policy that the least regulatory means of assuring the protection of the public should be preferred. Licensure is appropriate when other statutory regulation is inadequate to protect the public's health, safety and welfare. While physical therapists provide vital and specialized health care services, there is no evidence to reflect that registration of these professionals over the last 36 years has not been adequate to sufficiently protect the public. (See Attachment #7)

Tom Bell, Senior Vice President/Legal Counsel, Kansas Hospital Association, testified as an opponent to **HB 2235**. The Kansas Hospital Association is opposed to **HB 2235** as introduced for two main reasons: (1) it bypasses the state credentialing process; and (2) it does not sufficiently recognize the scope of practice of other health care personnel. Section 11 creates a very broad scope of practice for physical therapists. Section 20 (a) then says that a person must be licensed to perform and of the acts within that scope of practice. Section 20 (c) creates an exception for "independent" practitioners, but the bill does not recognize the numerous other health care workers who may provide services within this scope of practice. This creates many problems in the hospital setting, where dependent practitioners, such as nurses, pay an important caregiving role. Because of this, HB 2235 does not meet the requirements of the statute and should therefore be rejected. (See Attachment #8)

Rebecca Rice, Legislative Counsel, Kansas Chiropractic Association, testified in opposition to **HB 2235**. The current Kansas physical therapy statute is a title protection law. It is a type of "trademark" statute. The law provides that no one may use the title "physical therapist" unless they have met certain requirements. Under a doctor's orders, any member of the general public can perform all the treatments that a physical therapist performs

It changes the statutorily established licensing scheme that creates a two-tiered system: those persons licensed to practice the healing arts (doctors) and those who practice under the direction of a doctor (mid-level practitioners.) Currently, "licensees" are doctors who are trained and authorized to examine, diagnose and treat the human living body. On the other hand, "registrants" assist in a specialized part of a particular healing art under the direct supervision of a doctor.

Essentially, the two tier system is based on the higher education level, qualifications, and authority of licensees. In a final analysis, that is the separating factor and basis for having "licensure" for doctors and "registration" for mid-level practitioners. Should physical therapists become licensed by the board (or any of the other numerous groups seeking licensure by the Board of Healing Arts), the distinction between the types of practitioners would be lost. It is also a concern that **HB 2235** may extend greater privileges to physical therapists than the Legislature possibly intends.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, at the Dillon House at 1:30 p.m. on February 16, 1999.

There are many Kansas statutes that refer to persons "licensed by the Board of Healing Arts". If **HB 2235** was passed in its present form, it is possible some of the statutes referring to persons "licensed by the Board of Healing Arts" might be interpreted to include physical therapists. We do not know if that is the intent of the supporters of the bill or the Legislature's intent, but we wanted to bring the issue to the committee's attention. (See Attachment #9)

Keith Landis, Christian Science Committee on Publication for Kansas, stated **HB 2235** is so broad it could not be recommended without an amendment. There needs to be some clarification.

The Chairperson closed the hearing on **HB 2235**.

Staff gave a briefing on **HB 2237** on "ombudsman". The dictionary defines the word "ombudsman" as a governmental official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials. This definition would describe what is known as a classical ombudsman. The United States Ombudsman's Association describes the ombudsman as a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government. It is the role of a governmental or classical ombudsman to receive and independently and impartially investigate complaints made by individuals about actions of government agencies, state officials, and state employees. After careful investigation, research, and analysis the ombudsman makes recommendations to resolve the complaints. (Attachment #10)

The Chairperson stated that **HCR 5024 - Requesting enactment of legislation regarding regulation and reduction of prescription drug prices**; however, there were no proponents or opponents to speak for or against the bill. This needs to be looked at and keep on top of this and decide whether it should be held over until next year or try to work it yet this year. A summer interim is a possibility. Will bring this bill up again on February 22.

The meeting adjourned at 3:20 p.m. The next meeting will be February 17.

HUMAN AND HEALTH SERVICES

DATE February 16, 1999

NAME	REPRESENTING
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Tim Wood	VIA CHRISTI HEALTH SYSTEM
Pauline D. Beatty	KPT ASSN.
Susan Stone, PT	KS Physical Therapy Assn.
STEVE KEANEY	" " " "
Carolyn Boom PT	Ks " " "
Paul Siskaly PT	Ks " " "
Rebecca J	KS Chiropractic Assn.
Larry Bunning	Bd of Welding Arts
LARRY FROELICH	Bd of Pharmacy
Chip Wheelen	Assn of Osteopathic Med.
Tom Bell	KS Hosp. Assn.
Risa Maria	KS Physical Therapy Assoc.
Susie Hoffmann	Pinegar-Smith Co.
Carolyn Muddendorf	KS DA
LINDA Lukowsky	KS Home Care Assn.
Wendy Hildencuand	KS Occupational Therapy Assn.
TUCK DUNCAN	" " " "
Rachael Lane-Riker	KOTA student rep for KUMC
Stephanie Parks	KS Occupational Therapy Assn.
NICOLE RAMIREZ	KS OCCUPATIONAL THERAPY ASSN.
Stacy Soldan	Nein + Weis Child
Michelle Peterson	Peterson Public Affairs Group
Hanna Ann Brown	KAHP
Derek A. Blaylock	Intern for Teresa Sittenauer

February 16, 1999

Kansas Physical Therapy Association
1200 W. 10th Street
Topeka, KS 66604 785.233.5400

Carolyn Bloom, PT
1045 S.W. Gage Blvd.
Topeka, KS 66604 785.273.7700

To Chairman Boston and Members of the Health and Human Services Committee:

As Chief Delegate and Past President, I represent the Kansas Physical Therapy Association in urging your support and passage of H.B. 2235 giving licensure to physical therapists in Kansas.

Physical therapists have been registered in Kansas for over 30 years, to protect the public from persons calling themselves 'physical therapists' who have not met the mandates of the law. It is now time to protect the term 'physical therapy' only to the care given or directed by a professional physical therapist.

Insurance companies paying for physical therapy care, patients, and the public assume the service called physical therapy is given by a physical therapist, but that is not always correct. Anyone can say they are performing 'physical therapy' without any education in this profession, as long as they do not call themselves a 'physical therapist'. However, the public assumes the person to *be* a physical therapist if he/she is saying what is performed is 'physical therapy'. It is now time that you, as legislators, take action to protect the public from the harm of random 'physical therapy personnel'.

Medicare now has a \$1500 / year cap for combined physical therapy and speech therapy care. Many managed care insurance companies have a limited number of physical therapy treatments authorized or allowed under insurance policies. Patients need to use these precious dollars for physical therapy care given by a professional physical therapist for the best interest of their rehabilitation and most appropriate use of funds.

The Federation of State Boards of Physical Therapy defines regulatory terms as follows:

1. Registration: This is the least restrictive form of regulation and should be considered when the practitioner will not inflict harm on the public. In the purest form, the applicant does not have to demonstrate any special qualifications; all that is required is that an individual registers his or her name, address and relevant background information.
2. Certification: This implies a greater risk of harm to the public, and offers title protection. Requirements at this level include a specified level of education and passing an entry level

HHS
2-16-99
Atch # 1

competency examination. A state board may discipline the certified individual if he /she violates established legislative and regulatory standards.

3. Licensure: This implies the highest risk of harm to the public, as well as scope of practice, requires an entry level competency examination, education requirements and the ability of a state board to discipline the licensee if he/she doesn't meet the established legislative and regulatory standards.

Physical therapists in Kansas meet the definition of "licensed", and meet all the requirements, and regulatory standards. If not, we will have our 'license' revoked by the Kansas State Board of Healing Arts. Physical therapists are required to keep patient records for ten (10) years, as are licensees of the Board. What is lacking is the protection of the public in knowing that an educated, professional physical therapist is providing and billing their insurance plan for physical therapy care.

Patients expect physical therapy care to be performed by a professional physical therapist or physical therapist assistant, but the reality is that persons with 'no experience necessary' are performing a 'treatment' *called* 'physical therapy' and are billing insurance companies under professional Physical Medicine and Rehabilitation codes.

This:

1. Gives the public a wrong impression of the professional level of physical therapy care, which is much more than using machines such as ultrasound
2. Reduces the allowed number of actual professional physical therapist's treatments under HMO insurance policies and under Medicare caps.
3. Cost insurance companies dollars that should be spent on legitimate professional care

Physical therapists have a Master of Science degree from a school accredited to teach medicine and rehabilitation. Limit use of the term 'physical therapy' to the services of a physical therapist in Kansas. Pass H.B. 2235 with the Kansas Physical Therapy Association amendment that will be presented today.

Respectfully Submitted,

Carolyn Bloom, PT

Physical Therapy Education: A Historical Perspective

It was the tens of thousands of children paralyzed from polio and the thousands of soldiers wounded during World War I which brought about physical therapy in the United States.

1917 As a result of the paralyzed children and wounded soldiers, the Division of Special Hospitals and Physical Reconstruction was started.

The Division of Special Hospitals and Physical Reconstruction was responsible for training and managing reconstruction aides who were to provide physical therapy to the injured. It was these reconstruction aides who later became known as physical therapist.

1918 The first educational program for Reconstruction Aides/Physical Therapist was started at Walter Reed General Hospital in Washington, D.C.

1921 The American Women's Physical Therapeutic Association was formed. Its objectives were to:

1. Establish and maintain a professional and scientific standard for those engaged in the profession of physical therapeutics.
2. Increase efficiency among its members by encouraging them in advanced study.
3. Disseminate information by the distribution of medical literature and articles of professional interest.
4. Make available efficiently trained women to the medical profession.
5. Sustain social fellowship and intercourse upon grounds of mutual interest.

1922 The American Women's Physical Therapeutic Association was renamed the American Physiotherapy Association and further established the scope of physical therapy and formalized the educational process.

1923 The first males were admitted into the profession and the association.

1928 The American Physiotherapy Association developed and published a standardized curriculum for the education of physical therapist. It was a nine month program. Entrance requirements included graduation from a school of physical education or nursing.

1933 The American Physiotherapy Association sought the help of the American Medical Association to assist them in refining the educational requirements and credentialing of educational programs for the physical therapist.

HHS
2-16-99
Atch#2

- 1936 The American Medical Association (AMA) adopted the Essentials of an Acceptable School for Physical Therapy Technicians. Entrance requirements and length of the program remained essentially unchanged; however, the curriculum was stated in detail, and other characteristics were stipulated. Thirteen schools were approved by the AMA.
- 1943 Kansas University Medical Center, Kansas City, Kansas started a Physical Therapy Program.
- 1947 The American Physiotherapy Association's name was changed to the American Physical Therapy Association and the term physical therapist became the appropriate title for persons practicing physical therapy.
- 1950s States were beginning to require licensure of physical therapists. Therapists were being required to take and pass an examination before they could practice as a physical therapist.
- 1955 The AMA changed the title of the "Essentials" to the Essentials of an Acceptable School of Physical Therapy, and established minimum curricular standards, including a program length of 12 months.
- 1960s-1980s Was characterized by growth and recognition in education, practice, and research. New educational programs were developed in an attempt to keep pace with the demand.
- 1960 American Physical Therapy Association (APTA) established a policy declaring the baccalaureate degree as the minimum educational requirement for physical therapist.
- 1963 A physical therapy practice act was established in Kansas which outlined the scope of practice and requirements for becoming a physical therapist in Kansas.
- 1967 The APTA established education guidelines for the Physical Therapist Assistant secondary to growing demands for physical therapy services.
- 1973 Kansas Physical Therapy Practice Act was amended to acknowledge the Physical Therapist Assistant.
- Wichita State University in Wichita, Kansas started a Physical Therapy Program.
- Colby Community College in Colby, Kansas started a Physical Therapist Assistant Program.

- 1974 The APTA adapted the "Essentials of an Accredited Educational Program for the Physical Therapist".
- 1977 The APTA became recognized by the United States Office of Education and Council on Postsecondary Education as an accrediting agency.
- 1979 "Standards for Accreditation of Physical Therapy Educational Programs" were adopted by the APTA.
- Foundation for Physical Therapy was initiated to promote and support research in the profession.
- APTA adopted a policy which stated that new and existing programs in physical therapy must award a postbaccalaureate degree by December 31, 1990.
- 1983 Direct Access to Physical Therapy Services were initiated in some states.
- Kansas statues were changed to allow the Physical Therapist to evaluate patients without a physician's order, but could initiate treatment only upon orders from a physician.
- 1984 The APTA adopted a policy recognizing diagnosis in physical therapy.
- Washburn University in Topeka, Kansas started a Physical Therapist Assistant Program.
- 1993 Post-professional/advanced education of a licensed physical therapist at a master's or doctorate level was initiated.
- Colby Community College expanded its Physical Therapist Assistant Program.
- 1995 Wichita State University in Wichita, Kansas started a Physical Therapist Assistant Program.
- 1996 Kansas City Community College in Kansas City, Kansas started a Physical Therapist Assistant Program.
- Kansas University Medical Center in Kansas City, Kansas started a Distant Education Physical Therapy Program at Pittsburg State University in Pittsburg, Kansas.

Physical Therapy Programs In Kansas

Physical Therapist Programs

1. University of Kansas Medical Center
Kansas City, Kansas
Started in 1943
Accepts 44 students a year: 36 at KU, 8 at PSU
Grants a Masters of Science in Physical Therapy (1989)
Has approximately 250 applicants a year
Accredited by the Commission on Accreditation of Physical
Therapy Education
2. Wichita State University
Wichita, Kansas
Started in 1973
Accepts 32 students a year
Grants a Masters of Science in Physical Therapy (1990)
Has approximately 250 applicants a year
Accredited by the Commission on Accreditation of Physical
Therapy Education

Physical Therapist Assistant Programs

1. Colby Community College
Colby, Kansas
Started in 1973, expanded in 1993
Accepts 26 students in August and January
Grants an Associate of Science Degree
Has approximately 60 applicants per admission time
Accredited by the Commission on Accreditation of Physical
Therapy Education
2. Washburn University
Topeka, Kansas
Started in 1984
Accepts 24 students a year
Grants an Associate of Science Degree
Has approximately 100 applicants a year
Accredited by the Commission on Accreditation of Physical
Therapy Education
3. Wichita State University
Wichita, Kansas
Started in 1995
Accepts up to 24 students a year
Has approximately 100 applicants a year
Accredited by the Commission on Accreditation of Physical
Therapy Education

4. Kansas City Community College
Kansas City, Kansas
Started 1996
Accepts up to 30 students a year
Grants an Associate of Science Degree
Has approximately 50 applicants a year
Accredited by the Commission on Accreditation of Physical
Therapy Education

Physical Therapist Educational Requirements

Following is an example of prerequisite courses for consideration of acceptance into the Master of Science Degree at Kansas University Medical Center (KUMC):

- Chemistry I & II
- Physics I & II
- Biology and Laboratory
- Microbiology
- Human Anatomy with Dissection Laboratory
- Human Physiology and Laboratory
- Statistics
- Calculus I
- Composition and Literature
- Speech
- General Psychology
- Abnormal Psychology
- Sociology
- Humanities Courses (2)
- Human Growth and Development
- First Aid

Once accepted in the Physical Therapy Program at KUMC, the physical therapy curriculum consists of the following courses:

First Semester:

- Advanced Topics in Human Anatomy
- Physical Therapy Procedures I
- Professional Topics I

Second Semester:

- Advanced Human Physiology
- Physical Therapy Procedures II
- Applied Kinesiology and Biomechanics
- Professional Topics II
- Research in Physical Therapy
- Clinical Education I

Third Semester:

- Pathophysiology
- Neuroscience
- Evaluation Methods and Principles of Treatment of
Musculoskeletal Disorders
- Life Cycle Development and Health Promotion
- Clinical Education II

Fourth Semester:

- Pharmacology for Physical Therapists
- Advanced Cardiopulmonary Therapeutics
- Clinical Neurology
- Professional Topics III

Fifth Semester:

Related Theories and Procedures
Advanced Evaluation Methods and Principles of Treatment
of Musculoskeletal Disorders
Neuromuscular Therapeutics
Professional Topics IV
Clinical Education III

Sixth Semester:

Research in Physical Therapy II
Clinical Education IV

Wichita State University's physical therapy curriculum has most of the same prerequisite courses, with the curriculum once in the Masters Program being almost identical to KUMCs. The Commission on Accreditation of Physical Therapy Education specifies what must be covered in the curriculum of accredited PT Programs.

Physical Therapist Assistant Educational Requirements

Outlined below is the correlate and professional courses required for completion of the Physical Therapist Assistant Program at Washburn University:

Correlate Courses:

- Human Anatomy with Laboratory
- Human Physiology with Laboratory
- College Algebra
- Biology with Laboratory
- Kinesiology
- Exercise Physiology
- Introduction to Human Disease
- Composition
- Social Science Courses (2)
- Humanities Courses (2)
- Lifetime Wellness

Professional Courses:

- Introduction to Physical Therapy
- Physical Therapy Procedures I
- Physical Therapy Procedures II
- Clinical I
- Physical Therapy Procedures III
- Clinical II
- Physical Therapy Procedures IV
- Issues in Physical Medicine
- Physical Therapy Procedures V
- Clinical III

Physical Therapist Assistant Curriculum at the other institutions are very similar. The Commission On Accreditation of Physical Therapy Education outlines in its accreditation documents what must be covered in an accredited PTA Program.

February 16, 1999

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1200 W. 10th Street
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Pauline Beatty
1027 SW. Tyler
Topeka, KS 66612 785.233.9550

Chairman Boston and the Members of the Health and Human Services Committee:

I have received physical therapy care several times in the past, and benefited from this service. I was shocked and very surprised to learn that all physical therapy care is not necessarily given by a professional physical therapist. I always assumed this was the case.

I now realize how fortunate I was to have a professional physical therapist give treatments to me. Other patients may have been enticed to the offices of other health providers or nursing homes where care was given by someone with on-the-job training, but still billed at professional rates, until the insurance dollars run out. This is not fair or ethical.

I want the best professional care for my time and money, and so do all other patients. The public needs you to help us be sure that is what we get. Pass H.B. 2235, for the benefit of the public and your own family.

I will be pleased to answer questions now. Thank you for allowing me to speak to you today.

Pauline Beatty

HHS
2-16-99
Atch #3

Susan Grace. PT
President
Kansas Physical Therapy Association
1200 W. 10th
P.O. Box 2428
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February 16, 1999

Chairman Boston and Members of the Health and Human Services Committee:

I speak to you today as President of the Kansas Physical Therapy Association on the issue of licensure for physical therapists and ask for your support of H.B. 2235.

Ms. Bloom outlined the definition of regulatory terms as defined by the Federation of State Boards of Physical Therapy. I would like to point out additional definitions from the Federation as published in the "Model Practice Act for Physical Therapy." "Physical Therapy" is defined as the care and services provided by or under the direction and supervision of a physical therapist *licensed* by the state. The American Physical Therapy Association (APTA) holds that, examination, evaluation, or intervention - unless provided by a physical therapist or under the direction and supervision of a physical therapist - *is not physical therapy*, nor should it be represented or reimbursed as such.

The very foundation of a practice act centers on the concept that the public recognizes the *unique* training and qualifications of a given medical discipline and enacts laws governing their practice. When practitioners other than physical therapists represent that they are providing "physical therapy" they are violating the very spirit and core of licensure laws by misrepresentation to the public. We have heard testimony from one consumer today to that effect.

Kansas Law defines "*licensure*" as a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without a license is unlawful. In contrast, our state credentialing regulations define "*registration*" as the process by which the state identifies and lists on an official roster those persons who meet predetermined qualifications and who will be the only persons permitted to use a designated title.

Physical therapists do, in fact, meet predetermined qualifications to practice. Physical therapy is a profession with an established theoretical base, widespread clinical applications and a defined body of knowledge. We have are bound by a "Professional Code of Ethics" and "Guide to Professional Conduct" and are directed by "Physical Therapy Standards of Practice." Our scope of practice is clearly defined and we must pass an entry level competency examination in order to

Susan Grace, PT
President
Kansas Physical Therapy Association
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Topeka, KS 66601-2428

of practice is clearly defined and we must pass an entry level competency examination in order to be credentialed to practice. Our educational requirements are stringent and well delineated as outlined by Mr. Silovsky.

Physical therapists have been registered in Kansas since the passage of our original practice act in 1963. As you well know, the practice of medicine and the healing arts has advanced dramatically in knowledge, sophistication and technology since 1963. The education, science and art of physical therapy has progressed in accord. Health care decisions are extremely complex for consumers today. Misinformation and misrepresentation can add to the confusion and place consumers at serious health and economic risk. Physical therapist "registration" does not protect the consumer from receiving care represented as physical therapy but administered by less qualified individuals. Physical therapist "registration" does not prevent the erroneous billing of those services. It is imperative that we present a true picture to the public. It is essential that we protect patient's right to physical therapy care provided by qualified practitioners and third party payer's rights to appropriate billing.

This bill is not in any way intended to restrict persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed. (Please see attached amendment) It is not intended to change our scope of practice.

It is time we updated our practice act to reflect the 1999 health care environment and standards of practice. Please support H.B. 2235.

Thank you for your consideration.

Respectfully submitted,



Susan Grace, PT
President
Kansas Physical Therapy Association

Suggested Amendment on behalf of the Kansas Physical Therapy Association

(a) Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialed or certified by appropriate agencies of the state of Kansas. The practice of physical therapy shall not be construed to include the following individuals:

- (1) Persons rendering assistance in the case of an emergency.
- (2) Members of any church practicing their religious tenets.
- (3) Persons whose services are performed pursuant to the delegation of and under the supervision of a physical therapist who is licensed under this act.
- (4) Health care providers in the United States armed forces, public health services, federal facilities and coast guard or other military service when acting in the line of duty in this state.
- (5) Licensees under the healing arts act, and practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed physician under subsection (g) of K.S.A. 65-2872 and amendments thereto.
- (6) Dentists practicing their professions, when licensed and practicing in accordance with the provisions of law.
- (7) Nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of 43 K.S.A. 65-1124 and amendments thereto.
- (8) Health care providers who have been formally trained and are practicing in accordance with the training or have received specific training in one or more functions included in this act pursuant to established educational protocols or both.
- (9) Students while in actual attendance in an accredited health care occupational educational program and under the supervision of a qualified instructor.
- (10) Self-care by a patient or gratuitous care by a friend or family member who does not represent or hold oneself out to the public to be a physical therapist.

(b) Any patient monitoring, assessment or other procedures designed to evaluate the effectiveness of prescribed physical therapy must be performed by or pursuant to the delegation of a licensed physical therapist or other health care provider.

(c) Nothing in this act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon physical therapists to engage in any activity not conferred by this act.



214 S.W. 7th Street
Topeka, KS 66603
(913) 233-4111

TO: House Health and Human Services Committee

FROM: R. E. "Tuck" Duncan
Kansas Occupational Therapy Association

RE: House Bill 2235

Physical Therapists (PTs) and Occupational Therapists (OTs) are, in a manner of speaking, "partners in rehabilitation services." Both professions make unique contributions to health care outcomes.

Current law defines physical therapy as:

"the term 'physical therapy' means a health specialty concerned with the evaluation, treatment or instruction of human beings to assess, prevent and alleviate physical disability and pain. This includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of treatment; the planning, administration, evaluation and modifications of treatment and instruction including the use of physical measures, activities and devices for prevention and therapeutic purposes; and the provision of consultative, educational and advisory services for the purpose of reducing the incidence and severity of physical disability and pain. The use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the practice of medicine and surgery are not authorized or included under the term 'physical therapy' as used in this act." (KSA 65-2901)

Occupational Therapy is defined as:

"Occupational therapy" is a health care profession whose practitioners, other than occupational therapy practitioners working with the educationally handicapped in a school system, are employed under the supervision of a physician and whose practitioners provide therapy, rehabilitation, diagnostic evaluation, care and education of individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities or the aging process in order to maximize independence, prevent disability and maintain health. Specific occupational therapy services include:

- (1) administering and interpreting tests necessary for effective treatment planning;
 - (2) developing self care and daily living skills such as feeding, dressing, hygiene and homemaking;
 - (3) designing, fabricating, applying or training, or any combination thereof, in the use of selected orthotics, upper extremity prosthetics or adaptive equipment;
 - (4) developing sensory integrative skills and functioning;
 - (5) using therapeutic activity and exercise to enhance functional or motor performance, or both;
 - (6) developing prevocational/vocational work capacities and play/leisure skills;
- and
- (7) adapting environment for the disabled. (KSA 65-5402)

As you can readily determine there are parallels, albeit differences. *Thus, licensure of both professions should proceed together to ensure continuity in the law for these "partners in rehabilitative services."* I respectfully ask that the Committee amend the bill to also include the profession of occupational therapy.

There are over 65,000 occupational therapy practitioners in the United States and approximately 1400 in Kansas. The majority of states require licensure -- 41 states license occupational therapists and 39 states license occupational therapy assistants. Defining a scope of practice legally articulates the parameters of OT practice and provides important guidance to facilities, providers, consumers and major public and private health and education systems on the appropriate use of OT services and practitioners.

Occupational therapy practitioners provide important health and rehabilitation services to people of all ages who, because of illness, injury, developmental or psychological impairment, need specialized broadly covered under public insurance programs such as Medicare, Medicaid, FEHBP, CHAMPUS, and workers compensation programs, as well as by private insurers and managed care organizations (MCOs). They also provide extensive early intervention and school-based services to children under the Federal Individuals with Disabilities Education Act (IDEA). Because occupational therapy practitioners work extensively with extremely vulnerable and frail populations, it is especially important to regulate members of this profession in a manner that assures the highest level of consumer protection.

While 41 states, the District of Columbia, and Puerto Rico have enacted licensure laws for OT practitioners, four states (Hawaii, Kansas, Mich. and Minn.) have passed registration laws, three states (Ind., Vermont and Wis.) have enacted certification laws, and two states (Calif. and Colo.) and Guam have passed trademark laws. (See back page for additional information).

As you are aware, licensing is "the process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety, and welfare will be reasonably well protected." (U.S. Department of Health, Education and Welfare, 1977)

Licensure laws ensure that only individuals with specified training and experience may refer to themselves as occupational therapists or occupational therapy assistants. Licensure laws deter untrained individuals from practicing occupational therapy and prohibit unqualified individuals from engaging in the professional activities covered by the definition of services.

More importantly, licensure laws provide a venue for a consumer to seek redress if he or she believes there has been a violation of the law. Ultimately, the majority of the states have considered these and other factors and determined that licensure is the most effective approach to regulating OT practitioners.

The goals of licensure for the profession are to:

- a. Protect consumers of the OT services from unskilled or improperly trained practitioners by assuring minimum standards for practice are met.
- b. Prevent unqualified and unethical individuals from practicing occupational therapy or referring to themselves as occupational therapists or occupational therapy assistants.
- c. Establish a legal definition for the practice of occupational therapy within the state law.
- d. Establish a mandate for minimum requirements to practice occupational therapy in public and private agencies throughout a state.
- e. Provide further recognition of recognized standards, integrity and value of the profession; and monitor and discipline incompetent, fraudulent and negligent behavior.

The proposed amendment will not increase the cost of state regulation.

Thus, please consider the amendment we will propose on behalf of OTs as licensure of both professions should proceed together to ensure continuity in the law for these "partners in rehabilitative services."

(19)KOTA2235.TST

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



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MEMORANDUM

TO: House Committee on Health and Human Services

FROM: Lawrence T. Buening, Jr. *LTB*
Executive Director

DATE: February 16, 1999

RE: **House Bill No. 2235**

Chairman Boston and members of the Committee, thank you for the opportunity to appear before you and present information on behalf of the Kansas State Board of Healing Arts in opposition to House Bill No. 2235.

As I stated in my testimony to House Bill No. 2215, the Board currently licenses four professions—doctors of medicine surgery, doctors of osteopathic medicine and surgery, doctors of chiropractic and doctors of podiatry. Persons licensed in any of these four professions have earned an academic doctorate degree and are able to independently examine, diagnose and treat patients without the order or supervision of any other health care professional. Conversely, the other seven professions regulated by the Board, including physical therapists, are not licensed and cannot independently diagnose and treat individuals without authority from a licensee of the Board. This has created a very clear distinction between independent practice, i.e. licensure, from dependent practice, i.e. registration or certification. The provisions of K.S.A. 65-2901(b) remain unchanged in that physical therapists may initiate treatment only after consultation and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist or a licensed dentist in appropriately related cases.

House Bill No. 2235 creates some additional concerns not raised by House Bill No. 2215. The definition of physical therapy as set forth in K.S.A. 65-2901 (Section 11 on page 5 and lines 2 through 16) is very broad. "Physical therapy" is "a health care specialty concerned with the evaluation, treatment or instruction of human beings to assess, prevent and alleviate physical disability

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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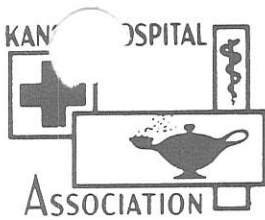
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HHS
2-16-99
Atch#7

and pain". The health care included within this definition can include that provided by any number of other currently-regulated professions, including occupational therapists, athletic trainers, physicians' assistants and nurses. Yet, these groups are not included within the exceptions to the bill listed on page 27 at lines 16-28 since they do not practice independently and without prescription or supervision. To the contrary, occupational therapists are required to be employed under the supervision of a physician (K.S.A. 65-5402). Physicians' assistants can only provide services under the direction of a physician (K.S.A. 65-2896e) and athletic trainers must have a practice protocol with a licensee under the healing arts act (K.S.A. 65-6905 and 65-6906 and K.A.R. 100-69-9). While Section 18 of House Bill No. 2215 lists 11 different exceptions to licensure to practice of respiratory therapy, House Bill No. 2235 contains no such list.

Again, the Board urges you to consider the provisions of the Kansas Act on Credentialing as set forth in K.S.A. 65-5001 et seq. That act specifies that credentialing regulation should be consistent with the policy that the least regulatory means of assuring the protection of the public should be preferred. Licensure is appropriate when other statutory regulation is inadequate to protect the public's health, safety and welfare. While physical therapists provide vital and specialized health care services, there is no evidence to reflect that registration of these professionals over the last 36 years has not been adequate to sufficiently protect the public.

Thank you for the opportunity to appear before you. I would be happy to respond to any questions you might have.



Donald A. Wilson
President

TO: House Health and Human Services Committee

FROM: Kansas Hospital Association; Tom Bell, Senior Vice President/Legal Counsel

RE: House Bill 2235

DATE: February 15, 1999

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of House Bill 2235, which would grant licensure status to physical therapists. The Kansas Hospital Association is opposed to HB 2235 as introduced for two main reasons: 1) it bypasses the state credentialing process; and 2) it does not sufficiently recognize the scope of practice of other health care personnel.

Before discussing the provisions of HB 2235, it is appropriate to review the statutory criteria that is to be applied when a particular health care provider group seeks credentialing by the state. Our statutes state that credentialing by the state is only appropriate when the following findings are made:

- (1) The unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public, and the potential for such harm is recognizable and not remote;
- (2) the practice of the occupation or profession requires an identifiable body of knowledge or proficiency in procedures, or both, acquired through a formal period of advanced study or training, and the public needs and will benefit by assurances of initial and continuing occupational or professional ability;
- (3) if the practice of the occupation or profession is performed, for the most part, under the direction of other health care personnel or inpatient facilities providing

health care services, such arrangement is not adequate to protect the public from persons performing noncredentialed functions and procedures;

(4) the public is not effectively protected from harm by certification of members of the occupation or profession or by means other than credentialing;

(5) the effect of credentialing of the occupation or profession on the cost of health care to the public is minimal;

(6) the effect of credentialing of the occupation or profession on the availability of health care personnel providing services provided by such occupation or profession is minimal;

(7) the scope of practice of the occupation or profession is identifiable;

(8) the effect of credentialing of the occupation or profession on the scope of practice of other health care personnel, whether or not credentialed under state law, is minimal; and

(9) nationally recognized standards of education or training exist for the practice of the occupation or profession and are identifiable.

This law was passed to provide the Legislature with guidance and criteria when professional groups seek to be credentialed. It provides a mechanism for such groups to go through a process where a "technical committee" initially reviews the application. This technical committee is usually made up of individuals who have some expertise in the health care field. They are able to provide legislators with guidance regarding difficult clinical issues. The technical committee also answers the specific questions posed by the statutes. In this case, that process has not been followed.

Section 11 of HB 2235 creates a very broad scope of practice for physical therapists. Section 20(a) then says that a person must be licensed to perform any of the acts within that scope of practice. Section 20(c) creates an exception for "independent" practitioners, but the bill does not recognize the numerous other health care workers who may provide services within this scope of practice. This creates many problems in the hospital setting, where dependent practitioners, such as nurses, play an important caregiving role. Because of this, HB 2235 does not meet the requirements of the statute and should therefore be rejected.

Thank you for your consideration of our comments.

/pc

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**TESTIMONY PRESENTED TO THE
HOUSE HEALTH & HUMAN SERVICES COMMITTEE
re: HB 2389**

February 16, 1999

**by: Rebecca Rice, Legislative Counsel
Kansas Chiropractic Association**

Mr. Chairman and Members of the Committee. My name is Rebecca Rice and I appear before you today on behalf of the Kansas Chiropractic Association to express opposition to HB 2389.

The current Kansas physical therapy statute is a title protection law. It is a type of "trademark" statute. The law provides that no one may use the title "physical therapist" unless they have met certain requirements.

Under a doctor's orders, any member of the general public can perform all the treatments that a physical therapist performs. The difference is that individuals who do not meet the training requirements set out by law cannot call themselves a physical therapist.

The Kansas Physical Therapy Act is not a practice act. It provides no authority for physical therapists to practice the healing arts. It does not allow a physical therapist to do anything beyond what the general public can do. And it does not prohibit others from performing physical therapy treatments.

If it is the position or belief of the physical therapists that this licensure bill will prohibit others from "practicing" physical therapy without a "physical therapy license" unless they meet the statutory requirements, we would disagree. We do not believe the bill provides this prohibition if that is indeed what they are seeking.

Therefore, changing the classification of physical therapists from registration to licensure appears to have no purpose. The bill does not appear to change what they can or cannot do or what others can or cannot do.

If physical therapists want to have the designation of licensure vs. registration simply because it seems to be more prestigious, then that is a different matter. The Kansas Chiropractic Association has two concerns if that is the reason behind the bill.

HHS
2-16-99
Atch #9

First, it changes the statutorily established licensing scheme that creates a two-tiered system: those persons licensed to practice the healing arts (doctors) and those who practice under the direction of a doctor (mid-level practitioners.) Currently, "licensees" are doctors who are trained and authorized to examine, diagnose and treat the human living body. On the other hand, "registrants" assist in a specialized part of a particular healing art under the direct supervision of a doctor.

Essentially, the two-tier system is based on the higher education level, qualifications, and authority of licensees. In a final analysis, that is the separating factor and basis for having "licensure" for doctors and "registration" for mid-level practitioners. Should physical therapists become licensed by the board (or any of the other numerous groups seeking licensure by the Board of Healing Arts), the distinction between the types of practitioners will be lost.

The second concern we have with HB 2235 is that it may extend greater privileges to physical therapists than the Legislature possibly intends.

There are many Kansas statutes that refer to persons "licensed by the Board of Healing Arts". If HB 2235 was passed in it's present form, it is possible some of the statutes referring to persons "licensed by the Board of Healing Arts" might be interpreted to include physical therapists. We do not know if that is the intent of the supporters of the bill or the Legislature's intent, but we wanted to bring the issue to the committee's attention.

Thank you Mr. Chairman and members of the committee. I would be happy to answer any questions.

February 16, 1999

LEGISLATIVE OMBUDSMAN

Background

The dictionary defines the word "ombudsman" as a governmental official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials. This definition would describe what is known as a classical ombudsman. The United States Ombudsman's Association describes the ombudsman as a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government. One person has noted, the ombudsman represents an acknowledgement "that in a bureaucracy mistakes will happen, things will go wrong, not every citizen will be treated fairly or courteously or with respect, not every civil servant will always do his or her job honestly or diligently and even good systems can sometimes benefit from scrutiny and can sometimes be improved."

It is the role of a governmental or classical ombudsman to receive and independently and impartially investigate complaints made by individuals about actions of government agencies, state officials, and state employees. After careful investigation, research, and analysis the ombudsman makes recommendations to resolve the complaints.

The first public sector ombudsman was appointed by the Swedish Parliament in 1809 and the Swedish office of ombudsman continues to be the accepted model for a public sector ombudsman today. In terms of state government, Hawaii established the first ombudsman office in 1967. There are now five states that follow the classical ombudsman model, *i.e.*, appointment by the state legislature. The laws of the five states are summarized in the following chart.

LEGISLATIVE OMBUDSMAN

	ALASKA	ARIZONA	HAWAII	IOWA	NEBRASKA
Title	Ombudsman	Ombudsman-Citizen Aide	Ombudsman	Citizens' Aide Ombudsman	Public Counsel
Nominated By	Selection Committee composed of House and Senate members	Selection Committee composed of members of House and Senate and one representative each of a small business, a large business, an unregulated consumer group, state employee who is managerial, state employee who is nonmanagerial	No provision	Legislative Council	Executive Board of Legislative Council
Ratified By	2/3 of members of legislature meeting in joint session	2/3 of each house of legislature	majority vote of each house in joint session	constitutional majority of each house	2/3 vote of members
Term	5 years; limit of 3 terms	5 years; limit of 3 terms	6 years; limit of 3 terms	4 years	6 years

Removal	Concurrent Resolution adopted by 2/3 of members of each house	Concurrent Resolution adopted by 2/3 of members of each house, but only for neglect of duty, conviction of improper divulging confidential information, misconduct or disability	2/3 vote of members of senate and house meeting in joint session		2/3 vote of members for incapacity or found guilty of neglect of duty or misconduct
Qualifications	at least 21 years of age and qualified voter; resident of state for at least 3 years; not otherwise employed; not a candidate for or a holder of any national, state or municipal office; at least 1 year out of office as a member of the legislature	at least 1 year from service as a state elected officer; resident of state for at least 6 months; at least 25 years of age; have investigatory experience	at least 2 years out of office as a legislator; not a candidate for or a holder of any state office; not otherwise employed	citizen of the U.S.; resident of state; qualified to analyze problems of law, administration, and public policy	well equipped to analyze problems of law, administration, and public policy; at least 2 years out of office as a member of legislature; not a candidate for or holder of state office; not otherwise employed
Restrictions	may not join, support or otherwise participate in a partisan political organization, faction, or activity, including making political contributions; may express private opinions, register, and vote	may express private opinions, register, and vote but not engage in any other political activity	none	may not be actively involved in partisan affairs; hold any other state office or position, except notary public; engage in business transactions with persons employed by agencies against whom complaints may be made	not be actively involved in partisan affairs

Staff	shall appoint acting ombudsman, assistants, and clerical staff	no specific provisions, except statement that may incur, subject to appropriations, expenses that are necessary to carry out office	shall appoint a first assistant and other officers and employees as necessary	must designate a deputy citizens' aide and an assistant who is primarily responsible for complaints relating to corrections agencies, employ and supervise all other employees	may select, appoint, and compensate as he or she sees fit, within available appropriations, assistants and employees deemed necessary
Compensation	set by statute	as determined pursuant to cited law	set by statute	set by Legislative Council	set by Governing Board of Legislative Council

Exceptions to Investigative Authority (usually arising from definition of "agency" in law)	governor, lieutenant governor, legislators, judges, member if city council or borough assembly, elected city or borough mayor; elected school board member	1, any elected state official, 2. any chief advisors who maintain a direct confidential and advisory relationship with the governor, secretary of state, attorney general, state treasurer, state mine inspector, supt. of public instruction, corporation commissioner, 3. agency attorney who maintains an attorney-client relationship with (a) an officer or employee of an agency acting in the exercise of duty or (b) an elected official listed in 2	judiciary and its staff; legislature and its committees and staff; any federal entity; multistate governmental entity; governor and personal staff; lieutenant governor and personal staff; mayors of counties; councils of counties	court or judicial staff; members, committees or staff of legislature; governor and personal staff; or any entity created pursuant to an interstate compact	any court; any member or employee of the legislature or legislative council; governor and personal staff; any political subdivision or entity thereof; any instrumentality formed pursuant to an interstate compact
Powers and Duties Set Out in Law	yes	yes	yes	yes	yes
General Procedures Set Out in Law	yes	yes	yes	yes	yes

Immunity	immune from civil action for activities relating to office; may not testify in court regarding matter coming to attention in exercise of official duties except as necessary to enforce provisions of ombudsman laws	immune from civil actions for actions relating to duties , except for gross negligence or intentional wrongful acts or omissions	actions immune from judicial review unless in violation of specific laws governing ombudsman	immune from civil actions for acts arising from duties	proceedings, opinions, or expression reviewable in any court; not required to testify except as necessary to enforce ombudsman laws
Reports	may report opinions and recommendations to the governor, legislature, a grand jury or the public after report has been submitted to agency; annual report to public required and inform legislature of report	annually before January 1 prepare a written report to governor, legislature, and public, including matters specified by law; report must be presented semi-annually to Legislative Council	may present opinion and recommendations, after a reasonable time has elapsed following investigation , to the governor, legislature, and public	may publish any conclusions, recommendations, and suggestions, along with agency responses, and transmit to governor, the legislature, or any legislative committee and may be made available to media or others concerned; must submit annual report to governor and legislature before April 1	may publish conclusions and suggestions, and any statement of an agency by transmitting them to the governor, legislature, the press and others who may be concerned; on or about February 15 each year report to the clerk of the legislature and governor on activities of previous year

<p>Unique Provisions</p>	<p>administrative facilities and services of Legislative Affairs Agency, including computer, data processing, and teleconference facilities may be made available to ombudsman; ; municipalities and school districts may elect to become subject to jurisdiction of ombudsman</p>	<p>office of ombudsman may not be located within the state office building complex or adjacent or contiguous to any other state agency</p>		<p>jurisdiction extends beyond state agencies; must notify the legislature of desirable changes if believes an agency action has occurred because of laws that are unfair or objectionable</p>	
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