

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:40 p.m. on March 6, 2001 in Room 313-S of the Capitol.

All members were present except: Representative Joann Freeborn

Committee staff present: Theresa M. Kiernan, Revisor of Statutes  
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:

Mike Farmer, Director, Kansas Catholic Conference  
Virgil Stinson, Wichita Pharmacist  
Dr. Todd Bielefeld, Topeka Pharmacist  
Dr. Eugene Pearce, Kansas Catholic Conference  
Jeanne Gawdun, Kansas for Life  
Pat Turner, Kansas Right to Life  
Ron Pope, Kansas Trial Lawyers Association  
Dr. John Swomley, Planned Parenthood of KS/Mid MO  
Carla Mahany, Planned Parenthood of KS/Mid MO  
Barbara Duke, American Association of University Women  
Barbara Holzmark, National Council of Jewish Women  
Bob Williams, Executive Director KS Pharmacy Association.  
Sharon Lockhart, Kansas National Organization for Women

Others attending: See attached list

Chairman Mays opened the hearing on **HB 2491 - Health care professionals' rights of conscience act.**

Mr. Farmer stated **HB 2491** seeks to protect any individual, including nurse's aides, pharmacists, students and others who may be in the situation of having to participate in a health care service to which he/she conscientiously objects, or risks disciplinary action or liability for his or her failure to participate. (Attachment #1) A Kansas pharmacist is about to be fired from their job for refusing to dispense a drug that violates their conscience. Illinois is the only state that currently protects the rights of conscience of all healthcare providers, institutions and payers who refuse to provide any health care service based on a religious or moral objection.

Mr. Stinson declared **HB 2491** is critically important to all pharmacists and health care providers. Because of the potential for pharmacists to be requested/required to participate in physician-assisted suicide and the withholding or withdrawal of life sustaining drugs. (Attachment #2)

Dr. Biefeld cited the potential for being fired if he chose not to dispense a medication that a doctor has authorized, due to personal religious and moral convictions. He urged the Committee to support **HB 2491**. (Attachment #3)

Dr. Pearce stated the many moral ramifications of our medical and scientific technology presents the need to address of legislation such as **HB 2491**. Other issues which potentially cause conscientious objection are capital punishment, euthanasia, and fetal organ research (Attachment #4) As an obstetrician-gynecologist for the past 49 years, he expressed his support of the bill to address the concerns of current and future health care personnel.

Ms. Gawdun rose in support of **HB 2491** and offered a nondiscrimination amendment (Attachment #5) to prevent potential misunderstanding that euthanasia would be applicable. She stated this bill is necessary to protect the rights of individuals in the health care field to be able to refuse, on moral or religious grounds, to participate in those activities that would result in the devaluation of human life, at any stage.

Ms. Turner stated the Pharmacists for Life ([www.pfli.org](http://www.pfli.org)) organization also recommends the bill as written. (Attachment #6)

Written testimony submitted by Matthew Hesse on behalf of Via Christi also supported **HB 2491** as a declaration of its public policy to respect and protect the fundamental rights of consciences of all individuals of all faiths who provide health care services in Kansas. (Attachment #7)

Mr. Williams expressed his association has not adopted a position on the conscientious objection issue although it has been discussed at both state and national meetings for years. He does expect adoption of a policy state this Fall. Additionally, KPhA has some concerns regarding the sections of the bill which apply to health care payers right to decline to pay for health care services based on religious or moral objections. (Attachment #8)

Mr. Pope noted KTLA has concerns about the far-reaching implications of **HB 2491** in that it goes far beyond what is necessary to achieve the purpose of allowing an individual health care provider as a matter of personal conscience. It appears to interfere with contractual rights of insureds who, after paying premiums, would be denied coverage for medically required health care services based on the undefined "religious or moral convictions" of the insurance company. This bill could potentially permit refusal of treatment in several situations. (Attachment #9) Additionally, it does not require notice to the public that provider, institution, or health care payer does not provide or pay for a specific procedure. It disproportionately impacts individuals who reside in rural areas and those of lower income levels who do not have the resources to find another health care facility or physician willing to perform the needed medical service.

Dr. Swomley declared this legislation attempts to give health care providers, hospitals, insurance agencies and corporations a right of conscience against providing normal medical service is really a weapon against people who do not share the views of a powerful religious organization. He commented the bill does not, however, recognize the conscience of health care personnel who disagree with the religious position of the corporate or religious owners of some hospitals, nursing homes, research centers and other facilities. But specifically refers to health care services that the Vatican has decided to oppose. (Attachment #10) He cited a pharmacist who refuses to fill certain prescriptions or provide other services is similar to a landlord or real-estate agency refusing to rent to certain financially qualified people for reasons of his own, such as discrimination against blacks, Hispanics, Asians, gays or lesbians.

Ms. Mahany cited **HB 2491** is one of the broadest health care denial bills introduced in any state to date. She commented current statutes are far better at permitting individuals and/or institutions to "opt out" without risking civil liability. Her written testimony (Attachment #11) lists several scenarios to consider. Health care providers have a professional, ethical and - in some instances - legal obligation not to impede access to health care.

Ms. Duke noted the pharmacist's job is to facilitate doctors' decisions, not to sit in moral judgement on them. (Attachment #12) She recommended the committee defeat the bill.

Ms. Holzmark opposed **HB 2491** citing that any person who is in need of health care should be allowed to visit any institution, either public or private, including any hospital, nursing home or pharmacy of their choice. (Attachment #13)

The hearing on HB 2491 was closed.

The committee meeting adjourned at 3:05 p.m. The next scheduled meeting is March 7, 2001.

# HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

## COMMITTEE GUEST LIST

DATE: 3/6/01

| NAME               | REPRESENTING  |
|--------------------|---|
| Bob Williams       | KSP Pharmacists Assoc   |
| JANIS McHILLER     | League of Women Voters  |
| Sharon Lockhart    | NATIONAL Org for Women  |
| Barbara Holmark    | Greater Kansas City Section<br>National Council of Jewish Women |
| John M Swomley     | Americans for Religious<br>Liberty P.P.S.M                      |
| Carol Nabay        | PPKM  |
| Barbara Deke       | AAWC → KCA  |
| Mike Farmer        | Kansas Catholic Conference                                      |
| Elizabeth Groopman | KANSAS CATHOLIC CONFERENCE                                      |
| Vuyet R. Stinson   | Pharmacy  |
| Kidd Bierfeld      | Pharmacy  |
| Glenn Thompson     | Stand Up For U.S.   |
| Marsha Strahm      | CWA of Ks.  |
| Jason Paul Dean    |   |
| Barb Seddian       | Kansas for Life   |
| Jamie Gardner      | KFL   |
| UMP Pierce         | Self  |
| Bruce Dimmitt      | KFL   |
| Robert Hermes      | Marlene Hermes  |









6301 ANTIOCH • MERRIAM, KANSAS 66202 • 913-722-6633

***House Federal and State Affairs Committee  
 Testimony in favor of HB 2491***

Mr. Chairman, members of the Committee, my name is Mike Farmer and I am the Executive Director of the Kansas Catholic Conference. Thank you for the opportunity to testify today in favor of HB 2491.

This bill, referred to as the Health Care Professionals' Rights of Conscience Act, seeks to protect any individual, including nurses' aides, pharmacists, students and others, who may be in the situation of having to participate in a health care service to which he or she conscientiously objects, or risk disciplinary action or liability for his or her failure to participate. In addition, the bill also protects both private and public health care institutions, including hospitals, pharmacies, and nursing homes.

With increasing frequency, health care professionals are being challenged in their workplace to participate in certain controversial health care services or to risk adverse action being taken against them. In 1996 a pharmacist refused to dispense a contraceptive drug that she knew, in a significant number of patients, prevented implantation of a fertilized egg. She was later fired from Kmart's Hamilton, Ohio store when she refused to sign an agreement that she would dispense all lawfully prescribed medications regardless of her feelings or beliefs. The pharmacist filed suit against Kmart in U.S. District Court in Cincinnati in August 1999. An effort by Kmart to dismiss the suit failed and the trial will begin in May of this year.

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MOST REVEREND GEORGE K. FITZSIMONS, D.D.  
 DIOCESE OF SALINA

MOST REVEREND JAMES P. KELEHER, S.T.D.  
 Chairman of Board  
 ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND EUGENE J. GERBER, D.D.  
 DIOCESE OF WICHITA

MOST REVEREND RONALD M. GILMORE, D.D.  
 DIOCESE OF DODGE CITY

MOST REVEREND THOMAS J. OLMSTED, D.D., J.C.D.  
 COADJUTOR BISHOP OF WICHITA

MOST REVEREND MARION F. FORST, D.D.  
 RETIRED

MICHAEL P. FARMER  
 Executive Director

MOST REVEREND IGNATIUS J. STRECKER, S.T.D.  
 RETIRED

I would like to draw to your attention the written testimony that has been provided to you by a pharmacist, who was asked by their attorney not to divulge their name since the matter you will read about is in litigation. This testimony is a current, real life example demonstrating the urgency for this type of legislation. A Kansas pharmacist is about to be fired from their job for refusing to dispense a drug that violates their conscience. I would hope that each of you takes the time to read this testimony. I would then respectfully request that you ask yourself this question: "Why is it that a patient is legally protected in this country to exercise her "right to choose" an abortion, in this case an abortifacient drug, while the health care provider is not being given the same right, but is being coerced into a situation of choosing between either dispensing what they believe is a life-threatening drug or of being fired?"

We believe that a right to conscientiously object must be a comprehensive civil right for any health care provider to refuse to participate in any health care service based on religious or moral convictions. Individuals, and health care providers no less, have a fundamental right to exercise their religious beliefs and conscience.

In the 7 page attachment to my testimony, the first 2 pages is entitled "Myths and Facts." It contains responses to some of the most common objections to conscience clause legislation. The 3<sup>rd</sup> "Myth" asserts that patients' lives will be endangered when health care providers conscientiously object and refuse to provide certain health care services. As is pointed out in the response, nothing in this proposed legislation prevents others from providing the health care service to which a conscientious objection has been made. Further, conscientious objections are most often raised concerning **elective** services, such as abortion, contraception, sterilization, physician-assisted suicide, and withdrawal of nutrition and hydration, rather than necessary or lifesaving services. Therefore, the lack of participation in a health care service by a health care provider or institution does not endanger the lives of patients.

The last 5 pages of the attachment entitled "Current State Statutes," gives an overview of the status of current rights of conscience laws in the U.S. As you will note, Illinois is the only state that protects the rights of conscience of **all health care providers**, institutions and payers who refuse to provide **any health care service** based on a religious or moral objection.

Thank you, Mr. Chairman, and members of the Committee. I ask for your support of HB 2491 and I would be happy to stand for any questions.

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# Myths and Facts

■ **Myth**

**Because women have a right to obtain abortion with no undue burden, it is unconstitutional for health care providers to refuse to provide abortion.**

**Fact**

The abortion right announced in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) is the right of a woman to choose whether to terminate a pregnancy and not the right to force someone to provide it. Laws that protect the civil rights of health care providers do not forbid women from obtaining abortions. They merely protect health care providers from acting contrary to their consciences. Moreover, in *Harris v. McRae*, 448 U.S. 297 (1980), the United States Supreme Court ruled that the federal government does not have to fund abortion except to save the life of the mother. Further, the Court rejected a challenge to a similar state statute in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), which upheld a state statute that prohibited state-run medical centers from providing abortions except to save the life of the woman. Therefore, this legislation is not an undue burden on a woman's right to abortion, because women have a right to choose abortion and not the right to force an individual or institution, including the government, to provide it.

■ **Myth**

**Forty-six states already provide protection for the right of conscience for health care providers.**

**Fact**

Only one state (IL) protects the rights of conscience of **all health care providers**, institutions and payers who refuse to provide **any health care service** based on a religious or moral objection. Although forty-five other states and the United States have enacted "conscience clause" legislation, these statutes are inadequate because they protect the right to object to participating in abortion only. Moreover, many of the current statutes do not protect all health care providers. For example, pharmacists are often excluded from coverage in these statutes, and are thus forced to provide "emergency contraception" contrary to their religious, moral, or philosophical convictions. See the following section, "Current State Statutes," on pages 10-14, for a complete summary of all statutes.

■ **Myth**

**Because the Health Care Providers Civil Rights Act will allow health care providers to conscientiously object and refuse to provide health care services, it will endanger the lives of patients.**

**Fact**

The Health Care Providers Civil Rights Act affirms the need to provide quality care to patients. The Act merely acknowledges that the care of patients must not be made to the detriment of the rights of health care providers. Individuals and institutions do not lose their right to exercise their religious beliefs and conscience once they decide to become health care

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providers. Nothing in the Act prevents others from providing the health care service to which a conscientious objection has been made. In addition, conscientious objections are often raised concerning elective services, such as abortion, contraception, sterilization, physician-assisted suicide, and withdrawal of nutrition and hydration, rather than necessary or lifesaving services. Therefore, the lack of participation in a health care service by a health care provider or institution does not endanger the lives of patients.

■ **Myth**

**The number of physicians who provide abortion services are declining due to lack of mandatory abortion training in medical schools.**

**Fact**

There is no need for medical schools to require abortion training, or to force medical students or residents to participate in abortion procedures. The medical training needed to learn how to empty the uterus of its contents is provided by the standard Ob/Gyn training which includes doing D&C procedures on missed abortions, which are defined as first trimester pregnancies where there is unequivocal evidence of a non-viable pregnancy on ultrasound or declining HCG levels prior to passage of tissue spontaneously.<sup>1</sup> In other words, a resident can learn the skills needed to empty the uterus of a child who is dead of natural causes, rather than on a live, unborn child. Standard Ob/Gyn training also requires experience with intrauterine fetal death in later pregnancy, which involves removal of a second to third trimester fetus who is dead of natural causes.

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<sup>1</sup> The WILLIAMS OBSTETRICS definition of “missed abortion” is “the prolonged retention of a fetus who died during the first half of pregnancy. . . [and] as the retention of dead products of conception in utero for eight weeks or more.” Furthermore, WILLIAMS OBSTETRICS defines “missed abortion” as a “subgroup” of “spontaneous abortion.” WILLIAMS OBSTETRICS, 17 ed. at p. 472.

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# Current State Statutes

January 2001

## OVERVIEW OF CURRENT RIGHTS OF CONSCIENCE LAWS:

Only **one** state (IL) protects the rights of conscience of **all health care providers**, institutions and payers who refuse to provide **any health care service** based on a religious or moral objection.

Forty-five state laws permit certain health care providers or institutions, or both, to refuse to participate **in abortion services only**, on the basis of religious or moral beliefs: AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY.

Four states provide **no protection** for the rights of conscience of health care providers.

ALABAMA

MISSISSIPPI

NEW HAMPSHIRE

VERMONT

The United States protects the civil rights of health care providers who conscientiously object to **abortion and sterilization** for individuals or institutions that receive federal funds.

UNITED STATES 42 U.S.C.A. § 300A-7 (2000)

## CURRENT STATE STATUTES:

*The following is a more specific list of current state statutes that provide some protection for the rights of conscience for health care providers, institutions, and payers:*

Only **one** state protects the civil rights of **all health care providers**, whether individuals, institutions, or payers, public or private, who conscientiously object to participating in **all health care services**.

ILLINOIS 745 ILL. COMP. STAT. ANN. 70/1 – 70/14 (2000); 720 ILL. COMP. STAT. ANN. 510/13 (2000).

**One** other state protects the civil rights of health care providers who conscientiously object to participating in **all health care services** but only when the health care providers are **individuals or religiously affiliated institutions**.

WASHINGTON Wash. Rev. CODE Ann. §§ 9.02.150, 48.43.065, 70.47.160 (2000).

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**One state specifically protects the civil rights of pharmacists who conscientiously object to dispensing medication that will cause abortion, assisted suicide, or euthanasia**

SOUTH DAKOTA S.D. Codified Laws § 36-11-70 (2000).

**One state protects the civil rights of all health care providers who conscientiously object to participating in abortion, sterilization, and artificial insemination.**

MARYLAND Md. Code Ann. Health-Gen. II § 20-214 (1996).

**One state protects the civil rights of all health care providers who conscientiously object to participating in abortion, abortifacients, and sterilization.**

PENNSYLVANIA Pa. Cons. Stat. Ann. TIT. 43, § 955.2 (WEST 1991) AND Pa. Cons. Stat. Ann. TIT. 18, § 3213(D) (WEST SUPP. 1999).

**One state protects the civil rights of health care providers and health care institutions who conscientiously object to complying with an individual's health care instructions made in a living will or with a health care decision made according to a durable power of attorney for health care regarding the withholding or withdrawal of life-sustaining treatment.**

CALIFORNIA Cal. Health & Saf Code §4734 (2000)(enacted by 1999 Cal. Assembly Bill 891).

**Four states protect the civil rights of all health care providers who conscientiously object to participating in abortion and sterilization.**

KANSAS KAN. Stat. Ann. §65-443, 65-444, 65-446, 65-447 (1992).

MASSACHUSETTS MASS. Ann. Laws CH. 112, § 12I (LAW. CO-OP. 1991).

NEW JERSEY N.J. Stat. Ann. §§ 2A:65A-1 TO 2A:65A-4 (WEST 1987).

WISCONSIN Wis. STAT. Ann. § 253.09 (WEST 1999).

**Twenty-five states protect the civil rights of all health care providers who conscientiously object to participating in abortion only.**

ALASKA Alaska Stat. § 18.16.010(B) (MICHIE 1998)(PERMANENTLY ENJOINED AS APPLIED TO PUBLIC, "QUASI-PUBLIC" NON-SECTARIAN FACILITIES IN VALLEY HOSP. ASSOC, INC. V. MAT-SU COALITION FOR CHOICE, 948 P.2D 963 (ALASKA 1997).

ARIZONA ARIZ. Rev. Stat. Ann. § 36-2151 (WEST 1993).

ARKANSAS ARK. Code Ann. § 20-16-601 (MICHIE 1991).

COLORADO Colo. Rev. Stat. Ann. § 18-6-104 (WEST 1999).

CONNECTICUT Ct. Agencies Regs. § 19-13-D54(f) (Conn. L.J., vol. LVIII, no. 30 (Jan 21, 1997): 8B-9B).

DELAWARE Del. Code Ann. TIT. 24, § 1791 (1997).

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|                |  |
|----------------|--|
| FLORIDA        | Fla. Stat. Ann. § 390.0111 (8) (WEST SUPP. 1999).                          |
| GEORGIA        | Ga. Code Ann. § 16-12-142 (1999).  |
| HAWAII         | Haw. Rev. Stat. Ann. § 453-16(D) (MICHIE 1998).                            |
| IDAHO          | Idaho Code § 18-612 (1997).  |
| KENTUCKY       | Ky. Rev. Stat. Ann. § 311.800 (1994).                                      |
| LOUISIANA      | La. Rev. Stat. Ann. §§ 40:1299.31-1299.33 (2000).                          |
| MAINE          | Me. Rev. Stat. Ann. TIT. 22, §§ 1591-1592 (WEST 1992).                     |
| MICHIGAN       | Mich. Comp. Laws. Ann. §§ 333.20181-33.20184, 333.20199 (WEST 1992).       |
| MINNESOTA      | Minn. Stat. Ann. § 145.414 (WEST 1998).                                    |
| MISSOURI       | Mo. Ann. Stat. §§ 188.100, 188.105, 188.110, 188.115, 188.120 (WEST 1996). |
| NEBRASKA       | Neb. Rev. Stat. §§ 28-337-28-341 (1995).                                   |
| NEW MEXICO     | N.M. Stat. Ann. § 30-5-2 (MICHIE 1994).                                    |
| NORTH CAROLINA | N.C. Gen. Stat. §§ 14-45.1(E), 14-45.1(F) (1993).                          |
| NORTH DAKOTA   | N.D. Cent. Code § 23-16-14 (1991).   |
| OHIO           | Ohio Rev. Code Ann. § 4731.91 (ANDERSON 1997).                             |
| OREGON         | Or. Rev. Stat §§ 435.475, 435.485 (1992). <sup>2</sup>                     |
| SOUTH DAKOTA   | S.D. Codified Laws §§ 34-23A-11 TO 34-23A-14 (MICHIE 1994).                |
| TENNESSEE      | Tenn. Code Ann. §§ 39-15-204 AND 39-15-205 (1991).                         |
| VIRGINIA       | Va. Code Ann. § 18.2-75 (MICHIE 1996).                                     |

Ten states protect the civil rights of health care providers who object to participating in **abortion only and only when** the health care providers are individuals or private institutions.

|            |  |
|------------|--|
| CALIFORNIA | Cal. Health & Safety Code § 123420 (WEST 1996).        |
| INDIANA    | Ind. Code. Ann. §§ 16-34-1-3 TO 16-34-1-7 (WEST 1997). |
| IOWA       | Iowa Code Ann. §§ 146.1-146.2 (WEST 1997).             |
| MONTANA    | Mont. Code. Ann. § 50-20-111 (1997).                   |

<sup>2</sup> Oregon also protects the civil rights of employees of the Adult and Family Services Division who refuse to offer family planning and birth control. Or. Rev. Stat. § 435.225 (1992).

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NEVADA Nev. Rev. Stat. Ann. §§ 449.191, 632.474 (MICHIE 1996).  
 OKLAHOMA Okla. Stat. Ann. TIT. 63, § 1-741 (WEST 1997).  
 SOUTH CAROLINA S.C. Code Ann. §§ 44-41-40, 44-41-50 (LAW CO-OP. 1985).  
 TEXAS Tex. Rev. Civ. Stat. Ann. ART. 4512.7 (WEST SUPP. 1999).  
 UTAH Utah Code Ann. § 76-7-306 (WEST SUPP. 1998).  
 WYOMING Wyo. Stat. Ann. §§ 35-6-105, 35-6-106 AND 35-6-114 (MICHIE 1997).

**One state protects the civil rights of health care providers who object to participating in abortion and sterilization only and only when the health care provider is an individual.**

RHODE ISLAND R.I. Gen. Laws § 23-17-11 (1996).

**Two states protect the civil rights of health care providers who conscientiously object to participating in abortion only and only when the health care provider is an individual.**

NEW YORK N.Y. [Civ. Rights] Law § 79-1 (MCKINNEY 1992).

WEST VIRGINIA W. Va. Code § 16-2F-7 (2000); *SEE ALSO* § 16-2B-4 (2000) (“FAMILY PLANNING SERVICES”); § 16-11-1 (2000) (REFUSAL OF A HOSPITAL, MEDICAL FACILITY, OR PERSON TO PARTICIPATE IN OR PERFORM A **STERILIZATION** SHALL NOT BE THE BASIS FOR ANY LEGAL SANCTIONS, RESTRICTIONS, OR CIVIL LIABILITY).

**Only eleven states protect the civil rights of medical and nursing students who conscientiously object.**

CALIFORNIA Cal. Health & Safety Code § 123420 (B) (WEST 1996).

ILLINOIS 745 Ill. Comp. Stat. Ann. 70/7 (WEST SUPP. 1999).

KENTUCKY Ky. Rev. Stat. Ann. § 311.800 (5) (1994).

LOUISIANA LA. REV. STAT. ANN. §§ 1299.31 (WEST 1992).

MAINE ME. REV. STAT. ANN. TIT. 22, § 1592 (WEST 1992).

MASSACHUSETTS MASS. ANN. LAWS CH. 112, § 12I (LAW. CO-OP. 1991).

MICHIGAN MICH. COMP. LAWS. ANN. §§ 333.20181-33.20184, 333.20199 (WEST 1992).

MISSOURI MO. ANN. STAT. § 188.110 (WEST 1996).

PENNSYLVANIA PA. CONS. STAT. ANN. TIT. 43, § 955.2 (B) (3) (WEST 1991) AND PA. CONS. STAT. ANN. TIT. 18, § 3213(D) (WEST SUPP. 1999)

TEXAS TEX. REV. CIV. STAT. ANN. ART. 4512.7 (WEST SUPP. 1999).

WISCONSIN WIS. STAT. ANN. § 253.09 (WEST 1999).

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Only two states protect the civil rights of counselors and social workers who conscientiously object.

ILLINOIS 745 ILL. COMP. STAT. ANN. 70/5 (WEST SUPP. 1999).

SOUTH DAKOTA S.D. Codified Laws §§ 34-23A-11 (MICHIE 1994).

**Thirteen** states mandate that insurance plans that cover prescription drugs also provide coverage for **contraceptive** drugs or devices. Of the thirteen, **nine** state laws include some form of limited conscience-based exemption for “religious employers” (CA, CT, DE, HI, ME, MD, NV, NC, RI); **four** state laws have no conscience-based exemption (GA, IA, NH, VT).<sup>3</sup>

For further information contact:

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<sup>3</sup> Specific statute citations may be obtained from the AUL Legal Department.



*Parklane Pharmacy*  
1530 S. Oliver Suite 141 Wichita, Ks. 67218  
Phone 316-685-2269 Fax 316-685-2621

Ladies and Gentlemen of the Legislature,

I have been asked to come before you to discuss House Bill No.2491, an act concerning health care professional's rights of conscience. As a registered and currently practicing Pharmacist in the State of Kansas I have come here to endorse this bill and urge its passing into law.

I speak for myself and many other Pharmacists who feel they should not be compelled by law or fear of disciplinary action in the work place or from fear of civil liability, to participate in the dispensing of drugs or devices with an intended use to which they have a moral or religious objection. The right to refuse on these grounds must in my opinion be secured in the law of the State of Kansas.

The enactment of the bill is of critical importance to me and all health care providers of moral conscience. I am an owner/pharmacist and need not be concerned with other management and outside ownership when refusing service. As recently as two weeks ago I was asked to dispense a dose of oral contraceptive that was clearly intended to be used as an abortifacient or morning after pill. I respectfully declined to do so and the physician directed to patient to another provider of service without incident. I can assure you, however, that I do not feel immune to outside civil litigation for choosing to exercise my moral right and obligation to refuse to provide medication in this or other cases. Litigation has been brought againsts Pharmacists in California, Indiana and New Jersey with the support of a large national womens organization and the ACLU for making just this kind of decision. For their having exercised their basic and fundamental right. It is important to point out that I represent the minority of Pharmacists in Kansas, the vast majority are employee Pharmacist with little or no protection when they choose to exercise their moral and religious beliefs and conscience. Many Pharmacists have been terminated from employment with large nationally recognized chains for having taken such action. This is a well documented problem for the Pharmacist.

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*Parklane Pharmacy*  
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Phone 316-685-2269 Fax 316-685-2621

The enactment of this bill is especially important for what I believe may be coming in the near future, with regards to the practice of Pharmacy. Abortifacient drugs and the morning after pill are with us now. RU-486 is on the horizon as well as an even more potent and dangerous version of the drug. I refuse and will continue to refuse to dispense these drugs in my pharmacy. Because I believe there is an ever increasing lack of respect for the life of the unborn, the sick and the aged, a great moral dilemma may soon be thrust upon the practice of Pharmacy. Pharmacists may soon be asked or required by employers to participate in physician-assisted suicide, euthanasia, and the withholding or withdrawal of life sustaining drugs. Many Pharmacists will have moral and ethical objection to participation in these activities. They must have the right to do so.

As a practitioner in the real world of day to day medicine, I can not overstate the need for and urgency for passage of House Bill 2491. It is critically important to all Pharmacist and health care providers. I have read the bill as proposed. I believe it to be comprehensive and thorough in scope. I believe this to be good policy at the right time and for the right reasons. I urge you to support this legislation providing for protection in law of the fundamental right of refusal by a health care giver where moral and religious objection exists.

Thank you for your time and the opportunity to be present.

Respectfully,



Virgil R. Stinson, RPH

House Fed. &  
State Affairs

Date 3/6/01

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March 6, 2001

TESTIMONY

Dr. Todd Bielefeld, RPh – Topeka, Kansas

**House Federal and State Affairs Committee**

**H.B. 2491**

Mr. Chairman, and members of the Federal and State Affairs Committee, my name is Dr. Todd Bielefeld, a pharmacist licensed in the State of Kansas. I am here today in support of H.B. 2491.

Pharmacy is not my first profession; I am also a chemist and became a pharmacist later in my career life. I am here solely on behalf of myself, and how this bill would affect me professionally. As circumstances in my life change, I could very easily be in an employment situation where this bill would greatly impact me.

I would want to be secure in knowing that if I chose not to dispense a medication that a doctor has authorized, due to my personal religious and moral convictions, that I would not be in fear of losing my job. There are a handful of issues that I would not want to be "forced" to participate in, such as abortion, capital punishment, euthanasia, assisted suicide, to name a few. I feel that the bill being discussed today would assure me protection in my rights of conscience beliefs.

I acknowledge my responsibility to all patients and intend to honor my oath as a public servant. However, if the freedom of choice is afforded my patient, then I believe I deserve that same freedom.

Thank you for allowing me the opportunity to speak to you today. I stand for questions.

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March 6, 2001

My name is Eugene W. J. Pearce. I am an obstetrician - gynecologist. Following army duty in Korea in 1950-51, I was stationed at Fort Riley, Kansas in January 1952 and have resided in Kansas for the past 49 years, the last 45 years at my current address in Merriam, Kansas.

My specialty training in obstetrics and gynecology was at the KU Medical Center, 1952-55, after which I was invited to join the faculty. I stayed at KU for two years and then went into private practice in Johnson County, KS. After 33 years or so of private practice, I joined the faculty at the University of Missouri at Kansas City School of Medicine where I have served for the past 10 years as an Associate Professor in the Department of Obstetrics and Gynecology and Chief of the Gynecology Section at Truman Medical Center/Hospital Hill.

As to H.B. 2491, has any action occurred or been proposed of a medical or quasi medical nature to which a health care worker might have religious, moral, or philosophic objections? Yes, I can think of three instances.

In January 1987, an amendment was introduced to H.B. 2062 on capital punishment. The amendment permitted the condemned to donate their organs after death. The amendment was suggested by the notorious Dr. Kevorkian. Before he took up euthanasia, he campaigned for medical experimentation and organ donation by the condemned at the time of execution. The amendment did not pass. If it had, it could have required medical personnel who had no objection to capital punishment to participate in quasi medical/scientific activities to which they had a serious religious, moral, or philosophic objection.

A few years back, the officials of the KU Medical Center petitioned this Legislature for a changed status for their hospital so they could be more nimble in pursuing insurance contracts. At that time, they claimed, erroneously, that it was a requirement of the Accreditation Council for Graduate Medical Education that they must do abortions to provide training for resident physicians. If they had succeeded, even through wrong, the hospital and department officials would have been in a position to pressure young physicians in training to behave against their religious, moral, and philosophic standards.

Finally, there is a report entitled "The Marketing of Aborted Babies" published in 2000 which alleges that an abortion clinic in Overland Park, KS provided fetal parts and organs for research as part of a profit making enterprise. A March 2000 ABC television program "20/20" detailed some of these activities. An abortion clinic worker might believe whole heartedly in abortion, but have religious, moral, or philosophic objections to dealing in fetal organs or body parts, regardless of the purpose.

That is the past. What about now? There are already assisted reproductive technologies (ART) in humans and animals (the cloning of Dolly, the sheep) to which many of us have serious reservations.

For the future, the deciphering of the human genome, gene therapy, and the cloning of humans or human cell lines make possible unforeseen interventions regarded by many of us on moral, religious, and philosophic grounds as objectionable. The table of contents of a recent issue of the Journal of the American Medical Association, included in the written record of my testimony illustrate some of these possibilities.

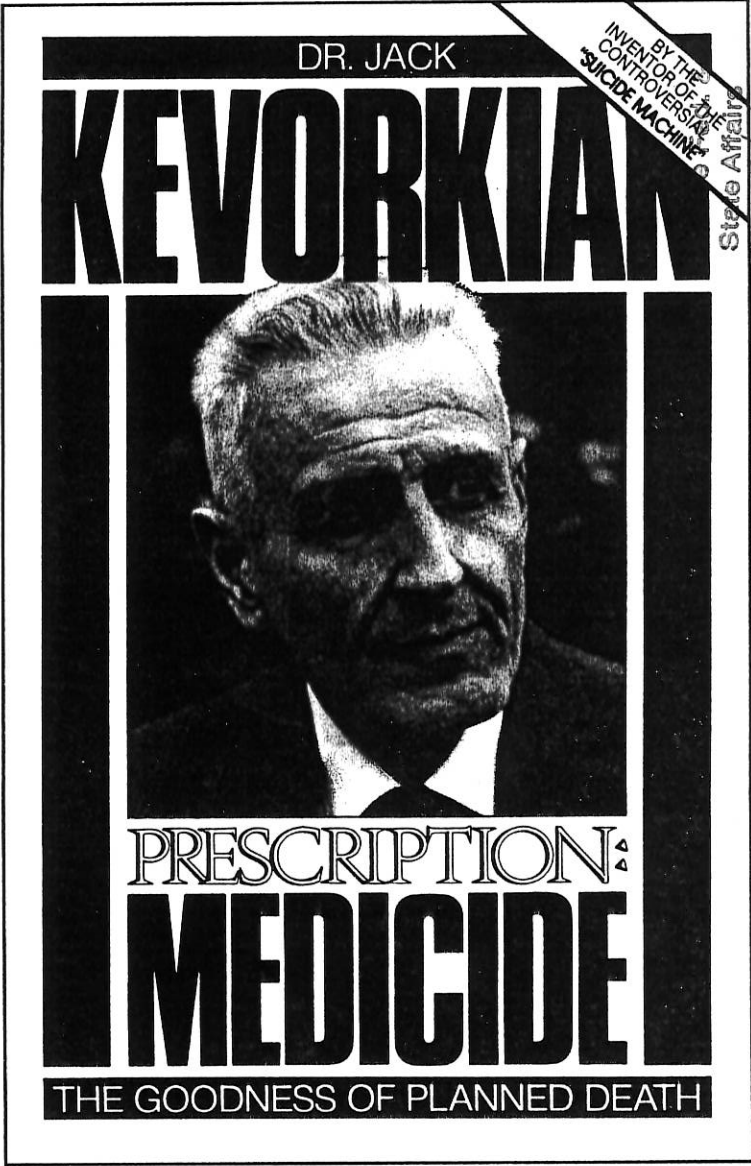
For the past, present, and future, the issue is: Should we do what we can do? Considering the many moral ramifications of our medical and scientific technology, I recommend the passage of H.B. 2491 a matter of conscience.

Attached to my written testimony are photocopies documenting sources of information on H.B. 2062 and the Overland Park abortion clinic.

I wish to thank the Committee for the privilege of testifying.

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1991

ciary committees because they represent the source of pertinent legislation. I received replies from only four of fifty-five senators, from six of sixty-two representatives, and from four of thirty governors. Fourteen responses in all.

Most of them merely acknowledged receipt of my letter, plus the customary bland expression of gratitude for the information and an insincere promise to keep it on file. I know they were insincere, because I never heard from them about subsequent legislative developments of which I learned from other sources. A few replied that they were "not in a position to sponsor such legislation." If legislative judiciary committee members can't sponsor it, who then?

Two representatives foresaw too many logistical problems, and they felt that "the controversy engendered by such a proposal would preclude its passage at this time." My forthright and factual explanation to both of them as to how easily the logistics could be mastered, and my criticism of their reticence aroused their ire. They accused me of counterproductive stridency. I will admit to being strident, but rightfully so in the face of such moral nonchalance.

The only positive and entirely honest response came from Topeka, Kansas. In January 1987, I became aware of a bill being introduced with majority support in that state's House to reinstitute capital punishment. I telephoned the office of one of the bill's sponsors, Rep. Martha Jenkins. She had left the capital for her home in Leavenworth, but her aide assured me that the legislator would call me the following morning.

Prior experience made me skeptical of the promise. But to my surprise and delight, Rep. Jenkins called right on time. I briefly outlined my proposal and requested that the advocated choice be included in the pending legislation. She asked me to send her a written summary, and she promised to get in touch with me again. I must admit, her cordial, matter-of-fact manner did not completely dispel my lingering skepticism, especially when three weeks of silence followed.

However, on 3 February 1987 my gloomy skepticism gave way to ineffable elation on receipt of this letter:

I am sorry it has taken me so long to get back in touch with you. We were successful in passing death penalty legislation out of the full House last week. The bill (Kansas Bill 2062) contains your amendment which permits the condemned to donate their organs at the time of their execution.

Enclosed please find a copy of the amendment. The amendment is not as broad as you might have desired. It does not address the method or means by which these organ transfers are to be made.

I have been assured that the organ donation amendment will remain intact and will be a part of the bill when it becomes law.

I hope the amendment addresses your concern and offers you an opportunity to pursue legislation of this kind in other states. Thank you very much for bringing this to my attention.

How could one doubt the sincerity of that "thank you"? What an enormous, refreshing difference from other legislators.

First of all, Rep. Jenkins took immediate action—to call the bill back for amendment, without protracted and unnecessary correspondence or "analysis" of something she (and all other legislators, too) knew to be very important and timely.

Second, her dynamic response went far beyond the usual banality of the meaningless phrase, "thank you for bringing this to my attention," which tends to be the *only* response (and generally insincere, at that) from her counterparts in other states.

During the thirty-three years of my campaign, Rep. Jenkins is the only authoritative person who acknowledged, without reservation, the correctness and value of my endeavor; and she, in 1987, and Warden Ralph Alvis of Ohio in 1958 wasted no time in doing everything in their power to help make it easier for me to promote my endeavor in a morally bewildered world. They are rare individuals indeed.

The wording of the Kansas bill was general enough to authorize execution even by general anesthesia: "A person sentenced to death may make an anatomical gift in a manner and for the purposes provided by the uniform anatomical gift act and *be executed in such a*

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manner that such a gift can be carried out (italics added)." This represented a giant step forward, compared to the ill-fated SB 1968 proposed in Sacramento three years earlier. It not only was the first official legislative action in the United States with respect to my proposal but also incorporated the possibility of execution by general anesthesia. That broadened the scope of potential benefit far beyond the limits offered by mere lethal injection.

But I should have known that the miracle was too good to be true. A second letter came from Rep. Jenkins three months later, informing me that the bill was defeated in the Kansas Senate and the issue would not be raised again the following year.

However, another capital punishment bill was introduced in Kansas in 1989, this time in the Senate and backed by the governor. And again the Senate voted it down. Both Rep. Jenkins and the governor kept me informed of its evolution and demise. If all state officials had the same cordial and cooperative attitude, there would be no basis for bilateral rancor or for indecent and unjustifiable procrastination in pursuing the right course.

It was obvious that I still needed the help of condemned inmates if I was to make headway with state legislators. The pleas from death row would be much harder to ignore. Fortunately several condemned men in Oklahoma and Georgia agreed to become activists in my campaign. They prepared carefully worded, well-reasoned letters and concise essays, and sent them to almost all legislators in Oklahoma City and the districts around Atlanta and Macon in Georgia.

At the same time, word of all this death row activity aroused the interest of local newspaper and television journalists. Their stories assured that the matter would be taken seriously in the two capitol; indeed, some legislators responded with favorable and meaningful comments. The outlook for enabling legislation has improved and appears to be most promising in Oklahoma where lethal injection already is the official mode of execution. The use of the electric chair in Georgia presents a more formidable obstacle.

In May 1989, I sent a follow-up letter to many of those same legislators. It reinforced the inmates' pleas and clarified the technical

and procedural details inherent in my proposal. As of this writing, there have been no replies.

The lack of response highlights part of the problem. Legislators are ambivalent about the relationship of law to morality. So, their safest course is to do nothing, and that breeds inertia. They don't manifest a clear awareness of their role in regulating the interaction between the two concepts. And I doubt that most of them would do much about it even if they did understand or openly acknowledge the relationship.

They should know that the ultimate wellspring of morality is the mores of a people. As new conditions of life arise from the burgeoning conquests of parts of nature by science, technology, and even art, the mores adapt almost automatically. Sociologist William Sumner explained how philosophy and ethics then follow and claim to have caused the changes, which is the reverse of what really happens. Sumner concluded that "ethical notions are figments of speculation. . . . All ethics grow out of the mores and are a part of them. That is why ethics can never be antecedent to mores."<sup>84</sup> The late U.S. Supreme Court Justice Benjamin Cardozo also averred that "the mores are themselves variable with time and circumstance and tribe, human in origin and development. But it is out of these that . . . the 'law' has its genesis and growth."<sup>85</sup>

Trouble begins and grows when one tries to make laws the arbiter of morality. That was stressed by Herbert L. Packard, Professor of Law at Stanford University, who, in reference to the experience of the Prohibition era, wrote that "law, even criminal law, simply is not that potent a weapon of social control. . . . It becomes largely inefficacious when it is used to enforce morality (rather) than to deal with conduct that is generally seen as harmful."<sup>86</sup> And just as birth control and abortion are no longer generally seen as harmful, so, too, should the emotional stigma of taboo be stripped away from the completely moral concept of euthanasia.

It doesn't take much insight to grasp why the above rational viewpoints seem to make little, if any, impression on legislators and politicians today. Since Machiavelli's time it has been no secret that

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 State of Kansas  
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# REPORT ABORTION



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## The Marketing of Aborted Babies



# A REPORT

## The Marketing of Aborted Babies

In April of 1997, Life Dynamics began an undercover investigation into the marketing of body parts harvested from babies killed by elective abortions. Most of the information that was eventually gathered was provided by people who worked inside a Planned Parenthood abortion clinic located in Overland Park, Kansas.

This book is an update of that ongoing investigation and contains data, analyses and documentation not previously released to the public.

### THE SYSTEM

Although federal law, and many state laws, prohibit the sale of fetal tissue or body parts, it now appears that some abortion industry profiteers, wanting to capitalize on the growing market for this material, have devised a way to circumvent these laws.

This is how the system works:

- 1) A wholesaler places retrieval technicians inside abortion clinics to harvest body parts from babies who are killed at the clinic. These people are either employees of the wholesaler who are placed in the abortion clinics, or employees of the clinics who were trained by the wholesaler. The harvested parts may include limbs, organs, blood, tissue, or in some cases, intact cadavers.
- 2) A buyer — usually a researcher working for a medical school, pharmaceutical company, bio-tech company or government agency — supplies this wholesaler with a list of the baby parts wanted.
- 3) The wholesaler faxes the order to the retrieval technician in the clinic who then harvests the parts

from babies killed that day, and ships them to the researcher using FedEx, Airborne or a similar common carrier.

- 4) The parts are then “donated” by the clinic to the wholesaler, who turns around and pays the clinic for “access” to the baby parts — but not for the parts themselves. This payment is called a site fee. At this point, the wholesaler “donates” the parts to the buyer who “reimburses” the wholesaler for the cost of retrieving them, and the transaction is complete.

The abortion industry claims that this scheme is legal because, technically speaking, no one is actually paying for body parts. But evidence presented in this document suggests that, in reality, site fees and retrieval fees are nothing more than proxy payments for the sale of baby parts. The wholesalers are able to generate profit because they control the amounts they pay for site fees and charge for retrieval fees.

### THE PLAYERS

Although other organizations are known to be involved in this field, this document provides information on what we believe are two main players in the wholesaling of baby parts: the Anatomic Gift Foundation (AGF) and Opening Lines.

AGF was founded in 1994 by Jim and Brenda Bardsley in a double-wide trailer house on the Satilla River outside rural White Oak, Georgia. This AGF facility is also a catfish farm called Sweetwater Farms.

Although the Bardsleys are still president and vice-president of the organization, and the White Oak address is still listed among AGF’s several locations,

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its headquarters have since been moved to Laurel, Maryland. Currently, Jim Bardsley's brother, Brent, is listed as executive director.

AGF also has offices in Arizona and Colorado. The Phoenix facility appears to only provide adult tissue and is not involved in the marketing of baby parts.

On the other hand, in Aurora, Colorado, AGF is actually located inside a free-standing abortion mill (Mayfair Women's Clinic). AGF's employee at this facility is a woman named Ying Bei Wang. AGF also claims to have operatives in abortion clinics on the east coast and in the midwest.

Opening Lines was founded in 1997 by pathologist Miles Jones, in West Frankfort, Illinois. Its daily operations are handled by Jones' business partner, Gayla Rose. Opening Lines is currently harvesting baby parts only from abortion clinics in the United States, but claims to be actively pursuing sources in Canada and Mexico.

As for ties between AGF, Opening Lines and the abortion industry, the National Abortion Federation listed AGF as a member in 1998, and in 1991 both Miles Jones and Gayla Rose were cited as donors in the radical pro-abortion group's annual report.

The last known addresses we had for these organizations are:

Anatomic Gift Foundation  
96 Satilla Drive  
White Oak, GA 31568  
(912) 576-5889  
(912) 576-3727 fax

Anatomic Gift Foundation  
13948 Baltimore Avenue  
Laurel, MD 20707  
(301) 953-2702  
(301) 953-2701 fax  
1-800-300-5433  
web: anatomicgift.com

Anatomic Gift Foundation of Arizona  
1313 N 2nd Street, Suite 2  
Phoenix, AZ 85004  
(602) 528-3715  
(602) 528-3717 fax

Anatomic Gift Foundation (Mayfair Women's Clinic)  
14446 E Evans Avenue  
Aurora, CO 80014  
(303) 696-9761 (Mayfair)  
(303) 755-8601 AGF voice & fax

Opening Lines/Professional Arts Lab  
A Division of Consultative and Diagnostic Pathology  
PO Box 508  
502 W St. Louis Street  
West Frankfort, IL 62896  
(618) 937-2439  
(618) 937-1525 fax  
1-800-490-9980

#### THE BABY PARTS ORDERS

Starting on page nine are over 70 orders for baby parts that were received by Comprehensive Health for Women (Comp Health). This is the Planned Parenthood abortion clinic in Overland Park, Kansas, mentioned on the preceding page.

These parts orders cover a time frame beginning in 1988 and lasting until 1998. They are exact copies and were not altered in any way other than to assign them page numbers and size them for this publication. Also provided (page 81) is a partial listing of frozen parts being stored at this abortion clinic during the week of November 17, 1997.

The wholesalers for these baby parts were AGF and the International Institute for the Advancement of Medicine (IIAM). This organization was at one time heavily involved in the baby parts business but has since withdrawn. IIAM was founded by Jim Bardsley who eventually left to start AGF.

To date, we have only been able to acquire one copy of an Opening Lines order, and it is found on page

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JANUARY 3, 2001

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FAX (913) 268-8486

**Topeka KFL**  
1005 SW 10th  
Topeka, Ks 66604  
OFF. (913) 234-3111  
FAX. (913) 357-0100

## TESTIMONY IN SUPPORT OF HB 2491 HEALTH CARE PROVIDERS' RIGHTS OF CONSCIENCE ACT

March 6, 2001

Dear Mr. Chairman and Members of the Committee:

My name is Jeanne Gawdun, and I am a lobbyist for Kansans for Life, the state's largest pro-life organization and an affiliate of the National Right to Life Committee. Kansans for Life supports House Bill 2491, the "Health Care Providers' Rights of Conscience Act."

The intent of this legislation, as stated in Section 2, is certainly laudable. Kansans for Life has always believed that it is important to protect the rights of individuals in the health care field to be able to refuse, on moral or religious grounds, to participate in those activities that would result in the devaluation of human life, at any stage. These individuals should not be subject to any type of discrimination for their beliefs, such as harassment, demotion, denial of benefits or termination.

While House Bill 2491 seeks to protect that basic right, at the same time we are concerned that it not be construed to give health care providers the right to deny life-saving treatment, causing the deaths of patients in their care, against the will of patients and their families.

Therefore, Kansans for Life would like to offer an amendment to House Bill 2491 that would make the act inapplicable to any discriminatory denial of treatment based on age or disability, and would protect patients from this dangerous form of involuntary euthanasia.

This Nondiscrimination Amendment, as given in the first attachment to this testimony, does not seek to create any new duty to provide any treatment, including that which the provider deems to be ineffective in treating the patient. However, it does prevent the use of this Conscience Act as a legal justification for the discriminatory denial of treatment.

The second attachment to this testimony further explains the need for such an amendment and the concerns that Kansans for Life has regarding ultimately giving health care providers the final decision-making authority against the wishes of their patients and their patients' families.

Kansans for Life asks you to support the Nondiscrimination Amendment to HB 2491 and to vote to move the bill out of committee as amended. Thank you very much.

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Kansas affiliate to the National Right to Life Committee

AMENDMENT TO H.B. 2491

On page 1, following line 33 by inserting:

(a) "Disability" means, with respect to an individual - (1) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

Re-letter succeeding subsections accordingly.

On page 4, following line 20 by inserting:

Sec. 7. This Act shall not be construed to protect decisions to deny to a particular patient, on the basis of the patient's age or present or predicted disability, a health care procedure or treatment which the health care professional, health care institution, or health care payer provides to other patients.

Re-number succeeding sections accordingly.



# SUPPORT THE NONDISCRIMINATION AMENDMENT TO HB 2491 TO PREVENT *INVOLUNTARY* EUTHANASIA

The objectives of H.B. 2941, the "Health Care Providers' Rights of Conscience Act," are laudable. However, the rights of health care providers not to be required to engage in procedures that offend their consciences must not be construed to authorize causing the deaths of patients in their care, against the will of patients and their families.

An amendment that makes the Act inapplicable to discriminatory denial of treatment based on disability, as well as age, would protect patients from this dangerous form of involuntary euthanasia.

## ***Would Doctors Really Claim Their Conscience Requires Denial of Lifesaving Medical Treatment to Some Patients?***

Unfortunately, many doctors are now arguing that their ethical standards justify a veto over a patient's request to be allowed to live if the doctor, in disagreement with the patient or the patient's family, thinks the patient's "quality of life" is so poor his or her life is not worth living.

- A study of 26 California hospitals that appeared in the Fall 2000 issue of the *Cambridge Quarterly of Healthcare Ethics* found, "All but two hospital policies specifically defined circumstances in which treatments should be considered nonobligatory even if requested by a patient or a patient representative.... Fourteen of these policies provided specific examples of clinical conditions that did not warrant life support because of lack of patient awareness or benefit." In cases where all efforts to resolve disputes failed, at least 9 of the hospitals assigned final decision-making authority to the responsible physician.<sup>1</sup>
- In 1999 *Critical Care Medicine* published a study on ethics consultations in situations where physicians intended to write DNAR (Do Not Attempt Resuscitation) orders against the wishes of the patients or families. Of the 31 patients the physicians deemed futile, 8 survived to discharge.<sup>2</sup>
- In January 1991 a Minnesota hospital went to court to try to cut off medical treatment for Helga Wanglie, an 87 year- old patient with brain damage. She had many times made it clear that she would want life-saving treatment, food, and fluids if she became disabled, and her family unanimously supported her. While the hospital lost the court battle, numerous doctors and ethicists writing about the case made it clear it was only a pioneering first attempt to establish the principle that doctors can

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involuntarily deny treatment when they consider the patient's quality of life to be too poor. Indeed, similar cases have reached the courts of Georgia, Massachusetts, and New Jersey.

- The authors of the *Cambridge Quarterly* study mentioned above note that, "Physicians should not expect the courts to give them prior permission..." but suggest that doctors will "...get better legal results when they refuse to provide non-beneficial treatment and then defend their decisions as consistent with professional standards than when they seek advance permission to withhold care."<sup>3</sup>

### ***What would the Nondiscrimination Amendment Do?***

Nothing in the amendment would create any new duty to provide any treatment, including treatment the provider judges would not be effective in treating the patient. It would simply prevent THIS CONSCIENCE ACT from being used to give an independent legal justification for discriminatory denial of treatment.

### ***How Can the State EVER Justify Asking Doctors or Hospitals to Provide Treatment Against Their Conscience?***

When a health care provider begins to treat a patient, the provider assumes a duty of care toward that patient which means that a balance must be struck between the rights of the patient and of the provider. Doctors and hospitals are licensed and given the privilege to practice medicine; in return they assume certain duties toward their patients, including the duty not to abandon them. With respect to many items, the rights of both can be preserved when a doctor or hospital refuses to perform a procedure deemed inherently unethical, because the patient can seek another physician or facility. When a patient could die imminently without life-saving treatment, however, its discriminatory denial would violate the patient's right to life.

1. Lawrence Schneiderman and Alexander Morgan Capron, "How Can Futility Policies Contribute to Establishing Standards of Practice?" *Cambridge Quarterly of Healthcare Ethics* Vol. 9 (Fall 2000): pp. 524-531
2. David Casarett and Mark Siegler, "Unilateral Do-Not Attempt Resuscitation Orders and Ethics Consultation: A Case Series," *Critical Care Medicine* vol. 27, no. 6: pp. 1116-1120
3. Schneiderman and Capron, supra note 1

**RIGHT TO LIFE OF KANSAS, INC.**  
**214 SW 6th Street, Suite 208**  
**Topeka, KS 66603-3719**  
**Phone 785-233-8601 Fax 785-233-8641**  
**e-mail RTLK1@aol.com**

March 03, 2001

We, at Right To Life of Kansas, are equally concerned about all individuals who work in the health care field. However, today we will specifically reference the Pharmacists.

Right To Life of Kansas, Inc. supports HB 2491 an ACT concerning the health care professionals' right of conscience. We keep in contact with Pharmacists For Life, International and know of their hard work to protect their colleagues. Since 1988, they have been trying to inform the public of the problems they encounter and how that affects all of us.

Bogomir Kuhar, a Registered Pharmacist representing PFLI, has read HB 2491 and states their organization can support this bill as long as it remains as written. He has given us permission to submit some of their material. Their website is very informative. It is "<http://www.pfli.org>."

We submit their Model Conscience Clause adopted in 1988.

Respectfully,



RTLK, Inc.

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Page 1 of 3

**PAT A TURNER**

---

**From:** PAT A TURNER <patlife@PRODIGY.NET>  
**To:** G'Ma <patlife@PRODIGY.NET>  
**Sent:** Saturday, March 03, 2001 9:35 AM  
**Subject:** Fw: Kansas

----- Original Message -----

**From:** Bogomir M Kuhar, PharmD, FASCP  
**To:** PAT A TURNER  
**Sent:** Friday, March 02, 2001 8:52 AM  
**Subject:** Re: Kansas

Pat:

We're glad you're active and concerned, two good things.

As for the bills, from our perspective they are very inclusive of many potential problem situations and give good coverage for the CC. We could support both bills AS WRITTEN. If they were to be altered or amended, we'd have to look at them at that time.

I don't think we can get any testimony to you by Monday, but feel free to use our Conscience Clause FAQs on our web site for supporting evidence, as well as the stories we put out on harrassed and fired pharmacists.

Bo Kuhar, PharmD

\*\*\*PFLI is the only pharmacy association which is exclusively pro-life. It represents 1500 pharmacists and hundreds of lay supporters in the USA, Canada and all around the globe. For membership info, key PFLI texts, PFLI archives, late-breaking news, abridged newsletter excerpts or general information, visit the PFLI web site at <http://www.pfli.org>. Or e-mail us at <mailto:pfli@pfli.org>.

\*\*\*To subscribe to PharmFacts E-News, just send an e-mail with the word "subscribe" in the subject area; to cease your subscription just send an e-mail with "unsubscribe" in the subject area. You may contact PFLI at the following: Pharmacists For Life International, PO Box 1281, Powell, OH 43065-1281 USA, 1-800-227-8359 [US & Canada only], +1-740-881-5520 [voice] or +1-707-667-2447 [fax]; e-mail us at <mailto:pfli@pfli.org>.

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# Pharmacist's Model Conscience Clause

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The rights of conscience of any person being a duly licensed pharmacist, who shall object on personal, ethical, moral or religious grounds to the performance of any act in the normal course of professional performance or dispensing, shall be respected.

Further, such a refusal to perform any act or the omission of any act based on such a claim of conscience, shall not form the basis for any claim for damages or any recriminatory or discriminatory action against such a person.

Any such person making such a claim of conscience, or who states a willingness or intention to make such a claim of conscience, shall not be denied employment, or discriminated against in any manner related to employment because of such a claim of conscience.

---

*The Pharmacist's Model Conscience Clause was adopted and approved by the PFLI Board of Directors in 1988. It was the first -- and remains the only -- one of its kind for the profession of pharmacy. It uniquely addresses the needs of pharmacists for recognition of their sincerely held religious, moral and ethical convictions which preclude the misuse of the gift of medications in manners contrary to the God-given dignity of the profession. Nothing less will do.*

*Any attempt to dilute or weaken the Conscience Clause does a disservice to the profession as well as an injustice to the many pharmacists who have courageously fought to have the Conscience Clause implemented in their workplaces. For standing by their principles, many of these brave professionals have paid the price of ostracizement, calumny, vilification, persecution, reprimands, censure and dismissal.*

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**Via Christi**  
Health System

818 North Emporia  
Suite 100  
Wichita, KS 67214-3725

Fax 316-262-2096  
Fax 316-267-0085

Office of General Counsel

March 6, 2001

To: Chairman and Members of the House Federal  
and State Affairs Committee

Re: House Bill No. 2491  
Health Care Providers Rights of Conscience Act

Chairman Mays and Members of the Committee:

My name is Matthew Hesse, and I represent Via Christi Health System, Inc. in Wichita, Kansas ("Via Christi"). I write today on behalf of the Via Christi to support House Bill No. 2491 (HB 2491), the Health Care Providers Rights of Conscience Act. Via Christi is the parent corporation to several Kansas not-for-profit hospitals (Wichita, Manhattan, Pittsburg, Salina), not-for-profit senior care facilities (Wichita, Manhattan, Concordia), private physician offices (Preferred Medical Associates clinics throughout the State of Kansas) and a for-profit "health care payer" within the meaning of HB 2491 (Preferred Health Systems).

Via Christi and its affiliated institutions support passage of House Bill No. 2491 to declare it public policy of the State of Kansas to respect and protect the fundamental rights of conscience of all individuals of all faiths who provide health care services within our great State. No health care provider, including hospitals, physicians, nurses, senior care facilities, or others, should be forced by institution/employer policies, government agencies, laws or regulations, to participate in or pay for a health care service which violates an individual's or organizations' religious or moral convictions. HB 2491 establishes and protects a health care providers' civil right to decline participation in a health care service offensive to the provider and frees them from government intrusion or entanglement to force such participation. Via Christi recommends that a helpful modification be made to HB 2491 in the form of a requirement that a health care provider give notice to his/her employer of a sincerely held religious belief or moral conviction in advance of health care services or procedures becoming necessary for any patient so that the employer may attempt to accommodate such faith-based beliefs (by finding an available substitute provider) without jeopardizing the quality of patient care.

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Robert L. Heath Tel 316-268-5084

Matthew C. Hesse Tel 316-268-5088

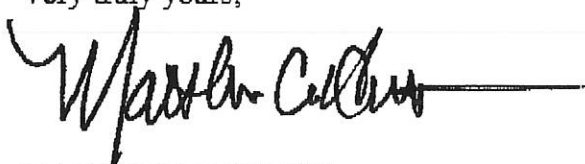
Roberta R. Johnson Tel 316-268-5107



The section protecting institutional health care providers becomes necessary due to recent action by the Equal Employment Opportunity Commission requiring health plans to provide contraception or contraceptive services to all health plan participants - a ruling which violates basic doctrinal teachings of the Roman Catholic Church. This legislation will protect religiously sponsored institutions from objectionable employer or government imposed rules and regulations violative of Church doctrine.

Please accept this letter in support of House Bill 2491.

Very truly yours,



MATTHEW C. HESSE

MCH:cn  
Associate General Counsel  
Via Christi Health System, Inc.

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KANSAS PHARMACISTS ASSOCIATION

1020 SW Fairlawn Road  
Topeka KS 66604  
Phone 785-228-2327  
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www.kansaspharmacy.org

Robert R. (Bob) Williams, M.S., C.A.E.  
Executive Director

TESTIMONY

HB 2491  
Committee on Federal and State Affairs  
March 6, 2001

My name is Bob Williams, I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the Committee regarding HB 2491.

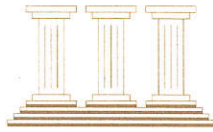
HB 2491 would prohibit all forms of discrimination, disqualification, coercion, disability or liability upon such individuals or entities that decline to perform any health care service based on religious or moral convictions.

The Kansas Pharmacy Act, Section 65-1637, paragraph (f) states: "Nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled." This clearly allows a pharmacist to refuse to fill or refill a prescription based on his or her professional judgment. However, the act does not appear to allow for the refusal to fill or refill a prescription based on "moral or religious" grounds, nor does the act protect the pharmacist against "discrimination, disqualification, coercion, disability or liability".

The "conscientious objection" issue, as it applies to a pharmacist's refusal to fill or refill a prescription based on moral or religious grounds, has been discussed at the state and national level for several years. Currently, the Kansas Pharmacists Association does not have a position or policy statement regarding conscientious objection. However, it will be the subject of discussion at our Annual Meeting this Fall and I anticipate this discussion will result in the adoption of a policy statement. Additionally, KPhA has some concerns regarding the sections of the bill which apply to health care payers right to decline to pay for health care services based on religious or moral objections.

Due to the sweeping implications of HB 2491, KPhA is opposed to passage of HB 2491 at this time to allow for more dialog regarding the issues surrounding conscientious objection by health care providers.

Thank you.



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Committee on Federal and State Affairs

FROM: Ron Pope  
Kansas Trial Lawyers Association

RE: 2001 HB 2491

DATE: March 6, 2001

Chairman Mays, and members of the House Committee on Federal and State Affairs. Thank you for the opportunity to appear before you today on behalf of the Kansas Trial Lawyers Association. I am Ron Pope, a practicing attorney from Topeka and a member of the KTLA Executive Committee.

KTLA has serious concerns about the far-reaching implications of House Bill 2491, an act which addresses health care professionals' right of conscience. KTLA understands that in part, the intent of the bill is to allow a health care professional to refuse to provide certain health care treatments or services based upon their right of conscience, KTLA must oppose HB 2491 as written. It is overly-broad, vague, ambiguous and as written, probably unconstitutional. HB 2491 goes far beyond what is necessary to achieve the purpose of allowing an individual health care provider as a matter of personal conscience to decline to provide a health care service if providing such service violates the health care providers' religious or moral principle. We do not believe that such a right of conscience should extend to health care payers or health care institutions.

In Section 3(d), the act defines a health care payer as "any entity or employer that pays for any health care service or product including health maintenance organizations, health plans, insurance companies, management service organization and employers that pay or provide health insurance coverage as a benefit to their employees." Section 6(a) provides, "a health care payer has the right to decline to pay, and, no health care payer shall be required to pay, for any health care service or product that violates its religious or moral convictions." Religious or moral convictions are defined in the act in Section 3(h) as "the religious or moral principles sincerely held by an individual and by the policies adopted by health care institution or health care payer that are based on sincerely held religious or moral principles."

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*Terry Humphrey, Executive Director*

The act defines "religious and moral convictions" as to an insurance company as "the policies adopted by health care institution or health care payer that are based on sincerely held religious or moral principles." This circular definition does nothing to define what a sincerely held religious or moral principle is, how it is to be recognized, and when a health care payer would be justified in denying payment for an otherwise covered health care service pursuant to a contractual arrangement. This language is unworkable and the act should not apply to health care payers.

A fundamental problem with this bill is that health care insurers will be able to deny coverage, after the fact, for health care services that they allege violate sincerely held religious or moral principles. This standard is simply too vague and ambiguous to be meaningfully enforced. It will allow insurance companies to deny coverage for medically necessary procedures prescribed by qualified health care providers that the insured has already paid premiums for. It will allow insurance companies and other health care payers to avoid payment for any procedure by simply claiming that they have religious or moral convictions against the performance of that procedure. For example, a dying child could be denied a blood transfusion or organ transplant. Patients may experience difficulty in getting providers to implement their advance directives. A person's living will could be violated by a hospital, forcing the family to continue paying thousands of dollars a day to keep the patient in a permanent vegetative state against the patient's literal will.

KTLA believes that HB 2491, as written, is clearly unworkable. Its vagueness as to when it would be applicable to deny coverage for health care services raises serious constitutional implications. It also would appear to interfere with contractual rights of insureds who, after paying premiums, would be denied coverage for medically required health care services based on the undefined "religious or moral convictions" of the insurance company. As such, it would insulate managed care entities from liability based on an undefined "religious or moral principle."

KTLA also opposes the special immunities created by this bill for physicians and hospitals against malpractice liability. Just a few examples of the problems posed by this bill include the following hypothetical situations:

- A person with AIDS could be refused medication, treatment, or counseling.
- Men and women alike could be denied reproductive related treatments or procedures.
- Rape and incest victims could be denied treatment or counseling.
- The bill contains no exceptions for treating patients in an emergency situation.

The bill does not require notice to the public that a provider, institution, or health care payer does not provide or pay for a specific procedure. This disproportionately impacts individuals who reside in rural areas and those of lower income levels who do not have the resources to find another health care facility or physician willing to perform the needed medical service.

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HB 2491 violates the fundamental liberty and constitutional rights of individuals to make decisions about their own medical treatment. It also conflicts with federal law. The federal Medicaid statute, for example, requires that Medicaid recipients be given access to family planning services, which could be denied by this bill. 42 U.S.C. 1396d(a)(4)(c).

What happens to patients' rights to treatment when a CEO or hospital board is replaced? Will treatment no longer be provided or paid for because of the new CEO's religious or moral beliefs?

For the reasons stated above, KTLA opposes HB 2491 as currently written. We appreciate the opportunity to present our concerns to you today about this bill and stand ready to answer any questions that you may have.

TESTIMONY BEFORE KANSAS HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FEDERAL AND STATE AFFAIRS  
on House Bill No. 2191  
March 7, 2001

My name is John M. Swomley, Professor Emeritus of Social Ethics, Saint Paul School of Theology, Kansas City, Missouri. I have also taught team-taught Biomedical Ethics at Kansas University Medical Center. I am here to testify for a national organization, Americans for Religious Liberty, and for Planned Parenthood of Kansas.

The bill before us is entitled, "An Act concerning the health care professionals' rights of conscience." It contains a selective definition of the rights of conscience. It does not recognize the conscience of health care personnel who disagree with the religious position of the corporate or religious owners of some hospitals, nursing homes, research centers and other facilities. The bill specifically refers to health care services that the Vatican has decided to oppose. It does not include other objections on religious grounds such as sometimes occur to blood transfusions or inoculations,

This bill allows the authoritarian leader or hierarchy of one religious group its exclusive definition of items to which conscience may apply, but ignores the official position of Methodist, Presbyterian and various other Protestant denominations whose positions are decided by representative democracy. As such the bill is distinctly anti-Protestant and anti-Jewish, since they differ from the Vatican on these issues. It also ignores the overwhelming majority of Catholic laity who defy the papal position on contraception and other issues. Public opinion polls reveal that 83% of Catholics believe that if a Catholic hospital receives government funds it should be required to allow its doctors to provide any

legal, medically sound advice they believe is needed. 96% of all Catholic women who have ever had sex have used modern contraceptive methods; 87% of Catholics believe that Catholics should make up their own minds about using birth control; and another poll found that 83% of women believe that insurance plans that cover prescription drugs should be required to cover birth control. Politicians should not confuse public opinion with the position of the Vatican or its agents, the bishops.

This bill specifically mentions abortion, artificial insemination, assisted reproduction, "artificial" birth control, cloning, human cell and fetal experimentation, physician-assisted suicide and euthanasia.

No doctor has the right of malpractice and no health agency or hospital has the right to demand or to enforce medical malpractice. That is what this bill represents. For example, it is a fundamental part of health care to provide emergency contraception to a woman who has been raped or gang-raped and to provide diagnosis and treatment if the rapist had AIDS. It is a fundamental right of a woman to have an abortion if she has an ectopic pregnancy or uterine cancer or if her life is threatened by a dead fetus lodged crosswise in her uterus, or if she has dangerously high blood pressure or a heart condition in which pregnancy would be life-threatening. It is a fundamental right of any patient to a medical diagnosis so she or he can give informed consent to treatment, or to refuse it, or to seek other information.

If a doctor after diagnosis disqualifies himself or herself, for whatever reason, a patient is entitled to have informed

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to find a physician who can provide that care. The bill prohibits referral to a facility that provides such care. How can withholding information be reconciled with the patient's absolute right under the law to the information she or he needs?

A physician is licensed to practice medicine, but this bill assumes he is to practice religion, which preempts his medical care.

In other words, this bill's attempt to give a health care provider, hospitals, insurance agencies and corporations a right of conscience against providing normal medical service is really a weapon against people who do not share the views of a powerful religious organization.

Since when does a corporation have a conscience that can discriminate not only against patients, but employees and shareholders. Since, among other things, this is an anti-contraceptives bill, does it mean that men and women who work for such a corporation may not use contraceptives?

It is obvious that only one category of religiously-owned corporations has to conform to a religious doctrine determined by a higher authority than the state which licenses such corporate hospitals or research centers. This bill is remarkably similar to laws and customs in this country that required separate schools, churches, railroad coaches, and places to eat, drink or go to movies, so that a white power structure could be maintained. The facilities were separate, but they certainly were not equal. In this case the proposed law would result in separate medical facilities for Catholic, Protestant, Jewish and non-religious patients who require medical and dental care.

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in Catholic hospitals and institutions. This bill provides health-care workers, hospitals and other entities that refuse insurance, prescriptions or other services, with an excuse against and a mandate not to practice any procedures that the religious entities' object to.

A pharmacist who refuses to fill certain prescriptions or provide other services is similar to a landlord or real-estate agency refusing to rent to certain financially qualified people for reasons of his own, such as discrimination against blacks, hispanics, Asians or gays or lesbians. In each case society has assured people that they are entitled to a proper standard of treatment. This Committee should not sanction discrimination in either case. A pharmacy or hospital which discriminates must at the least be expected to have another pharmacist or physician on staff willing to provide the legal standard of care.

How does the state determine what is sincere conscientious objection? The conscription law adopted by the Congress just prior to World War II refused to grant conscientious objection to a man on the basis that he belonged to a particular peace church or denomination, and insisted that a draft board make that judgment based on specific sworn testimony by the draftee, including his personal record in harmony with his opposition to participating in war. It is well-known that those anti-abortion religious fanatics who bomb clinics and shoot doctors claim that their conscience made them do it.

If you are going to adopt a so-called "conscience clause", you must provide a method for testing whether that conscience

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or not.

How does this legislature avoid coercion by church or hospital or other authority that leads physicians or other health care workers to adopt a conscience they didn't declare in previous employment? Would some say, "I oppose abortion but know that use of effective contraception is the best way to minimize it." Would a physician with a family history of Parkinson's disease have a conscience against all stem-cell research and treatment? Why is the phrase "artificial birth control" in this bill when only one denomination provides another method, one that is least effective in preventing pregnancy, so-called "natural family planning?"

Clearly this proposed legislation, if made into law, would go down in history as theocratic control of this legislature. Are you aware that virtually every largely-Catholic nation in Europe has rejected Vatican efforts to secure legislation to ban contraception and abortion?

Much could be said about issues of artificial insemination, stem-cell research, and assisted suicide, but the issue of abortion is the one on which there is most public discussion. Most people are not aware that long before Roe v. Wade, abortion was legal in the U. S. for about two centuries after the first colonists arrived on our shores. The first law with respect to abortion was in Connecticut in 1821, then 1827 in Illinois. The purpose was not to prevent the procuring of abortions so much as to guard the health and life of the woman against the surgical consequences.

Abortion and artificial birth control are as American as apple pie because the lives and health of women are as precious as those

of men. This bill is directed against women, and not a word in it recognizes the rights of women.

Are the proponents of this bill unaware of the Bill of Rights of the Kansas Constitution, which gives rights of conscience to any person (not selected categories), forbids "Any preference be given by law to any religious establishment" and asserts that "No religious test. . . shall be required for any office of public trust. . . nor shall any person be incompetent to testify on account of religious belief."

The language of this bill in Sec. 5,c, must have been written by lawyers for one denomination or organization of bishops. Listen to this language in the bill: "It shall be unlawful for any person, public or private institution to discriminate against any health care institution, person, association or corporation. . . in any manner including any denial. . .with respect to licensure. . .or any authorization. . . to affiliate or merge with any health care institution. . . association or corporation planning, proposing or operating a health care institution because such health care . . .corporation declines to participate in a health care service contrary to the health care institution's religious or moral convictions..."

Clearly this means that a group of Protestants or of people from the general public cannot oppose the merger of a non-Catholic with a Catholic hospital, or publicly oppose the loss of services with respect to women's health or a couple who may only be able to have a child with the help of artificial insemination? Do you really mean that you want to deny religious liberty to denominations

7

or clergy who oppose mergers with another religious hospital, or who oppose corporate control of medicine in the entire state or part of Kansas?

The language of this bill obviously is written to protect corporations, hospitals or other agencies operated by one religious group, despite their discrimination against patients, especially women, with respect to services that are legally, generally and usually available in public, non-sectarian and religious hospitals of Jewish or Protestant sponsorship. Certainly in this land of religious liberty and with growing respect for religions that differ, we should not even consider approving the tyranny clauses disguised as "conscience clauses" in this bill.



Planned Parenthood®  
of Kansas and Mid-Missouri

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TESTIMONY  
in Opposition to House Bill 2491

by Carla Mahany, Kansas Public Affairs Director  
Planned Parenthood of Kansas and Mid-Missouri  
913.312.5100, Ext. 227

House Committee on Federal and State Affairs  
Representative Doug Mays, Chair

Tuesday, March 6, 2001

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Thank you for this opportunity to speak on House Bill 2491. Planned Parenthood of Kansas and Mid-Missouri opposes this legislation because of its breadth and vagueness, because it ignores the right of patients to have access to the health care they choose and/or need, because the civil liabilities are extreme, and because current Kansas statutes already allow individual health care providers and hospitals to opt out of participation in abortion and sterilization procedures if they wish. HB 2491 is more than a conscience clause, more than an opt-out bill – it is a health care denial bill.

Others have been introduced in this country, but HB 2491 is one of the broadest health care denial bills introduced in any state to date. It goes far beyond current Kansas statutes, which are attached to my testimony. Individuals in this state today may opt out of participating in abortion or sterilization procedures, and hospitals may refuse to provide abortions and/or sterilizations, without risking civil liability. Planned Parenthood opposes institutional exemptions; however we acknowledge that the current statutes are far better than the sweeping language of HB 2491, and are puzzled why the sponsors would want to broaden our current law in so many ways. The answer does seem to be that they want to deny access to as many procedures as possible that they themselves find objectionable, with no regard for the consequences for the lives and health of the real people this bill may affect. This bill opens a Pandora's box of possible outcomes, since even the list of procedures mentioned is not intended to be exhaustive. Who knows what procedure may be deemed wrong by a sincere health care worker? Who knows what procedure the sponsors themselves might need that a doctor, nurse, LPN or pharmacist might consider to be against their religious or moral perspective?

SCENARIO #1: A health care worker has recently become a Jehovah's Witness, and has felt a great deal of conflict over the church's policy against blood transfusions. His conscience bothers him enough that he decides he will no longer participate in those procedures, although he wants to continue to work in the hospital because there are many other things he can do. However, under the provisions of HB 2411, the hospital can't even transfer him to another floor or shift without his permission. The employer may not even screen potential hires to determine possible conflicts of conscience.



SCENARIO #2: A woman with an ectopic pregnancy comes into an emergency room . A nurse causes harm to this patient through negligence or incompetence. She later claims it was because she has a “sincere religious or moral belief” that the procedure is wrong. No provision of HB 2491 would allow her to be disciplined or held liable. In fact, the hospital would be held liable if it tried to discipline her.

Unlike current law which protects hospitals from liability if they or their employees opt out of providing care to a patient, HB 2491 mandates that the hospital, nursing home, clinic, pharmacy, or insurance company is liable for a civil penalty of at least \$5,000 for “discriminating” against any employee who opts out of providing treatment on “religious or moral” grounds.

HB 2491 provides no exception for the life or health of patients. It never mentions the right of patients to receive appropriate and timely medical care, insurance coverage and medications. There is no provision requiring the referral of patients to an institution where they will be able to receive the care they have been denied.

SCENARIO #3: A woman with diabetes is given a prescription for birth control pills by her doctor, because pregnancy could cause her some serious health problems. Her pharmacist refuses to sell her the prescribed birth control pills, and is not even required to refer her to another pharmacist who will fill the prescription. The woman is from a rural area, so this problem is exacerbated. Her only option is to drive 100 miles to another pharmacy, and she has the additional concern that the second pharmacy will also refuse to fill her prescription.

This bill also prohibits health care administrators from taking reasonable actions to ensure that all patients receive the care they need. If a nursing home worker refuses to honor a terminally ill patient’s advance directive not to be resuscitated, his or her supervisor may not transfer the worker to another shift, even temporarily. [Section 4 (c)... “reassignment to a different shift” is considered discrimination, and the worker is entitled to damages [Section 7 (b)]. Health care administrators must choose between risking civil liability for reassigning an employee, or a lawsuit from the patient or patient’s family for refusing to abide by the advance directive.

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SCENARIO #4: A woman is prescribed birth control pills by her HMO physician. Her insurance policy includes coverage for prescriptions purchased from an in-network pharmacist. However, the in-network pharmacist refuses to sell her the birth control pills. She has to purchase the pills from an outside pharmacist and pay for them out-of-pocket.

HB 2491 is an end-run around many health care initiatives supported by Planned Parenthood and millions of other Americans who believe that rape survivors must be offered emergency contraception, that the terminally ill should have the right to decide against artificial life support, that women should not only have the right to an abortion but should have access to it as well, that prescriptions given by a doctor should be filled, and that everyone should have the same access to professional health care, prescriptions and insurance coverage.

While everyone has the right to their opinions about health care, it is important to remember that the conscience that matters most belongs to the patient. Health care providers have a professional, ethical, and—in some instances—legal obligation not to impede access to health care. Health care providers who object to providing certain services still have an obligation to respect the rights of their patients and to enable them to access the health care they need. This includes providing complete information about their condition and all possible treatments, and making a referral to an accessible and appropriate health care provider who is willing and able to provide the treatment without undue delay.

Please oppose this dangerous health care denial bill.

**CURRENT KANSAS STATUTES  
CONCERNING HEALTH CARE EXEMPTIONS**

**K.S.A. 65-443. Termination of human pregnancy; performance or participation in medical procedures not required. [1969]**

No person shall be required to perform or participate in medical procedures which result in the termination of a pregnancy, and the refusal of any person to perform or participate in those medical procedures shall not be a basis for civil liability to any person. No hospital, hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of such person's refusal to perform or participate in the termination of any human pregnancy.

**K.S.A. 65-444. Same; performance in hospital; refusal to permit; adoption of criteria and procedures; conditions; emergency. [1969]**

No hospital, hospital administrator or governing board shall be required to permit the termination of human pregnancies within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person. A hospital may establish criteria and procedures under which pregnancies may be terminated within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies: Provided, No pregnancy shall be purposely terminated until the opinions of three (3) duly licensed physicians attesting to the necessity of such termination have been recorded in writing in the permanent records of the hospital, except in an emergency as defined in section 21-3207 (2) (b) of the Kansas criminal code.

(The provision in 65-444 that required certification by three physicians of the circumstances necessitating abortion was held by the U.S. District Court of Kansas in 1972 to violate the constitution.)

**65-446. Medical procedures for sterilization of persons; performance or participation in procedures not required. [1971]**

No person shall be required to perform or participate in medical procedures which result in sterilization of a person, and the refusal of any person to perform or participate in those medical procedures shall not be a basis for civil liability to any person. No hospital, hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of his refusal to perform or participate in such medical procedures.

**65-447. Same; hospitals, officers and employees not required to permit procedures; criteria and procedures authorized. [1971]**

No hospital, hospital administrator, or governing board shall be required to permit medical procedures resulting in sterilization within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person. A hospital may establish criteria and procedures under which sterilizations may be performed within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies.

**Constitution of the State of Kansas – Bill of Rights**

**§ 7. Religious liberty; property qualification for public office.**

The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

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# The Kansas Choice Alliance

Aid for Women  
American Association of University  
Women - Baldwin Branch  
American Association of University  
Women - Kansas  
American Association of University  
Women - Shawnee Mission Branch  
American Civil Liberties Union of  
Kansas and Western Missouri  
Choice Coalition of Greater Kansas  
City  
Greater Kansas City Chapter of  
Hadassah  
Jewish Community Relations  
Bureau/American Jewish  
Committee  
Jewish Women International  
Kansas Religious Leaders for  
Choice  
KU Pro-Choice Coalition  
League of Women Voters of  
Johnson County  
League of Women Voters of Kansas  
League of Women Voters of  
Wichita-Metro  
MAINstream Coalition  
National Council of Jewish Women,  
Greater Kansas City Section  
National Organization for Women,  
Johnson/Wyandotte County  
Chapter  
National Organization for Women,  
Kansas Chapter  
National Organization for Women,  
Kansas City Urban Chapter  
National Organization for Women,  
Lawrence Chapter  
National Organization for Women,  
Manhattan Chapter  
National Organization for Women,  
Wichita Chapter  
Planned Parenthood of  
Kansas & Mid-Missouri  
Pro-Family Catholics for Choice  
Wichita Family Planning  
Women's Health Care Services  
YWCA of Wichita

## House Federal and State Affairs Committee Testimony in Opposition to House Bill 2491 March 6, 2001

Submitted by: Barbara M. Duke on behalf of the American Association of  
University Women—Kansas and the Kansas Choice Alliance

Chairman Mays and Members of this Committee:

We are opposed to House Bill 2491 because it goes far beyond current  
Kansas law which gives persons and hospitals the right to refuse to participate  
in abortion or sterilization procedures.

We view this bill as an attack on birth control. Today I will limit my  
remarks to the harmful effects of refusing to fill birth control prescriptions.

Until now, we assumed that the pharmacist's job is to facilitate  
doctors' decisions, not to sit in moral judgement on them. Since it would be  
not be ethical or good business for a pharmacy to allow a pharmacist's right of  
refusal to override a patient's right to treatment, why is this legislation under  
consideration? Refusing to fill a birth control prescription demeans the  
customer (usually a woman) and stigmatizes family planning. Perhaps that is  
the reason.

Most Kansans have several pharmacies to choose from and there are a  
number of mail-order services, so a pharmacist's refusal could cause an  
annoying delay but usually would not prevent filling the prescription. **But if  
the prescription is for emergency contraception (EC) any delay is  
unacceptable.**

Birth control pills designed specifically to prevent pregnancy when  
first-line birth control measures fail or weren't used, and in cases of sexual  
assault must be taken as quickly as possible within **72 hours**. Timely access to  
EC is essential. **Exceptions** to the health care provider's right of refusal must  
be made for **emergencies**.

American women have the right to choose. That right is meaningless if  
women can't get birth control when they need it. We urge defeat of this bill.

Thank you for your attention.

*Barbara M. Duke*



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Testimony of Barbara Holzmark, Kansas Public Affairs Chair  
National Council of Jewish Women, Greater Kansas City Section  
8504 Reinhardt Lane, Leawood, Kansas 66206  
(913)381-8222, Fax: (913)381-8224, E-Mail: [bjbagels@aol.com](mailto:bjbagels@aol.com)

Re: HB 2491

Representative Mays and Members of the House Federal and State Affairs Committee,

My name is Barbara Holzmark. I am the Kansas Public Affairs Chair for the Greater Kansas City Section of the National Council of Jewish Women (NCJW). We are nearly 1000 members in the metropolitan Kansas City area with 200 sections across the United States and 90,000 members nationwide.

NCJW is opposed to HB 2491.

The mission of NCJW, a volunteer organization inspired by Jewish values, is to work through a program of research, education, advocacy and community service to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all.

To accomplish our mission NCJW works to advance the well-being and status of women, children and families, and to ensure individual and civil rights. We believe in equal rights and equal opportunities for women, human rights and dignity, and quality, comprehensive, nondiscriminatory health care coverage and services which are accessible and affordable for all. These are principles that must be guaranteed for all individuals. In order to ensure individual and civil rights, we advocate for the protection of every individual's right to privacy, and every female's right to reproductive choice and reproductive freedom.

The position of NCJW on the "right of conscience" legislation is that any person who is in need of health care should be allowed to visit any institution, either public or private, including any hospital, nursing home, or pharmacy of their choice. Our principle concern with HB 2491 is that it allows entire institutions to opt out. The National Council of Jewish Women has no problem with individual health care providers opting out, as long as they are required to refer to other providers. This bill does not require a referral when health care is denied, and the language of the bill is very vague and broad. I urge you to vote against HB 2491.

Thank you for considering my testimony.

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