Approved: April 10, 2002
Date

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 7, 2002 in Room 313-S of the Capitol.

All members were present.

Committee staff present: Mary Torrence, Revisor of Statutes
Russell Mills, Legislative Research Analyst
Shelia Pearman, Committee Secretary

Conferees appearing before the committee: Representative Bruce Larkin
Representative John Toplikar
Elmer Feldkamp, Right to Life of Kansas, Inc.
Ronald Ferris, M.D.
Rachel Stanton
Rebecca Messall, J.D.
Barbara Duke, Kansas Choice Alliance
Carla Mahany, Planned Parenthood of KS & Mid-Missouri
Amanda Golbeck, Board of Regents
Kathy Damron, Massage Therapist Association

Others attending: See attached list

Without objection, bill was introduced as requested by Representative Mays regarding congressional districts Caucus J. [HB 3012]

Without objection, bill was introduced as requested by Representative Faber regarding ethics of professors' consultation contracts. [HB 3013]

Chairman Mays re-opened the hearing on **HB 2977 - Cosmetology training, examinations, broadened definitions, reciprocity and board membership.** Ms. Golbeck stated the original testimony was written based upon **HB 2977** erroneous reference the Board of Regents. She explained the Board does not have the staff expertise to draft rules and regulations for cosmetology examinations nor the resources and FTE staff to develop an oversight system for any specialty area. She additionally questioned the ACT score references instead of a G.E.D. or high school diploma.(Attachment #1)

Ms. Damron thanked the committee for addressing the issue raised by **HB 2977** and striving to appropriately remove massage therapists from this legislation.

Representative Hutchins cited written testimony submitted by Anita Belt which included a petition opposing the changes listed in **HB 2977**. (Attachment #2)

To further review **HB 2977, Chairman Mays appointed Representatives Hutchins, Ruff, Mays and Long to a subcommittee consisting to meet with the Cosmetology Board and other interested parties.**

Chairman Mays opened the hearing on **HR 6003 - Attorney general directed to determine certain issues of law concerning unborn children.** Representative Larkin supported this resolution and suggested the effective date be changed to February 2003 due to the change in Attorney General during the upcoming election cycle.

Mr. Feldkamp stated the inalienable right to life of all human beings (as clarified by scientific discoveries during the past 20 years) must be reexamined by the Courts to determine if unborn children are deprived of equal protection of the laws. (Attachment #3) He urged the committee to support **HR 6003**.

Dr. Ferris rose in support **HR 6003** and emphasized the scientific justification to address the issue of when life begins is readily available. Via various cases (Attachment #4), he cited the need to reexamine the value placed on human life following conception.

Representative Toplikar rose in support of **HR 6003** as an attempt to overturn *Roe v. Wade*. He stated he believes many of the questions did not address at the time of the Courts ruling which has since been answered by scientific, factual information such as when life begins. He cited DNA evidence is presently being recognized in the courts to overturn a previous ruling. (Attachment #5)

Ms. Stanton stated abortion has dramatically affected Generation Y. She cited the devaluation of life has resulted in increased school violence, higher suicide rates and drug usage. She urged the committee to support **HR 6003** to return dignity to all lives. (Attachment #6)

Ms. Messall expressed support of **HR 6003** in order to recognize in law what science has proved about the beginning of life citing various articles and rulings. (Attachment #7) She emphasized this resolution will be the Legislature's clarion call to the Executive and Judicial branches to enforce the Kansas Bill of Rights for all humans.

Ms. Duke stated legal restriction on abortion does not guarantee a low abortion rate and referenced abortion rates in Mexico and the Netherlands. She cited a study with worldwide abortion rates and hospitalizations in countries where abortion is legally restricted. She urged the committee to defeat **HR 6003** and to improve access to reliable contraception in Kansas. (Attachment #8)

Ms. Mahany stated opposition of **HR 6003** consistent with legislation during 2000 and 2001 citing State statutes and Constitutions may not be used in any way to restrict rights more than federal constitutional law allows. (Attachment #9) She also cited former United States District Attorney for Kansas Lee Thompson's written testimony in which he stated this resolution would be non-binding and is questionable as to whether the Legislature can direct the initiation of litigation. (Attachment #10).
The hearing on **HR 6003** was closed.

Representative Powell made the motion to amend effective date to be February 1, 2003. Representative Freeborn seconded the motion. The motion carried.

Representative Ruff made the motion to adopt HR 6003 as amended. Representative Cook seconded the motion. The motion carried. Representatives Benlon, Cox, Gilbert, Henderson and Peterson requested the record reflect their opposition to this bill.

Chairman Mays requested the committee turn their attention to **HB 2711 - Health care providers' rights of conscience act.**

Additional written testimony was submitted regarding the survey of conscientious objection by Robert Williams, Executive Director of the Kansas Pharmacists Association on February 25 regarding **HB 2711**. (Attachment #11)

Representative Powell made the motion to amend products/services, add advanced registered nurse practitioners as a provider and additional emergency provisions as exceptions. Representative Williams seconded the motion. The motion carried.

Representative Powell made a motion to pass HB 2711 favorable for passage as amended. Representative Williams seconded the motion. During discussion, the following amendments were addressed:

Representative Rehorn made the motion to remove infanticide from Sec. 2(c). Representative Ruff seconded the motion. The motion failed.

Representative Barnes made the motion to exclude reference to health care payer. Representative Rehorn seconded the motion. The motion failed.

Representative Benlon discussed the SANE/SART brochure (Attachment #12) and made the motion to amend creating a referral requirement preventing disruption of continuous care. Representative Ruff seconded the motion. The motion failed.

Representative Rehorn made the motion to amend by adding similar language to protect **individuals who chose to provide/perform the services listed in Sec. 3(c). Representative Benlon seconded the motion. The motion failed.**

Representative Benlon made the motion to amend to include a provision for employment at will for specific services. Representative Cox seconded the motion. The motion failed.

Representative Benlon cited research stating United States Equal Employment Opportunity Commission the failure to provide coverage for prescription contraceptives where group health plan provides prescriptive coverage for the prevention of other conditions constitutes unlawful sexual discrimination under Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1978 and thus questioned the constitutionality of this proposed legislation. (Attachment #13)

The committee recessed to the rail for further deliberation with no additional amendments offered. **The committee voted HB 2711 favorable for passage as amended. The motion carried 10-7 with Representatives Benlon, Cox, Gilbert, Henderson, Peterson, Rehorn, and Ruff requesting to be recorded in opposition.**

The meeting adjourned at 3:30 p.m. The next scheduled meeting is March 11, 2002.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE March 7, 2002

NAME	**REPRESENTING**
Margaret M. Mann	Right to Life Of Kansas
Ronald Ferris	Right to Life of Kansas
Pat Turner	RTLK, Inc.
Mel Davis	KBOC
Cherie Daniels	KBOC
Mike Farmer	KCC
Rachel Stanton	Right to Life (Generation Y)
Jon Dorzen	Generation Y
elizabeth Nourey	Kansas right to life
Kent Damm	AMTA-Kansas
Barbara Dute	KCA
Elmer Feldkamp	Right To Life of KS
Rae Mona Herman	Right to Life of Ks
Agnes McFarlin	Right to Life of Ks
Crystal McClelland	Right to Life of KS (generation y)
Catherine M. Wahlmeier	Right to Life of Ks. Ellis - Hays, Ks -
Marilyn Malleck	Right to Life of Ks. Ness City, Ks
Laura Mallow	RTLK
John Seiler	RTLKs
Genius Stocken	RTLKs
Inez A Simon	RTLKs

Carla Mahany PPKM

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE March 7, 2002

NAME	REPRESENTING
Norbert Hermes	RTLK
Marlene Hermes	RTLK
Rebecca Mensall	self / RTLK
Judy Smith	Concerned Women for America
Bruce Dimmitt	Independent.
Mary Ellen Conlee	Ks Assoc of Cosmetology Schools
Jennifer Orth	Ks Assoc of Cosmetology Schools
Laurie Yocum	American Academy of Hair Design
Don Samuel	American Academy of Hair Design
Renee Faber	
Barb Conrad	KTLA

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Statement to the
House Committee on Federal and State Affairs
by Dr. Amanda Golbeck,
Vice President Academic Affairs

March 6, 2002

HB 2977

Good afternoon Mr. Chairman and members of the committee. My name is Amanda Golbeck and I am the Vice President for Academic Affairs for the Kansas Board of Regents. I am here today to speak in opposition to section 4(a) of HB 2977. The language in this section of the bill would require that all examinations held or conducted by the state board of cosmetology be in accordance with rules and regulations adopted by the Kansas Board of Regents.

The bill as currently written would expand the mission of the Board of Regents. The Board of Regents does not author rules and regulations for examinations and particularly for those offered by other institutions, even those that it governs or coordinates. Nor does it author rules and regulations for examinations by any other state professional board. The Board of Regents does provide oversight for GED testing. However, it should be noted that the American Council on Education (ACE) is the primary author of the rules and regulations for the GED examinations, and not the Board of Regents.

This tradition of not authoring examinations is based on the philosophy of the Board as a policy and leadership board, with delegation of academic decisions (related to instruction, examinations, advising, etc.) to the institutions. It is also a practical matter in that we lack the staff to craft the rules and regulations that would be appropriate for all of the academic and applied agencies with which we interact. Take Emergency Medical Technician certification as an example. While state postsecondary institutions provide training toward EMT certification, the Board of Regents defers to the expertise of the Kansas State Board of Emergency Medical Services for setting up rules and regulations for professional EMT licensure examinations and then for overseeing these examinations. Similarly, the Board of Regents defers to the expertise of the Kansas State Board of Nursing for nursing licensure examinations, the Kansas board of Accountancy for accountancy licensure examinations, the Kansas Bar Association for bar examinations, Kansas State board of Healing Arts for licensure examinations in medicine, the Kansas State Board of Technical Professions for engineering licensure examinations, and so forth.

At their current level, proprietary school fees can support only 0.5 FTE professional staff for proprietary school oversight. This professional staff member is already responsible for handling review of, certification for, and complaints against all proprietary schools in Kansas and there is no time available to devote to develop an oversight system for any particular subject area. Since proprietary school fees are capped by statute, it would require legislative action to increase the FTE to add proprietary school oversight.

In conclusion, we are aware that there are some concerns with oversight of cosmetology schools in Kansas. However, the Board of Regents does not have the expertise or resources to assume an expansion of its mission into the area of rules and regulations for examinations by the state board of cosmetology.

My final comment is that the bill raises a number of questions from an academic point of view. I would like to raise two of these questions.

One question relates to the sentence in section 3(a)(1) which states that a person practicing under the laws of another state or jurisdiction shall be granted a license entitling the person to practice in this state if the person is not less than 17 years of age and a graduate of an accredited high school, or equivalent thereof or [sic] an ACT score of at least 18. ACT scores are used for university admissions decisions, and their use as a criterion for professional licensure would be unusual. We would expect the person to be a graduate of an accredited high school, or equivalent thereof or to have earned a GED certificate and question why the ACT score is included as a criterion.

The second question relates to the sentence in section 4(a) which states that examinations shall include a written test administered at the completion of 1,000 hours of training. Compare this requirement with the one stated in section 2(a)(2) which states that each licensed school shall provide a course of instruction and practice in preparation for the profession of cosmetology requiring not less than 1,500 clock hours. It would appear that this testing requirement of 1,000 hours is not consistent with the instructional requirement of 1,500 hours. We would expect the

testing requirement to be 1,500 hours to match this instructional requirement and question why these numbers are inconsistent in the bill.

Thank you for the opportunity to comment. I will be happy to answer any questions you may have at the appropriate time.

House Fed. &
State Affairs
Date 3/7/02
Attachment No. 1
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Fantastic Sams®

House Committee on Federal and State Affairs
House Bill 2977

Wednesday, March 6th 2002
Testimony presented by Anita Belt

Littell Enterprises, Inc.
2790 S. Seneca
Wichita, KS 67217
(316) 265-9466
Fax (316) 265-9395

Mr. Chair and Members of the Committee:

My name is Anita Belt; I graduated from Cosmetology School in 1981 and am currently employed with Fantastic Sams as the Director of Operations for the four Wichita salons. I have been with Sams since 1987. We currently employ 28 licensed cosmetologists.

As you can imagine from the length of time, number of salons and stylists that I work with, I feel that I am very familiar with the Cosmetology Industry. That is why I wish to express my concerns over the changes being suggested with this bill.

1. On page 4, line 18, (2) removing the words: practiced as a cosmetologist for one year prior to licensure, I am strongly opposed to this change. I know from personal experience that you cannot learn everything in school. When I graduated I thought I knew it all, until I went to work in a salon. We would be doing the students and consumers a grave disservice if we were to change this. I understand that schools are having problems finding instructors however; putting unqualified people in the position just to fill the void cannot be the answer. I had an opportunity to discuss the proposed changes with a Cosmetology Instructor and she too was against it. In her words she felt she would not be able to do the job she does without the practical experience she had prior to becoming a teacher.

2. Page 9, line 7, (B). The current wording is: which has substantially the same requirements for licensure as the state. They wish to remove that and add: and has practiced cosmetology for five years. I live in Wichita, home to McConnell Air Force Base. I have hired stylists whose husbands had been transferred to this state by the military. Am I to understand that we are going to tell qualified stylists from other states who may have only practiced for three years, that they cannot work in this profession. I am more than a little confused that it has even been suggested that we put unqualified people in teaching positions, yet not allow experienced stylists to work.

3. I attended Cosmetology school for 1,500 clock hours of instruction. I am against changing from that to credit hours. What is next a correspondence course? For the amount of knowledge that these students need to learn the clock hours are appropriate.

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Wichita, KS 67217
(316) 265-9466
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In addition to coming here today I also went to other salons in my area and spoke with licensed cosmetologists about this bill. I submit to you a petition signed by those individuals who are also against this bill. It is my hope that this will help you to understand that those of us working in this profession do not want the standards for our industry lowered.

Thank you, for your time and your consideration in this matter.

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State Affairs
Date 3/7/02
Attachment No. 2
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House Bill No 2977.

We, as licensed Cosmetologists, are OPPOSED to the changes being suggested by this bill.

1. Anita Belt, Anita Belt
2. Karen Mathis, Karen Mathis
3. Jennifer Buchanan; Jennifer Buchanan
4. Amber Lyons, Amber Lyons
5. Patricia Parr, Patricia Parr
6. Kim Goerzen Kim Goerzen
7. Sara Wilson Sara Wilson
8. Shalene Derby Shalene Derby
9. Mary Griffith Mary Griffith
10. Carol Hoover Carol H. Hoover
11. Linda Thach Linda Thach
12. Cindy Hunter
13. Susan Williams
14. Jennifer Heiman, Jennifer Heiman
15. Jennifer R Lusher, Jennifer R Lusher
16. Lisa J. Thompson Lisa Thompson
17. Connie Brooks Connie J. Brooks
18. Amber R Townsend Amber R Townsend
19. Crystal Giesy Crystal L. Giesy
20. Jamie L Johnson Jamie L. Johnson
21. Tammy Hoover Tammy Hoover
22. Jennifer George Jennifer George

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Date 3/7/02
Attachment No. 2
Page 3 of 5

HOUSE BILL # 2977

WE, AS LICENSED COSMETOLOGISTS, ARE OPPOSED TO THE CHANGES BEING SUGGESTED BY THIS BILL

23. Melissa Belcher

24. Kathryn J. Stark

25. Pamela J. McLoud-Shurtz

26. Linda Blythe

27. Tonya S. Morgan

28. [illegible]

29. Amanda J. Fox

30. Romonia G. Ellington

31. Charla Lee

32. DORIS FRIEND

33. Candace Johnson

34. Linda Kinnard

35. Nini Thach

36. Vicky Nguyen

37. Mai Trinh

38. Julie Trang Dang

39. RANDY IANG

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State Affairs
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Attachment No. 2
Page 4 of 5

House Bill No. 2977

We, as licensed cosmetologists are opposed to the changes being suggested by this bill.

40. MS. Pat Radford, MO. Pat. Radford
41. Natthania Stillwell
42. Janet M. Leddy
43. Amalia Villa
44. Delaine Wiedenbeller
45. Mary [illegible] Baker
46. [illegible]
47. Dawn Miller
48. Bobbi Green
49. Nettie Mills
50. Sarah Samaniego
51. Carra Gillespie
52. Lelia [illegible] Carter
53. Jayne Burton
54. Lisa Frinco
55. Jean Herring (Metcalf)
56. Stephanie M. Opie
57. Nancy Nguyen
58. Julie Lane
59. [illegible]
60. Cynthia Clark

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Right To Life of Kansas, Inc.

614 SW 6th Ave., Suite 208
Topeka, Kansas 66603

Phone 785-233-8601
FAX 785-233-8641

February 13,2002

Testimony of
Elmer Feldkamp
President, Right To Life of Kansas, Inc.
Before the
Kansas House of Representatives Federal and State Affairs Committee
In favor of
House Resolution 6003 -- "The Human Life Resolution"

Mr. Chairman and Members of the Committee,

My name is Elmer Feldkamp, President of Right To Life of Kansas. I thank you for the opportunity to appear before this Committee today and speak in favor of House Resolution 6003, the Human Life Resolution.

The whole abortion debate is predicated on the assumption that there is no life present until the child is born alive. The United States Supreme Court Justices came to this conclusion stating in *Roe v Wade*, "We need resolve the difficult question of when life begins.....the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." *Roe v Wade*, 410 US 113, 160 (1973).

We have always believed and continue to believe as President Reagan stated at the Kansas State University Landon Lecture Series in September, 1982, "I just happen to believe that simple morality dictates that unless and until someone can prove the unborn human is not alive, we must give it the benefit of the doubt and assume that it is. And thus, it should be entitled to life, liberty, and the pursuit of happiness."

The purpose of HR 6003 is first, to recognize the scientific, biological fact that the life of each human being begins at conception/fertilization; second, to affirm that each and every human life has intrinsic worth and equal value regardless of it's stage of development or condition; and third, to enforce the First Section of the Bill of Rights of the Kansas Constitution by ensuring that the protection afforded by the constitution extends to all human beings.

The issue of equal rights becomes blurred and confused when the state of Kansas allows a preborn child to be counted as a 'person' for purposes of her mother qualifying for Medicaid coverage. But, as if by magic, that same "person" then becomes a "non-person" under *Roe* if the mother exercises her so-called right to choose to have her baby killed by an abortionist.

The State Supreme Court confuses it even further by stating in a unanimous 2001 ruling that, "As a matter of law, a physician who has a doctor-patient relationship with a pregnant woman who intends to carry her fetus to term and deliver a healthy baby also has a doctor-patient relationship with the fetus." *Nold v Binyon* (2001) Can anything other than a human being

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be considered a physicians patient? And then to confine that duty only to cases in which the mother wants to deliver a child is the essence of slavery. To give one person such control over another human being simply because she doesn't want to deliver a child is a blatant violation of Section 6 of our state constitution which forbids slavery.

The Junction City teenagers that didn't want a child are both spending 5 years in prison. And a Topeka mother was sentenced to ten years for not wanting another child. Their crime? They waited until the baby was born to kill the child.

There has been confusion before over one whole segment of human beings. The Fourteenth Amendment to the US Constitution was adopted to ensure equal protection to all, including those of the Negro race. Still, discrimination against black people abounded. In 1896 the "separate but equal" ruling made it's appearance by way of the *Plessy v. Ferguson* decision. Six cases involving this "separate but equal" ruling were considered by the courts over a period of more than fifty years. Yet, it wasn't until the Topeka Brown family challenged the Topeka Board of Education that the inequality of education under the "separate but equal" rule was finally declared unconstitutional.

In deciding that case the Court states, "In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." *Brown v. Board of Education of Topeka*, 387 US 483,492,493 (1954)

To paraphrase the Courts statement we of Right To Life of Kansas state:

In deciding the equal right to life of all innocent human beings, we cannot turn the clock back to 1859 when the Kansas Constitution was adopted, or to 1969 when the Kansas criminal code was changed to allow, for the first time in Kansas history, human children to be killed before birth, or even to 1973 when the US Supreme Court handed down the infamous *Roe v. Wade* decision. We must consider the inalienable right to life of all human beings in the light of the development of man's knowledge gained in the past 15 to 20 years concerning the very beginning of life and the scientific explanation of the identity of each individual human being. Only in this way can it be determined if the so-called "termination of pregnancy" deprives these unborn children of the equal protection of the laws.

Mr. Chairman and Members of the Committee, I strongly urge your favorable consideration of HR 6003.

Testimony of Ron Ferris, M.D. in favor of HR 6003
March 7, 2002

Thank you for the opportunity to offer testimony to you here today. As way of introduction, I am a family physician in private practice in Wichita, Kansas.

In 1973, at the time of the *Roe v. Wade* decision, arguments for life beginning at conception were made, but could not be scientifically demonstrated. Our understanding at that time regarding the DNA molecule of a human chromosome was only just beginning. Today, the human genome project has become completed and gives us a detailed map of each chromosome. Given such a great achievement, we find ourselves at a crossroads and cause to re-examine the evidence for when life begins.

It is a demonstrable scientific fact when the 23 chromosomes carried by a sperm encounter the 23 chromosomes carried by the ovum, all of the information necessary and sufficient to produce all of the characteristics of a new and unique human being are organized into one place and structure we call the human genome. This unrepeatable human genome comprised of 46 chromosomes assembled at the moment of conception carries the personal constitution for a specific human being. In 1989, Dr. Alec Jeffreys in England developed a technique whereby genetic information could be extracted from the nucleus of one cell. Dr. Jeffreys went on to demonstrate, through scientifically provable procedures, the ability to verify through DNA that all of life's messages are written in the very first cell. The possibility exists now to recognize a characteristic sequence of the Y chromosome from a single cell of the youngest embryo.[1] The determination of the sex of an individual is technically realizable on an embryo only several days old. This information is not theoretical, but is information which the science of genetics knows beyond any doubt. This exact information led Judge Dale Young to make his judgment on September 21, 1989 in a case regarding the custody of seven human embryos in frozen storage.

[1] A.H. Handyside et al., *Nature* 344 (1990): 768-70.

It was the trial of *Junior L. Davis v. Mary Sue Davis,* in the Circuit Court for Blount County, State of Tennessee, at Maryville, Tennessee. Professor Jerome Lejuene, who is internationally known for discovering the genetic basis of Down's Syndrome, was the most notable authorities testifying in the case. Two conclusions of the court, after expert scientific testimony was rendered, were: (1) From fertilization, the cells of a human embryo are differentiated, unique, and specialized to the highest degree of distinction (2) Human life begins at conception.[2] The Maryville judgment is now part of universal jurisprudence and is especially noteworthy in revealing that the scientific evidence considered was adequate to make a determination. At the time of the *Roe v. Wade* decision in 1973, Justice Blackmun stated, "the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer" regarding when life begins.[3] It is clear that as of 1989, the courts need to no longer speculate being confronted with scientific fact. That same scientific evidence confronts us today.

In 1999, the first successful use of a procedure called **preimplantation genetic diagnosis** for sickle cell disease was reported. A little over a week ago, an article in the Journal of the American Medical Association reported the use of preimplantation diagnosis with Alzheimer Disease and its application to at least 50 different genetic conditions.[4] With the mapping of the human genome completed, preimplantation genetic diagnosis could be used with an unlimited number of possibilities. Ultimately, here again is the 'technology" question of should a procedure be done simply because it can be done and watch as discrimination takes place in a most brutal kind of form. The International Working Group on Preimplantation Genetics reports the experience of preimplantation gentetic diagnosis in over 3000 cases.[5] Given that there is no legislation or control in regard to preimplantation genetic diagnosis, a very fundamental and urgent question that needs to be answered is **what kinds of things are we going to discard**. We implore this legislature to exercise its exclusive and ample power to determine the public policy of the state.[6] House Resolution 6003 is a clear solution to the increasing dilemma presented by genetic manipulation. HR 6003 is about making a determination long overdue by the Legislature of Kansas that human life begins at conception and affirming the inalienable right to life of all human beings guaranteed by Section 1 of the Bill of Rights of the Kansas Constitution.

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[2] *Tennessee Code Annotated* 20-5-106(b).

[3] *Roe v. Wade,* 410 U.S. 113, 159 (1973).

With all the current evidence, the real question today is not when human life begins, but whether to give value to a human life at its early and most vulnerable stages of existence. In the 1981 Senate Hearings on the beginning of human life, the many medical and scientific witnesses who testified disagreed on many things, but not on the scientific evidence that the unborn child is alive, is a distinct individual, or a member of the human species. They did disagree over the value to place on human life at its earliest beginning. There is no cause more important for preserving freedom then affirming the transcendent right to life of all human beings. House Resolution 6003 is about this fundamental right to life, without which no other rights have any meaning, being extended to the human being at conception. Let it be recognized in our public policy that the State of Kansas does indeed place a great value on all human life.

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[4] *Cavender v. Hewitt*, 239 SW 767 (1922).

[5] International Working Group on Preimplantation Genetics. Preimplantation genetic diagnosis: experience of three thousand clinical cycles: report of the 11th Annual Meeting of the International Working Group on Preimplantation Genetics, in association with 10th International Congress of Human Genetics, Vienna, May 15, 2001. *Reprod Biomed Onlin.* 2001; 3:49-53.

[6] Verlinsky, Y., et al. *JAMA*. Februrary 27, 2002; 287:1018-1021.

Costly option stops inheriting of sickle cell

By Brigid Schulte
Knight Ridder Newspapers

WASHINGTON — The young couple were desperate. Although each was healthy, together their genes spelled a one in four chance that any child they conceived would have sickle cell disease, a debilitating and painful illness for which there is no cure.

Twice she had become pregnant. Twice early prenatal testing with amniocentesis showed the fetuses had the disease. Twice she had chosen to terminate those pregnancies.

Then the New York couple, who requested anonymity, agreed to be the first to try a costly, experimental procedure to screen embryos for sickle cell genes in a test tube before she even got pregnant. Doctors implanted only unaffected embryos into her uterus. On the second try, she gave birth to healthy twin girls.

The births, the result of the first successful use of a procedure called preimplantation genetic diagnosis for sickle cell disease, are hailed as a medical breakthrough in today's Journal of the American Medical Association.

"This is a really powerful method for those people who may need it," said Dr. Zev Rosenweks, director of the Center for Reproductive Medicine and Infertility at Cornell University's Weill Medical College. "This gives parents an alternative to avoid a very difficult decision to abort a fetus that may be affected."

But the births, as with any breakthrough in genetics, also raise important questions: Will only the wealthy be able to afford to live disease-free? And do only genetically perfect children deserve to be born?

"This is both an enormously exciting way to prevent quite a debilitating disease, and it is the beginning of a kind of philosophy of genetic manipulation that is only going to get more common and be used for more conditions as we become more sophisticated in using genetic engineering," said Paul Root Wolpe, at the University of Pennsylvania's Center for Bioethics. "The issue really becomes, as we move down this road, what kinds of things are we going to choose to discard?"

The genetic procedure itself is relatively new. And success is difficult. Doctors must use a microscopic pipette to remove one or two cells from a fragile seven- or eight-cell embryo without destroying it. And, as with any pregnancy where embryos are fertilized outside the womb and later implanted, called in vitro fertilization, chances of a live birth run only 20 percent to 40 percent.

"This is both an enormously exciting way to prevent quite a debilitating disease, and it is the beginning of a kind of philosophy of genetic manipulation."

Paul Root Wolpe,
University of Pennsylvania Center for Bioethics

Around the world, fewer than 200 babies have been born after this intricate test to screen out a handful of genetic or sex-linked disorders like Tay-Sachs, cystic fibrosis, hemophilia and Down syndrome.

And the prohibitively high cost — anywhere from $10,000 to $15,000 for each try — means the procedure is unlikely to be widely used. Still, Rosenweks and others see a brave new world coming. As scientists find more genes, "it will be possible to virtually eliminate the genetic diseases that are so devastating that they lead to death in early childhood," he said. "Sickle cell is just one."

And truly, sickle cell is a horrific disease.

About one in 600 Americans, most of them African-American, are affected. The oxygen-carrying hemoglobin in their red blood cells, instead of being pliant, is C-shaped like the farming tool, and rigid. That means that as the blood circulates into smaller and smaller vessels, the sickle-shaped cells can get stuck and block oxygen from entering vital organs like the heart, brain, kidneys and lung. The result is excruciating pain, organ damage, stroke and often early death. Hospitalizations cost an estimated half a billion dollars a year.

Fully 10 percent of African-Americans carry the gene, called sickle cell trait, that can help trigger the disease. Although they themselves are not sick, if they have a child with another carrier, they have a one in four chance of producing a child with sickle cell disease and a one in two chance of producing a child with sickle cell trait.

And while there is no easy cure for the disease yet, there is hope, aid Dr. Duane Bonds, leader of the Sickle Cell Disease Scientific Research Group at the National Heart Lung and Blood Institute. Blood transfusions, antibiotics, bone marrow transplant and a new drug, hydroxyurea, to soften the stiff sickled cells have cut down on painful crises and lengthened lives.

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Preimplantation Diagnosis for Early-Onset Alzheimer Disease Caused by V717L Mutation

Yury Verlinsky, PhD
Svetlana Rechitsky, PhD
Oleg Verlinsky, MS
Christina Masciangelo, MS
Kevin Lederer, MD
Anver Kuliev, MD, PhD

Context Indications for preimplantation genetic diagnosis (PGD) have recently been expanded to include disorders with genetic predisposition to allow only embryos free of predisposing genes to be preselected for transfer back to patients, with no potential for pregnancy termination.

Objective To perform PGD for early-onset Alzheimer disease (AD), determined by nearly completely penetrant autosomal dominant mutation in the amyloid precursor protein (*APP*) gene.

Design Analysis undertaken in 1999-2000 of DNA for the V717L mutation (valine to leucine substitution at codon 717) in the *APP* gene in the first and second polar bodies, obtained by sequential sampling of oocytes following in vitro fertilization, to preselect and transfer back to the patient only the embryos that resulted from mutation-free oocytes.

Setting An in vitro fertilization center in Chicago, Ill.

Patients A 30-year-old AD-asymptomatic woman with a V717L mutation that was identified by predictive testing of a family with a history of early-onset AD.

Main Outcome Measures Results of mutation analysis; pregnancy outcome.

Results Four of 15 embryos tested for maternal mutation in 2 PGD cycles, originating from V717L mutation–free oocytes, were preselected for embryo transfer, yielding a clinical pregnancy and birth of a healthy child free of predisposing gene mutation according to chorionic villus sampling and testing of the neonate's blood.

Conclusion This is the first known PGD procedure for inherited early-onset AD resulting in a clinical pregnancy and birth of a child free of inherited predisposition to early-onset AD.

JAMA. 2002;287:1018-1021 www.jama.com

According to the most recent review,[1] preimplantation genetic diagnosis (PGD) has been applied to at least 50 different genetic conditions in more than 3000 clinical cycles. In addition to traditional indications, similar to those in prenatal diagnosis, PGD was performed for an increasing number of new indications, such as late-onset disorders with genetic predisposition and HLA testing combined with PGD for preexisting single-gene disorders.[2,3] These conditions have never been an indication for prenatal diagnosis because of potential pregnancy termination, which is highly controversial if performed for genetic predisposition alone. With the introduction of PGD, it has become possible to avoid the transfer of the embryos carrying the genes that predispose a person to common disorders, thereby establishing only potentially healthy pregnancies and overcoming important ethical issues in connection with selective abortions.

To our knowledge, this article presents the first experience of PGD for early-onset Alzheimer disease (AD), representing a rare autosomal dominant familial predisposition to the presenile form of dementia. Three different genes have been found to be involved in this form of AD, including presenilin 1 located on chromosome 14,[4] presenilin 2 on chromosome 1,[5] and amyloid precursor protein (*APP*) on chromosome 21,[6] which is well known for its role in the formation of amyloid deposits found in the characteristic plaques of patients with AD. The early-onset dementias associated with *APP* mutations are nearly completely penetrant and, therefore, are potential candidates for not only predictive testing but also PGD. Of the 10 *APP* mutations currently described, mutations in exons 16 and 17 have been

See also p 1038.

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JOHN M. TOPLIKAR

TESTIMONY ON H.R. 6003

COMMITTEE ON FEDERAL & STATE AFFAIRS

March 7, 2002

Chairman Mays & members of the Committee

There has been much discussion on this issue since the Roe v. Wade Supreme Court decision nearly 30 years ago. I will make five key points on what the U.S. Supreme Court "decided": 1) that it did not know at that time when a human life begins, 2) that the judiciary was not in a position to speculate when life begins, 3) that the Court could not adopt "one theory of life", 4) that there was a state interest in "potential life", and 5) that a woman's right to privacy was not absolute. Now, if I may, I would like to present the committee with what I consider five key questions and my answers to those questions.

1. Do we now know when life begins?
   Yes. Fertilization.

2. How do we know?
   It has been revealed through science.

3. Should we use science in determining questions of law?
   Yes. It is a common practice to use the truths of science to help solve legal problems such as in the use of DNA testing, and we have recognized these advances and have begun to incorporate scientific references into law. In fact, I believe that Kansas, "The Evolution State", should strive to be at the forefront of recognizing the truths, discoveries, and advances of science in light of recent years' emphasis by our Kansas Board of Education and the Board's desire to educate our children in the sciences. We should recognize scientific fact and truth. Since the truths of DNA have been recognized, some death row inmates have been released based on scientific evidence which revealed their innocence.

4. Is there a good reason to not recognize science?

   No. Unless there is a desire to continue to attempt to solve this controversy through many more years of political sound bites and rhetoric.

5. Is there a good reason to answer the question of when life begins now?

   Yes. Unless answered, if we know by scientific fact when life begins but fail to address it in our law or the interpretation of law, then we will only prolong ignorance of scientific truth. We must have the truth on this question in order to fully uphold the oath of office to faithfully defend our Kansas Constitution, specifically Article I of the Bill of Rights. That article calls on us to guarantee the unalienable right to life.

   We need to know when human life begins in order to effectively guarantee its protection. We cannot guarantee it if we refuse to recognize its beginning. We are living in an age of unprecedented scientific experimentation and discovery in areas of embryonic research and cloning. It is absolutely necessary to answer the question of the beginning of life now. There are many more complicated life issues that will arise and it is critical that we no longer delay.

Please pass H.R. 6003. Thank you.

Presented by Rachel Stanton

In favor of House Resolution 6003

Abortion has a significantly different meaning for my generation than it does for previous generations. For my generation, at one time, was so dependant on a single choice early in our development, that our lives were extremely vulnerable. One could say I'm a survivor of my generation, as one-third of it was lost due to abortion. Since the beginning of our existence, we, the survivors, have been taught, however, that our lives carry no worth; we were simply a convenience – lucky enough our mother made the decision to carry us into this world. Instead of a unique, important being, we are a decision. And, this devaluation of human life, holistically, has had a negative impact on our society. Our schools are no longer safe, drug abuse is rampant, and suicide rates are higher, as well as teenage sexual promiscuity. But, since our lives have no worth, then neither do those of the children we bear through our own sexual acts.

Just because we have been told, and suppressed into believing, our lives are worthless does not mean, however, that we do not see and are not influenced by the effects of abortion. For, we are aware that humans are interconnected, and we have witnessed the emotional trauma and the physical pain all people go through because of abortion. Some of us, being actively involved in a sexually charged society, have experienced this pain first hand; all the rest of us have perceived it from a second party, even from our own family. We understand that not only do our lives have no worth; we are expected to amount to nothing. It is assumed that we will all be involved in several sexual relations, and abortion is promoted to remedy our inevitable mishaps. Because too many people believe the "bad youth" label and accept it, sexual promiscuity and abortion continues. Perhaps, a little more faith in us could challenge the assumption that the members of my generation will always make the wrong choices.

However, my generation no longer accepts the lie that we are not valuable, and we are growing intolerant of the negative effects of abortion we continually see, but that are still being covered up. Suffocated by our own desire to be *someone*, we realize that our lives hold dignity, whether or not our government or mothers *think* so. It also seems ironic to us that the two groups of society most responsible for upholding our right to life, the government and our family, deem our lives unworthy of the chance to exist. Even more so, then, does irony ring true, when our parents' tax money, as well as our own, goes towards denying the right to life to more helpless human beings.

Frustrated, confused, and saddened, I am shocked that although people observe how abortion affects everyone in society, they do not seek to find a solution to the problem. Instead, they turn to the lies that sustain the difficult situation, and surrender in their helpless state for the status quo.

A HEARING ON THE HUMAN LIFE RESOLUTION
February 13, 2002

Testimony by Rebecca R. Messall, J.D
Overland Park, Kansas 66213

Thank you for today's hearing in support of the Human Life Resolution. "Public officials are privileged in a certain way to apply their moral convicions to the policy arena. We hold in high esteem those who, through such positions and authority, promote respect for all human life." [1]

My father's great grandfather came here in 1856, when violence was turning our territory into Bleeding Kansas. The next year, the United States Supreme Court announced a bizarre and now unbelievable fiction, holding that an entire class of human beings were an "inferior class of beings," and "had no rights or privileges but such as those who held the power and the Government might choose to grant them." Scott v. Sanford, 60 U.S. 393 (1857).

In contrast to that judicial debacle, this Human Life Resolution will be the legislature's clarion call to the executive and judicial branches to enforce the Kansas Bill of Rights, which opens with the once inconceivable, revolutionary political idea embodied in the Declaration of Independence. Our Kansas Bill of Rights boldly proclaims in section 1: "All men are possessed of equal and unalienable natural rights, among which are life, liberty and the pursuit of happiness."

Though these magnificent documents refer to the rights of 'men,' we know the word 'men' means all human beings, not just males. Now --- I am called a woman. But even when I have been called a teenager, a toddler, an infant, a fetus, an embryo and a fertilized egg, I have always been the same human being. And I claim that my right to life began when my life began.

"From the time that the ovum is fertilized, a new life is begun which is neither that of the father nor of the mother, it is rather the life of a new human being with his own growth. It would never be made human if it were not human already. In the human zygote the biological identity of a new human individual is already constituted." [2]

The Human Life Resolution challenges Kansas government to finally recognize in law what science proved long ago, and then to enforce --- for all human beings in Kansas--- the right to life made explicit in the Kansas Bill Rights.

On February 4th, just nine days ago, the great man who led the defeat of Communism, John Paul II, called for the legal recognition of the human embryo, as well

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[1] A Statement of the U.S. Catholic Bishops, *Pastoral Plan for Pro-Life Activities*, section III (December 2001)
[2] *Donum Vitae*.

as respect for the rights of every individual unable to defend himself. He said, "to 'recognize' means to guarantee to every human being the right to develop according to his own potential, ensuring his inviolability from conception until natural death. No one is master of life; no one has the right to manipulate, oppress or take life, neither that of others or his own. To recognize the value of life implies consistent measures from the legal point of view, especially the protection of human beings who are unable to defend themselves. Among the most vulnerable are "the unborn, the mentally handicapped, and the most seriously or terminally ill."[3]

"Our era needs wisdom far greater than that of bygone eras if discoveries made by man are to be further humanized. For the future of the world stands in peril unless wiser people are forthcoming."[4] Bio-technology in private hands today, fueled by governments, raises twin threats to the human species: eugenics and genocide.[5] "The ideas of eugenics are based on the assumption that all men are unequal, while democracy is based on the asumption that they are equal."[6]"If we continue to ignore the immorality of abortion and human experimentation, we could quickly end up with eugenics as a commercial and social institutution around the world. The world's past experience with eugenics was that it led the way to genocide." [7]

The conscience of each individual person and the self-regulation of researchers cannot be sufficient for ensuring respect for personal rights and public order.[8] "If legislators are not watchful, their prerogatives may be overcome by researchers claiming to govern humanity in the name of biological discoveries and alleged "improvement" processes. "Eugenicism" and forms of discrimination between human beings could come to be legitimized: this would constitute an act of violence and a serious offense to the equality, dignity and fundamental rights of the human person."[9]

Four days ago the Sunday Observer in London[10] reported experimenters anticipate that artificial wombs will be perfected within a few short years. These artificial wombs will launch the ability to manufacture human beings, clones and part-human chimeras for brutal experimentation and commercial profits. In addition, for population terrorists, the perfected artificial womb will mean their ability to chemically sterilize millions of people involuntarily, maybe with sprays from crop dusters, and sell desparate pre-approved couples their parental rights to genetically pre-designed embryos. This picture is not the movie Gattica or Huxley's novel, Brave New World, but the future we will hand to our children and grandchildren unless we act dramatically now.

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[3] Zenit.org February 4, 2002
[4] *Donum Vitae.*
[5] Kimbrell, Andrew, The Human Body Shop: On Engineering and Marketing of Life (Harper:San Francisco 1993)
[6] William, Glanville, The Sanctity of Life and the Criminal Law (Alfred A. Knopf: New York 1957), quoting Bertrand Russell.
[7] Kimbrell.
[8] *Donum Vitae.*
[9] *Id.*
[10] *The Observer International* (on-line text), Sun. Feb. 10, 2002

John Paul II wrote: "The Pharaoh of old, haunted by the presence and increase of the children of Israel, submitted them to every kind of oppression and ordered that every male child born of the Hebrew women was to be killed (cf. *Ex* 1:7-22). Today not a few of the powerful of the earth act in the same way. They too are haunted by the current demographic growth, and fear that the most prolific and poorest peoples represent a threat for the well-being and peace of their own countries. Consequently, rather than wishing to face and solve these serious problems with respect for the dignity of individuals and families and for every person's inviolable right to life, they prefer to promote and impose by whatever means a massive programme of birth control. Even the economic help which they would be ready to give is unjustly made conditional on the acceptance of an anti-birth policy."[11]

"Humanity today offers us a truly alarming spectacle, if we consider not only how extensively attacks on life are spreading but also their unheard - of numerical proportion, and the fact that they receive widespread and powerful support from a broad consensus on the part of society, from widespread legal approval and the involvement of certain sectors of health-care personnel."[12]

"With time the threats against life have not grown weaker. They are taking on vast proportions. They are not only threats coming from the outside, ..no, they are *scientifically and systematically programmed threats*. The twentieth century will have been an era of massive attacks on life, an endless series of wars and a continual taking of innocent human life...we are in fact faced by an objective *"conspiracy against life"*, involving even international Institutions, engaged in encouraging and carrying out actual campaigns to make contraception, sterilization and abortion widely available. Nor can it be denied that the mass media are often implicated in this conspiracy, by lending credit to that culture which presents recourse to contraception, sterilization, abortion and even euthanasia as a mark of progress and a victory of freedom, while depicting as enemies of freedom and progress those positions which are unreservedly pro-life."[13]

"The law must provide appropriate penal sanctions for every deliberate violation of the child's rights. The law canot tolerate---indeed it must expressly forbid—that human beings, even at the embryonic stage, should be treated as object of experimentation, be mutilated or destroyed with the excuse that they are superfluous or incapable of developing normally."[14]

Fundamental rights include 1. every human being's right to life and physical integrity from the moment of conception until death, 2. the rights of the family and of marriage as an institution and 3. the child's right to be conceived and brought into the world and brought up by his parents.[15]

Two Kansas Supreme Court cases decided last year recognize legal rights of preborn men during gestation, the right to have non-negligent medical care[16] and even the

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[11] *Evangelium Vitae*,paragraph 16 (1995)
[12] *Id.*, paragraph 17.
[13] *Id.*
[14] *Donum Vitae*.
[15] Id.
[16] Nold v. Binyon, docket no. 84,292 (Kan. S. Ct. 2001)

right to have heirs at law.[17] Likewise, under Medicaid, pre-born men are on the one hand defined as patients entitled to tax-funded medical treatment, and on the other hand, denied access to those benefits by Medicaid payments to end their lives summarily.[18] These inconsistent treatments create a glaring Constitutional conflict in which the class of pre-born Kansans now being killed through abortion are blatantly denied Equal Protection under state and federal Constitutional law, and are denied the right to life contained in the Kansas Bill of Rights.

Our culture needs this new hopeful vision, new paradigm, new commitment: that abortion is not a 'necessity' to save the mother, the 'race' or the planet; that our government will end all efforts at depopulation and replace them with compassionate, non-family planning alternatives to abortion to help the mother help her child; that we will massively educate that abortion causes irreparable harm to the mother and child; that there are morally acceptable ways to space children without recourse to damaging steroids, implants and invasive machinery; that every embryo is a human being and entitled to equal protection of the law,

When he wrote Evangelium Vitae, the Gospel of Life, in 1995, John Paul II pleaded with the world. He said his encylical was "meant to be a *precise and vigorous reaffirmation of the value of human life and its inviolability,* and at the same time a pressing appeal addressed to each and every person, in the name of God: *respect, protect, love and serve life, every human life!* Only in this direction will you find justice, development, true freedom, peace and happiness![19]

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[17] Shelton v. DeWitte, docket no. 84,488 (K. S. Ct. 2001)
[18] e.g. Kansas Medicaid State Plan, effective date 4/1/97, TN#MS-97-07, attachment 4.19-B, describing abortion reimbursement amounts.
[19] *Evangelium Vitae*, paragraph 5 (1995)

Physicians' Services
Pediatric Practitioner Services
Methods and Standards of Established Payment Rates

Explanation of Method and Standards of
Established Fee for Service Payment Rates

This report is based on information collected by the fiscal agent from SFY1995 paid claims for the period of the fiscal year (July 1, 1994 - June 30, 1995). For this report, fiscal year data is used to provide an average payment rate per procedure code for SFY '95, the second previous year. Regardless of current maximum reimbursement rates, providers are instructed to bill their usual and customary charge.

Procedure Code: This reflects the CPT code for a specific medical procedure.

Procedure Description: This reflects the CPT nomenclature for the specified procedure code. Due to availability of space, the description may be shortened or abbreviations utilized.

Current Rate: This reflects the maximum rate currently reimbursed by the Kansas Medicaid program for the specified procedure code. Rates do not vary by geographic location of provider.

KANSAS MEDICAID STATE PLAN

Physicians' Services
Obstetrical Practitioner Services

PROCEDURE CODE	PROCEDURE DESCRIPTION	AVERAGE PAYMENT AMOUNT AS OF 7/1/95	MAXIMUM RATE
598550000	INDUCED ABORTION, BY ONE OR MORE VAGINAL SUPPOSITORIES (eg, PROSTAGLANDIN) WITH OR WITHOUT CERVICAL DILATION (eg, LAMINARIA)		$333.23
598560000	WITH DILATION AND CURETTAGE AND /OR EVACUATION		$350.00
598570000	WITH HYSTEROTOMY (FAILED MEDICAL EVALUATION)		$350.00
598700000	UTERINE EVACUATION AND CURETTAGE FOR HYDATIDIFORM MOLE		$257.79
598990000	UNLISTED PROCEDURE, MATERNITY CARE AND DELIVERY		$250.00

Note: When average payment amounts are higher than current rates, it is due to the encounter rate payment methodology for Rural Health Clinics and Federally Qualified Health Centers. These providers receive all-inclusive, cost-based reimbursement. Rates do not vary by geographic area.

POPE CALLS FOR LEGAL RECOGNITION OF HUMAN EMBRYO

Marks Pro-life Day in Italy VATICAN CITY, (Zenit.org).- John Paul II Sunday called for the legal recognition of the human embryo as well as respect for the rights of every individual unable to defend himself.

The Pontiff emphasized that "science has now demonstrated" that the embryo "is a human individual who possesses his own identity from conception. Therefore, it is logical to exact that this identity be legally recognized, above all in its fundamental right to life."

The Holy Father´s comments came before he recited the Angelus with several thousand faithful and pilgrims gathered in St. Peter´s Square. Among those on hand were members of the Italian Pro-Life Movement.

Italian Catholics were celebrating Pro-Life Day, which had the motto "Recognize Life."

John Paul II said that "to recognize" means "to guarantee to every human being the right to develop according to his own potential, ensuring his inviolability from conception until natural death."

"No one is master of life; no one has the right to manipulate, oppress or even take life, neither that of others or his own," the Bishop of Rome added.

"Much less can he do so in the name of God, who is the only Lord and the most sincere lover of life," he continued. "The martyrs themselves do not take their life, but they accept being killed in order to remain faithful to God and to his commandments."

To "recognize the value of life implies consistent measures from the legal point of view, especially the protection of human beings who are unable to defend themselves," the Holy Father continued.

Among the vulnerable, John Paul II mentioned "the unborn, the mentally handicapped, and the most seriously or terminally ill."

The Holy Father received a warm applause when he imparted a special blessing to expectant mothers in the crowd.

Kansas Choice Alliance

Members:

Aid for Women
American Association of University Women - Baldwin Branch
American Association of University Women - Kansas
American Civil Liberties Union of Kansas and Western Missouri
Greater Kansas City Women's Political Caucus
Jewish Community Relations Bureau/American Jewish Committee
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
Mo-Kan Choice Coalition
National Council of Jewish Women Greater Kansas City Section
National Organization for Women Johnson/Wyandotte Counties Chapter
National Organization for Women Kansas Chapter
National Organization for Women Lawrence Chapter
National Organization for Women Wichita Chapter
Planned Parenthood of Kansas & Mid-Missouri
Pro-Family Catholics for Choice
Wichita Choice Alliance
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House State and Federal Affairs Committee: Testimony In Opposition to H.R 6003

February 13, 2002

Submitted by Barbara Duke on behalf of the Kansas Choice Alliance (785-749-0786)

Chairman Mays and members of the House Federal and State Affairs Committee:

Thank you for this opportunity to speak on behalf of the members of the Kansas Choice Alliance in opposition to House Resolution 6003. Of prime importance when considering any legislation is to determine the consequences of passage, both intended and unintended.

Should our courts declare that a human fertilized egg is a "man," abortion would become illegal in Kansas. I believe this is the intended consequence of HR 6003. The unintended consequences include forcing Kansas women who need to terminate an unhealthful pregnancy to go to another state or to seek an illegal abortion. Since llegal abortions are often unsafe some women who have them will need to be hospitalized and some will die.

Legal restriction on abortion does not guarantee a low abortion rate. In fact abortion rates are as high or higher in countries where abortion is illegal as it is countries with legal abortion.

For example, the abortion rate in the United States is 22 per 1000 women aged 15-44. In Mexico abortion is illegal and penalties are heavy. A woman can face a sentence of up to three years in prison for having for having an illegal abortion. For someone who performs an abortion, the penalty ranges up to ten

years in prison. Yet the abortion rate in Mexico is estimated to be 25.1 per 1000 with 106,500 hospitalizations.

Abortion rates are lowest in countries where there is easy access to reliable contraceptives regardless of the legality of abortion. In the Netherlands, where abortion is not only legal but also paid for by the state, the abortion rate is 4 per 1000.

I have based my remarks on a research study titled "The Incidence of Abortion Worldwide" published in 1999. Attached is a summary of the study and two tables from it which show abortion rates worldwide and rates and hospitalizations in ten countries where abortion is legally restricted. For more complete information about the topic and the methods used to collect statistics, the article can be read online at www.guttmacher.org

I urge this committee to defeat HR 6003 and look instead to proven effective ways to reduce our abortion rate. That simply means improving access to reliable contraception in our state. We look to you for help in that effort.

Thank you for your attention and thoughtful consideration.

Barbara Duke

House Fed. &
State Affairs
Date 3/7/02
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International FAMILY PLANNING PERSPECTIVES

Volume 25, Supplement, January 1999

The Incidence of Abortion Worldwide

By Stanley K. Henshaw, Susheela Singh and Taylor Haas

Context: *Accurate measurement of induced abortion levels has proven difficult in many parts of the world. Health care workers and policymakers need information on the incidence of both legal and illegal induced abortion to provide the needed services and to reduce the negative impact of unsafe abortion on women's health.*

Methods: *Numbers and rates of induced abortions were estimated from four sources: official statistics or other national data on legal abortions in 57 countries; estimates based on population surveys for two countries without official statistics; special studies for 10 countries where abortion is highly restricted; and worldwide and regional estimates of unsafe abortion from the World Health Organization.*

Results: *Approximately 26 million legal and 20 million illegal abortions were performed worldwide in 1995, resulting in a worldwide abortion rate of 35 per 1,000 women aged 15–44. Among the subregions of the world, Eastern Europe had the highest abortion rate (90 per 1,000) and Western Europe the lowest rate (11 per 1,000). Among countries where abortion is legal without restriction as to reason, the highest abortion rate, 83 per 1,000, was reported for Vietnam and the lowest, seven per 1,000, for Belgium and the Netherlands. Abortion rates are no lower overall in areas where abortion is generally restricted by law (and where many abortions are performed under unsafe conditions) than in areas where abortion is legally permitted.*

Conclusions: *Both developed and developing countries can have low abortion rates. Most countries, however, have moderate to high abortion rates, reflecting lower prevalence and effectiveness of contraceptive use. Stringent legal restrictions do not guarantee a low abortion rate.*

International Family Planning Perspectives, 1999, 25(Supplement):S30–S38

The Programme of Action of the 1994 International Conference on Population and Development urged governments and other relevant organizations "to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services."[1] To implement this recommendation, policymakers need information on the availability and quality of family planning services, the extent of harm to women's health caused by unsafe abortion, and the incidence of abortion.

This article focuses on the last of these factors, the incidence of both legal and illegal abortions in each

Table 1. Estimated number of induced abortions, by legal status, percentage of all abortions that are illegal, abortion rate and abortion ratio, all according to region and subregion, 1995

Region and subregion	No. of abortions (millions)			% illegal	Rate*	Ratio†
	Total	Legal	Illegal			
Total	**45.5**	**25.6**	**19.9**	**44**	**35**	**26**
Developed regions	**10.0**	**9.1**	**0.9**	**9**	**39**	**42**
Excluding Eastern Europe	3.8	3.7	0.1	3	20	26
Developing regions	**35.5**	**16.5**	**19.0**	**54**	**34**	**23**
Excluding China	24.9	5.9	19.0	76	33	20
Africa	**5.0**	‡	**5.0**	**99**	**33**	**15**
Eastern Africa	1.9	‡	1.9	100	41	16
Middle Africa	0.6	‡	0.6	100	35	14
Northern Africa	0.6	‡	0.6	96	17	12
Southern Africa	0.2	‡	0.2	100	19	12
Western Africa	1.6	‡	1.6	100	37	15
Asia	**26.8**	**16.9**	**9.9**	**37**	**33**	**25**
Eastern Asia	12.5	12.5	‡	§	36	34
South-central Asia	8.4	1.9	6.5	78	28	18
South-eastern Asia	4.7	1.9	2.8	60	40	28
Western Asia	1.2	0.7	0.5	42	32	20
Europe	**7.7**	**6.8**	**0.9**	**12**	**48**	**48**
Eastern Europe	6.2	5.4	0.8	13	90	65
Northern Europe	0.4	0.3	‡	8	18	23
Southern Europe	0.8	0.7	0.1	12	24	34
Western Europe	0.4	0.4	‡	§	11	17
Latin America	**4.2**	**0.2**	**4.0**	**95**	**37**	**27**
Caribbean	0.4	0.2	0.2	47	50	35
Central America	0.9	‡	0.9	100	30	21
South America	3.0	‡	3.0	100	39	30
Northern America	**1.5**	**1.5**	‡	§	**22**	**26**
Oceania	**0.1**	**0.1**	‡	**22**	**21**	**20**

*Abortions per 1,000 women aged 15–44. †Abortions per 100 known pregnancies. (Known pregnancies are defined as abortions plus live births.) ‡Fewer than 50,000. §Less than 0.5%. *Notes:* Developed regions include Europe, Northern America, Australia, New Zealand and Japan; all others are considered developing. Regions are as defined by the United Nations (UN) (see Appendix). Numbers do not add to totals due to rounding. *Sources:* **Populations**--UN, *The Sex and Age Distribution of the World Population, The 1996 Revision*, New York: UN, 1997. **Births**--UN, *World Population Prospects: The 1996 Revision, Annex II & III, Demographic indicators by major area, region and country*, New York: UN, 1996. **Illegal abortions**-- WHO, 1998, op. cit. (see reference 4). **Legal abortions**--see text.

calculated a range, based on varying assumptions, that encompasses their best estimate (Table 3). The factor that explains most of the spread in the range is the proportion of all women having abortions who are expected to be hospitalized. This proportion is estimated to range from 14% to 67% (column three divided by column six), depending on the safety of abortion service provision and access to hospitals.[16]

Table 3. Measures of induced abortion and hospitalization for abortion complications, for 10 countries where abortion is highly legally restricted, by country

Country and year	Abortions				Hospitalizations	
	Best estimate of number	Range	Rate*	Ratio*	No.	Rate
Bangladesh, 1995†	730,000	678,000–783,000	28.0	18.0	71,800‡	2.8
Brazil, 1991	1,444,000	1,021,000–2,021,000	40.8	29.8	288,700	8.1
Chile, 1990	160,000	128,000–224,000	50.0	35.3	31,900	10.0
Colombia, 1989	288,000	288,000–404,000	36.3	26.0	57,700	7.2
Dominican Republic, 1990	82,000	58,000–115,000	47.0	27.9	16,500	9.8
Egypt, 1996	324,000	u	23.0	15.7	216,000	15.3
Mexico, 1990	533,000	297,000–746,000	25.1	17.1	106,500	5.4
Nigeria, 1996	610,000	428,000–610,000	25.4	12.0	142,200§	6.1
Peru, 1989	271,000	271,000–380,000	56.1	30 0	54,200	10.9
Philippines, 1994	401,000	320,000–481,000	25.0	16.0	80,100	5.1

*Based on best estimates presented in column 1. †Bangladesh estimates for induced abortion include an estimated number of menstrual regulations (468,000). For officially reported numbers of (legal) menstrual regulations, see Table 2. ‡Includes 19,400 women hospitalized due to complications resulting from a menstrual regulation procedure. §Includes 21,500 women treated for complications from an abortion performed by a physician. *Note:* u=unknown. *Sources:* see reference 17.

The proportion of women hospitalized for complications of abortion is based on several variables for which accurate measurement is not possible. The extent to which safe abortion is practiced, the probability of complications arising from procedures provided by nonphysicians and the ease of access to a hospital are all reflected in this factor. Moreover, the factor itself was estimated from different sources, including community surveys that provide the proportion hospitalized among all women reporting having had an abortion, and surveys of informed health professionals that ask their opinion on the probability of women experiencing complications from abortion and the probability of obtaining medical care if they do so.[17]

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HAYS CENTER
122 East 12th Street
Hays, KS 67601
(785) 628-2434

INDEPENDENCE CENTER
815 North Noland Road
Independence, MO 64050
(816) 252-3800

JEFFERSON CITY CENTER
1005 Northeast Drive
Jefferson City, MO 65109
(573) 635-2882

LAWRENCE CENTER
1420 Kasold Drive, Suite C
Lawrence, KS 66049
(785) 832-0281

BROUS CENTER
1001 East Emanual Cleaver II Blvd.
Kansas City, MO 64110
(816) 756-2277

NORTH KANSAS CITY CENTER
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Kansas City, MO 64119
(816) 453-6000

SEDALIA CENTER
1708 West 9th Street
Sedalia, MO 65301
(660) 826-7377

SOUTH KANSAS CITY CENTER
11902 Blue Ridge Ext., Suite T
Grandview, MO 64030
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WARRENSBURG CENTER
607 Burkarth
Warrensburg, MO 64093
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WICHITA CENTER
2226 East Central
Wichita, KS 67214
(316) 263-7575

Planned Parenthood®
of Kansas and Mid-Missouri

TESTIMONY
in Opposition to House Resolution 6003

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

Wednesday, February 13, 2002

Th. you for this opportunity to present testimony on HR 6003. Since I have spoken to this Committe opposition to the identical HRs 6006 and 6007 in the past two legislative sessions, I intend to keep my remarks today very short.

The bottom line is: state statutes and Constitutions may not be used in any way to restrict rights more than federal constitutional law allows.

Several states have laws declaring that the intent of the legislature is to protect the life of the "unborn." When the U.S. Supreme Court handed down its decision on the 1989 Missouri law in Webster v. Reproductive Health Services, it reiterated an earlier decision (Akron v. Akron Center for Reproductive Health, Inc., 1983), which stated that "a State [cannot] 'justify' an abortion regulation otherwise invalid under Roe v. Wade." The Missouri preamble states that "the life of each human being begins at conception," and that "[u]nborn children have protectable interests in life, health, and well-being" – but it cannot use this statement as a basis for any restriction of women's right to abortion.

Five states have legislative declarations supporting the right of a woman to choose abortion (CT, ME, MD, NV, WA). The Nevada law, which affirmatively protects a woman's right to choose during the first 24 weeks of pregnancy, cannot be changed without a referendum vote. These do have the force of law because they grant stronger, not weaker, rights than federal constitutional law.

The decision in 1973's Roe v. Wade decision addressed the concept of fetal personhood this way: "The Constitution does not define "person" in so many words…But in nearly all [the] instances [where it appears], the uses of the word is such that it has application only postnatally. None indicates, with any assurance, that it has any possible pre-natal application."

All subsequent U.S. Supreme Court case law has affirmed the finding in Roe that the word "person" as used in the 14th Amendment does not include the fetus. The 14th Amendment applies federal constitutional law to the states.

In June of 2000, the U.S. Supreme Court declared it would not revisit the core principles of Roe. Stenberg v. Carhart struck down Nebraska's so-called "partial birth" abortion law, and the majority found that "a law designed to further the State's interest in fetal life which imposes an undue burden on the woman's decision before fetal viability" is unconstitutional.

Even if a state legislature passes a bill that includes a reference to it, that statement cannot be used to restrict abortions or contraception.

My point here is that the sponsors of HR 6003 may not like the outcome brought about by its passage, since the Attorney General is probably very unlikely to reach the conclusions it urges.

I also appeal to members of this Committee who believe access to family planning and the full range of current contraceptive methods is necessary to reduce the need for abortion. Some contraceptive methods, such as the pill and IUD, may prevent the implantation of a fertilized ovum, and one logical extension of the arguments found in HR 6003—if they could become law—would be to equate usage of these contraceptive methods with murder.

HR 6003 is misleading and offensive to many of us who care about women's health and lives.

I hope you will oppose this resolution, for any of these reasons or others. Thank you.

THOMPSON STOUT & GOERING, LLC

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Email: lthompson@tslawfirm.com

Law Firm
Bank of America Center
100 N. Broadway, Suite 710
Wichita, KS 67202

Phone: 316-265-2511
Fax: 316-303-0815

February 13, 2002

Ms. Carla Norcott-Mahany

Topeka, KS

Dear Ms. Norcott-Mahany:

At your request, we have reviewed House .Resolution 6003 from the standpoint of its affect on significant issues of public policy. In particular, the attached analysis highlights concerns we have about the risk which the proposal creates for the doctrine of separation of powers and the traditional deference afforded prosecutorial discretion.

I address these questions from several standpoints; but do want to emphasize that one facet of my background which influences my thinking is having served for three years as United States Attorney for the District of Kansas under President George H.W. Bush, 1990-93. This type of legislation would be antithetical to almost any public prosecutor.

I hope the attached analysis is helpful.

Yours very truly,

THOMPSON STOUT & GOERING, LLC

s/ *Lee Thompson*

By Lee Thompson

LT:tmc

House Fed. &
State Affairs
Date 3/7/02
Attachment No. 10
Page 1 of 3

ANALYSIS OF HOUSE RESOLUTION 6003

House Resolution 6003 attempts to direct the Attorney General to file suit to determine certain issues of law concerning unborn children and to seek a permanent injunction to prohibit the expenditure of state funds for the purpose of terminating the lives of innocent human beings including the unborn.

There are several facets of this legislation which ought to be emphasized and which cause considerable concern from a constitutional standpoint:

1. Binding legislation under the state constitution must comply with the full panoply of constitutional protections. As the Supreme Court has noted in State v. Kearns, 623 P.2d 507, 509 (Kan., 1981):

> ...no bill may become law without the language required by Article 2, [section] 20 of the Kansas Constitution. Substantial compliance with that requirement is no longer sufficient for bills destined to become either criminal or civil law.

This procedure requires approval of both houses and assent of the governor. As drafted, a House Resolution is, then, at best, a non-binding sense of the House – not binding legislation.

2. Although a house of the state legislature has the authority to request action by the Attorney General, the extent of that request has generally been limited to constitutional questions. The statutory authorization for this approach is at K.S.A.§ 75-702 which states in relevant part:

> The attorney general shall . . . when required by the governor or either branch of the legislature, appear for the state and prosecute or defend, in any other court or before any officer, in any cause or matter, civil or criminal, in which this state may be a party or interested or when the constitutionality of any law of this state is at issue and when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas.

The plain language of the statue makes its somewhat questionable if through the mechanism of a House Resolution one house of the legislature can direct the initiation of litigation, as opposed to requesting that the Atty. Gen. appear in an existing cause of matter.

3. The legislation raises serious questions about separation of powers. Although Kansas does not have an express provision in its constitution providing for separation of powers, "'[g]generally speaking ... the executive power is the power to enforce the laws, and the judicial power is the power to interpret and apply the laws in actual controversies." Van Sickle v. Shanahan, 212 Kan. 426, Syl. ¶ 8, 511 P.2d 223 (1973). The process of "separation is accomplished by the establishment of the three branches of

government and the distribution of the various sovereign powers to each of them." 212 Kan. at 440 [511 P.2d 223]. The pending resolution invades the executive power and discretion vested in an executive to enforce the laws and as such, does violence to an established and cherished constitutional doctrine. It goes far beyond the limits envisioned in any statutory or constitutional scheme and would virtually vitiate the independence of the executive branch.

4. The Resolution would seriously invade the time honored and recognized doctrine of prosecutorial discretion. This is a staple of Kansas law, as recognized by the Kansas Supreme Court which has stated in State v. Pruett, 213 Kan. 41, 515 P.2d 1051 (19).:

> The rule has most recently been stated in State v. Kilpatrick,201 Kan. 6, 439 P.2d 99, where we declared: 'The county attorney is the representative of the state in criminal prosecutions, and as such he controls these prosecutions. He has the authority to dismiss charge or to reduce any charge . . .' In State v. Finch, 128 Kan. 665, 280 p. 910, we stated that the power effectively to control a prosecution involves the power to discontinue, if, and when, in the opinion of the prosecutor in charge this should be done.

This doctrine has traditionally recognized the importance of discretion vested in the prosecutor who, both on the federal and state level has always been deemed to be the final repository in determining whether charges should be filed or dismissed. The scope of this discretion extends to the power to investigate and to determine who shall be prosecuted and what crimes shall be charged. State v. Dedman, 230 Kan. 793, 798, 640 P.2d 1266 (1982).

Some of the policy reasons behind this doctrine were spelled out by the American Bar Association Standards for Criminal Justice, The Prosecution Function, which emphasizes the broad discretion of a prosecutor in the following language under the commentary to § 3.9:

> '. . . Necessarily crimes are defined in broad terms that encompass situations of greatly differing gravity. Differences in the circumstances under which the crime took place, the motives or pressures activating the offender, mitigating factors of the situation or the offender's age, prior record, general background, his role in the offense, and a host of other particular factors require that the prosecutor view the whole range of possible charges as a set of tools from which he must carefully select the proper instrument to bring the charges warranted by the evidence. In exercising discretion in this way, the prosecutor is not neglecting his public duty or discriminating among offenders. The public interest is best served and even-handed justice best dispensed not by a mechanical application of the 'letter of the law' but by a flexible and individualized application of its norms through the exercise of the trained discretion of the prosecutor as an administrator of justice.' (p. 94.)

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Kansas Society of Health-System Pharmacists
Kansas Employee Pharmacists Council
1020 SW Fairlawn Rd.
Topeka KS 66604
Phone 785-228-2327 ✦ Fax 785-228-9147 ✦ www.kansaspharmacy.org
Robert (Bob) R. Williams, MS, CAE, Executive Director

MEMO

TO: House Federal and State Affairs Committee

FROM: Robert R. Williams, MS, CAE, Executive Director

RE: HB 2711

DATE: Feb. 25, 2002

I would like to take this opportunity to clarify statements made by Ms. Paula Koch in her testimony regarding HB 2711.

In Ms. Koch's verbal testimony, she implied the survey KPhA sent to a random sample of our membership regarding conscientious objection only dealt with whether or not pharmacists should have the right to conscientious objection to morally, religiously, or ethically troubling therapies. The question on the survey KPhA sent to our membership (attached) regarding conscientious objection was in fact word for word the resolution which was ultimately adopted at our Annual Business Session last fall and included the statement "...which would support the establishment of systems that protect the patient's right to obtain legally prescribed and medically indicated treatments..." Ms. Koch was correct in her statement that 85% of those who responded supported the statement in the survey (survey results attached).

As KPhA indicated in our testimony, we support the health care providers right to conscientious objection. However, we do believe a system needs to be in place which would protect the patient's right to obtain legally prescribed treatments. Ms. Koch's situation in her previous job is a prime example in support of our position. In a very professional manner, Ms. Koch created a system which protected the patient's right to obtain legally prescribed treatments while, at the same time, accommodated her conscientious objection to provide those treatments. KPhA believes Ms. Koch made a valiant effort to create a win-win situation for all concerned. Unfortunately, her employer was not as professional. In it's current form, HB 2711 would protect Ms. Koch from termination or reprisals, but would not require a system be in place to protect the patient' s right to services.

Why is it necessary for one group to give up their right (patient's access to services), in order for another group to (health care providers) have the right to object to participate in that service.

House Fed. & State Affairs
Date 3/7/02
Attachment No. 11
Page 1 of 8

KANSAS PHARMACISTS ASSOCIATION

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www.kansaspharmacy.org
info@kansaspharmacy.org

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

Timely Issues in Kansas Pharmacy
KEPC Survey

July, 2001

Dear Colleague:

Congratulations! You have been randomly selected to participate in the Kansas Employee Pharmacist Council's 2001 survey. Some of the questions are directly related to issues to be voted on at this year's Kansas Pharmacists Annual Meeting, September 22 in Topeka. Others ask for input on how the Association can best meet your current and future needs through education/training and the Internet.

Responses will remain anonymous and will be used for statistical purposes only. The results of this survey will be published in a future issue of the *Journal of Kansas Pharmacy*.

A brief bit of background on the three Ethical, Regulatory and Statutory questions:

- B.1.) For a number of years, through various committees and task forces, KPhA has attempted to develop a policy regarding "conscientious objection." An increasing number of diseases will be treated by medication in the future, and advances in the treatment of diseases may involve procedures such as gene therapy and other procedures as yet undiscovered. Pharmacists may be called upon to provide services which may or may not be contrary to their moral religious or ethical beliefs. (NOTE: This does *NOT* apply to objection based on professional judgment, which is already protected by law, but on personal moral, religious or ethical beliefs *ONLY*.)

- B.2.) Currently, Kansas is one of only two states in the nation that makes it a crime for a physician to prescribe and a pharmacist to dispense a sterile syringe to illegal drug users. Under the Kansas Controlled Substances Act, a syringe is classified as "drug paraphernalia" and, if a health care provider prescribes or furnishes a sterile syringe with reasonable knowledge it will be used for illegal drugs, the health care provider is guilty of a felony. An article on the September, 2000 issue of the *Journal of the American Medical Association* stated that "We could start prescribing needles today and reach 97% of those at risk of acquiring HIV through needle injection."

- B.3.) In order to meet increasing demands on their time -- from increased volume of prescriptions to more consultation with patients and focus on disease management -- pharmacists are relying on pharmacy technicians to provide the act of "dispensing," with the pharmacist having the final check. It is advantageous for the pharmacy profession to have a qualified pool of pharmacy technician applicants, and it is in the best interest of the public for the State Board of Pharmacy to maintain a listing, otherwise known as a "registry," of pharmacy technicians.

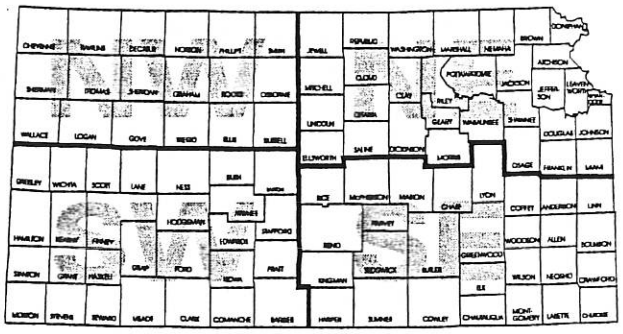
Please answer the following questions and return the questionnaire in the enclosed self-addressed envelope by July 20, 2001. Thank you!

Sincerely,

Suzanne R Schrater

Suzanne Schrater, President
Kansas Employee Pharmacists Council

A. Demographic and Primary Practice Setting Information



1. Please indicate the area of the state in which you practice:
   ___ a. Northwest ___ c. Northeast
   ___ b. Southwest ___ d. Southeast

2. Gender: ___ a. Male ___ b. Female

3. Age: ___ a. Under 35 ___ d. 55-64
   ___ b. 35-44 ___ e. 65 and over
   ___ c. 45-54

4. Total compensation range (base salary plus benefits):
   ___ a. Under $50,000 ___ c. $60,000-$69,999 ___ e. $80,000-$89,999
   ___ b. $50,000-$59,999 ___ d. $70,000-$79,999 ___ f. $90,000 and over

5. Primary Practice Setting *(check only one)*
   ___ a. Community retail - Independent ___ c. Hospital/Health-System
   ___ b. Community Retail - Chain ___ d. Consultant
   (4 or more stores) ___ e. Other (specify) _____

6. Position *(check only one)*
   ___ a. Pharmacy owner ___ c. Staff pharmacist
   ___ b. Pharmacy management ___ d. Other (specify) _____

7. Degree *(check all applicable)*
   ___ a. BS ___ d. PhD
   ___ b. PharmD ___ e. Other (specify) _____
   ___ c. Residency/Fellowship

8. On average, how many hours per week do you work?
   ___ a. Less than 36 hours
   ___ b. 36-45 hours
   ___ c. 46 hours or more

9. Is your primary practice site located in an area populated by:
   ___ a. Less than 10,000
   ___ b. 10,000-99,999
   ___ c. 100,000 or More

B. Ethical, Regulatory and Statutory Issues

1. Given the background described in the introduction to this survey, should KPhA adopt a policy which would recognize a pharmacist's right to conscientious objection to morally, religiously, or ethically troubling therapies, AND which would support the establishment of systems that protect the patient's right to obtain legally prescribed and medically indicated treatments while accommodating the pharmacist's right of conscientious objection?
   ___ a. Yes ___ b. No

2. Given the background described in the introduction to this survey, should KPhA adopt a policy which would support the decriminalization of providing sterile syringes to drug users when prescribed, dispensed or authorized by a qualified health care provider; AND which would additionally support that sterile syringes prescribed by a qualified health care provider or supplied pursuant to a valid prescription or supplied by a qualified health care provider shall not be considered "drug paraphernalia"?
___ a. Yes ___ b. No

3. Given the background described in the introduction to this survey, should KPhA adopt a policy which would support the State Board of Pharmacy in its efforts to seek credentialing in the form of "registration" for all pharmacy technicians practicing in the state of Kansas?
___ a. Yes ___ b. No

C. Technology & Communication

1. Have you visited the KPhA Website, www.kansaspharmacy.org?
___ a. Yes ___ b. No (if no, skip to Question #4)

2. If Yes, how often? ___ a. Weekly ___ c. Monthly
___ b. Couple of times a month ___ d. Other (specify) _____

3. If Yes, what sections have you visited/used?
___ a. Legislative Reports ___ e. Calendar of Events
___ b. Product Ordering ___ f. Update Newsletter
___ c. Meeting Registration ___ g. Message Board
___ d. Links to Other Sites ___ h. S.P.I.N.s*
___ i. Other (specify) _____

*KPhA has recently developed a Website section for Special Practice Interest Networks (SPINs). Each SPIN section contains names and contact information for individuals interested in networking in that particular topic; reports of pertinent task force and committee meetings; announcements of related meetings and events; and other important timely information. Currently there are sections for Compounding, Herbal/Supplements, Immunization, and Long Term Care.

4. Are you aware of these SPINs, described above? ___ a. Yes ___ b. No

5. What other topic(s) would you suggest for additional SPINs? _____

To eliminate duplication, lower expenses, and provide more timely information, the KPhA Board is considering discontinuing the monthly printed *Update Newsletter* and posting all information on the Website (currently the Classified Ads and Calendar of Events are already separate sections). The *Journal of Kansas Pharmacy* would continue to be published quarterly.

6. Would you agree with this transition, to be effective beginning in 2002?
___ a. Yes ___ b. No

D. Information, Education & Training

1. What *specific* areas of continuing education do you personally want KPhA to provide? *(List as many topics as applicable -- specific disease states, practice issues, etc.)*

   _____

   _____

2. KPhA is exploring a method of offering CE via the Internet through our Website. Assuming the fee is reasonable, would you take advantage of this service?
   a.___ Yes b. ___ No

3. Please rank the following CE formats based on which you are most likely to use, with #1 being most likely and #3 being least likely.
   ____ a. Live program (Annual Meeting, Spring Meeting, District Meetings, other)
   ____ b. Written correspondence (*Journal of Kansas Pharmacy*, other)
   ____ c. Internet-based home study

4. KPhA is exploring the possibility of distributing information from industry (i.e. new product info, special product alerts, etc.) as a member service via a "blast" fax and/or e-mail network. Would such a service be helpful to you?
   a. ___ Yes b. ___ No

5. If "Yes," which medium would you prefer?
   a. ___ E-mail b. ___ Fax

THANK YOU for taking the time to complete this survey!
Responses will remain anonymous and will be used for statistical purposes only.
The results of this survey will be published in a future issue of the *Journal of Kansas Pharmacy*.

KEPC

"Making your work place a better place."

KEPC Survey Results-Part I

"Hot Topics 2001"

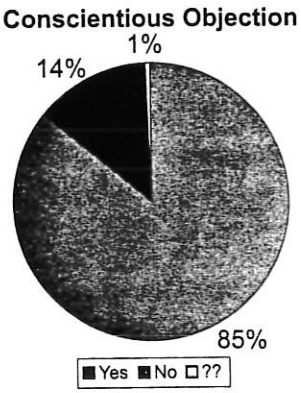
by Suzie Schrater, PharmD, MPH
President, KEPC

Introduction

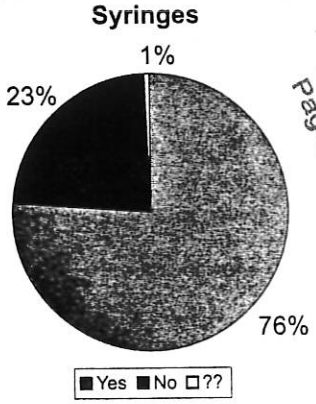
The Kansas Employee Pharmacy Council (KEPC) is a council of the Kansas Pharmacy Association (KPhA). The primary purpose of KEPC is to make the workplace a better place. Since our establishment in 1994, the Council has conducted a variety of surveys to address the concerns of our membership as well as the concerns of all practicing pharmacists in the state. In developing the 2001 survey, the Council was responding to concerns from pharmacists to address ethical, regulatory and statutory issues. In addition to the standard demographic and primary practice setting information, three key questions were developed. Other areas surveyed include the use of technology, communication and education. The survey results will be published as two separate articles; the first focuses on the three key questions. The demographic, salary and statistical analysis will be completed and reported in the spring to determine any correlation, interaction or assumption of the various information gathered.

Background

For a number of years, through various committees and task forces, KPhA has attempted to develop a policy regarding "conscientious objection." An increasing number of diseases will be treated by medication in the future, and advances in the treatment of diseases may involve procedures such as gene therapy and other procedures as yet undiscovered. Pharmacists may be called upon to provide services, which may or may not be contrary to their moral, religious or ethical beliefs. (NOTE: This does NOT apply to objection based on professional judgment, which is already protected by law, but on personal, moral, religious or ethical beliefs ONLY.) This was the focus of the first question.



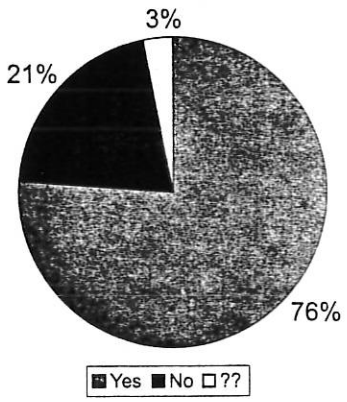
The next question was in reference to dispensing sterile syringes. Currently, Kansas is one of only two states in the nation that makes it a crime for a physician to prescribe and a pharmacist to dispense a sterile syringe to illegal drug users. Under the Kansas Controlled Substances Act, a syringe is classified as "drug paraphernalia" and if, a health care provider prescribes or furnishes a sterile syringe with reasonable knowledge it will be used for illegal drugs, the health care provider is guilty of a felony. An article on the September 2000 issue of the *Journal of the American Medical Association* stated that "We could start prescribing needles today and reach 97% of those at risk of acquiring HIC through needle injection.



(continued from page 26)

The last question dealt with technicians and their registration. In order to meet increasing demands on their time—from an increase in the volume of prescriptions to more consultation with patients and focus on disease management—pharmacists are relying on pharmacy technicians to provide the act of "dispensing," with the pharmacist providing the final check. It is advantageous for the pharmacy profession to have a qualified pool of pharmacy technician applicants, and it is in the best interest of the public for the State Board of pharmacy to maintain a listing, otherwise known as a "registry", of pharmacy technicians.

Technician Registry

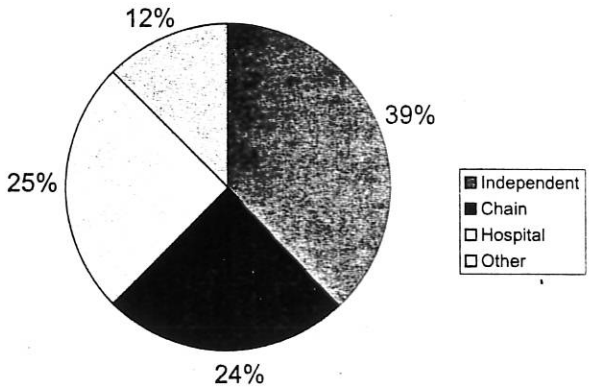


Methods and Demographics

Seven hundred and eighty-four surveys were mailed to pharmacists throughout the state. Members of KPhA as well as non-members were surveyed. One hundred and ninety-three pharmacists responded. This resulted in a 24.6% respondent rate. Secondary to no information being completed on one respondent's survey, it will not be counted in the final analysis (n = 192).

Geographically, a majority of respondents reside in the eastern half of the state (northeast-53.13%; northwest-0.06%; southeast-33.85%; southwest-0.06%). Approximately sixty percent of the respondents were males with one no response. The breakdown by practice setting included independent pharmacists 38%; chain pharmacists 24.5%; hospital 25% and "other" making up the remaining. Staff pharmacists made up 48.4% of the respondents; the remaining was divided almost equally among owners and management.

Practice Settings



Based on the information, mentioned in the background of this article, the pharmacists when then asked to respond to three key questions. The questions were as follows:

1) Given the background described in the above mentioned information, should KPhA adopt a policy which would recognize a pharmacist's right to conscientious objection to morally, religiously, or ethically troubling therapies, AND which would

(continued on page 33)

(KEPC Survey Results continued)

support the establishment of systems that protect the patient's right to obtain legally prescribed and medically indicated treatments while accommodating the pharmacist's right of conscientious objection?

2) Given the background described in the above mentioned information, should KPhA adopt a policy which would support the decriminalization of providing sterile syringes to drug users when prescribed, dispensed or authorized by a qualified health care provider; AND which would additionally support that sterile syringes prescribed by a qualified health care provider or supplied pursuant to a valid prescription or supplied by a qualified health care provider shall not be considered "drug paraphernalia?"

3) Given the background described in the above mentioned information, should KPhA adopt a policy which would support the State Board of pharmacy in its efforts to seek credentialing in the form of "registration" for all pharmacy technicians practicing in the state of Kansas?

Results

In response to the conscientious objection, 165 pharmacists (85.9 %) said yes they were in favor of adopting a policy, 26 said no with 1 no response. The respondents answered "yes" 146 times (76%) and "no" 45 times with 1 "no response" in favor of adopting a policy to change the criminal act of dispensing sterile syringes. Similar results were seen in favor of supporting the State Board of pharmacy to register technicians ("yes" -146; "no"—40 times, 6 – "no response")

Action

The information obtained from this survey was presented at the 2001 Annual Business Meeting held in conjunction with the KPhA Annual Meeting in Topeka, KS, September 20-23, 2001. As a result of the support of the respondents, the motions were made and approved for the association to move forward with legislative action to support the ethical, regulatory and statutory issues.

Please stay tuned for the second half of the KEPC "Hot Topics 2001"—Survey Results coming to a journal near you soon!!!!!!!!!!!!!

Why does my community need SANE/SART?

The goal of the SANE/SART Program is to provide victims of sexual assault with services that are supportive in order to aid in investigation and prosecution of sexual offenders. Victims will be more likely to report assaults, communities will have developed a coordinated effort to prosecute offenders, and services will be accessible and available.

A community commitment to the SANE/SART Program conveys the following messages:

- This community will not tolerate sexual violence.
- Victims of sexual assault should feel safe in reporting the crime and confident that they will be believed and supported.
- Victims of sexual assault will be treated with compassion and understanding.
- Investigations will be conducted and offenders will be prosecuted.

What can I do to help?

To learn if your community has taken steps or would like to start a SANE/SART Program, contact your local hospital, sexual assault program or district/county attorney's office

For more information

For more information on SANE/SART education, please contact:

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WASAC Wichita Area Sexual Assault Center

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The SANE/SART Program

Kansas Sexual Assault Network

What is SANE/SART?

The Sexual Assault Nurse Examiner/Sexual Assault Response Team is a community-based coordinated response to child and adult victims of sexual assault. The purpose of this program is to provide immediate and follow-up medical, advocacy, and criminal justice services to all victims of sexual assault. The SANE/SART Program places emphasis on:

- History of reported incident and pertinent health issues
- Investigation conducted by law enforcement
- Forensic evidence collection, identification, and preservation
- Genital anatomy recognition
- Crisis intervention
- Care of associated injuries
- Prophylaxis for sexually transmitted diseases
- Community referrals
- Follow-up counseling by a local sexual assault center
- Court testimony
- Development of protocol
- Public education aimed at recognition and reduction of sexual violence
- Community collaboration

Who is a SANE?

A Sexual Assault Nurse Examiner is a Registered Nurse who has specific education to complete the following:

- Victim history
- Head to toe assessment
- Detailed genital exam
- Forensic evidence collection
- Courtroom testimony

Who is part of SART?

The Sexual Assault Response Team is composed of SANEs, hospital directors and administrators, sexual assault victim advocates, law enforcement, prosecutors, judicial members, and any other professionals with a vested interest in assisting victims of sexual assault.

Law enforcement officers initiate and direct the forensic collection of evidence when a sex crime is reported. SANEs provide care to the victim and collect the forensic evidence. Officers take the initial report from the victim and conduct a formal investigation. Their report is sent to the District/County Attorney's Office to be reviewed to determine what charges, if any, will be filed against the alleged suspect.

Advocates provide support to the victim and their families throughout the medical exam, the investigation process, and court proceedings. Advocates also offer follow-up support, crisis counseling, support groups, information on sexual assault and trauma, and referrals for other services/resources.

Who will this program help?

This program assists medical personnel, victim advocates, law enforcement officers, and judicial members to do their job more efficiently. Each individual and/or agency working with the victim will be able to define their role with the victim more definitely and concentrate on that role. Victims will receive a continuum of care that enhances safety and promotes their well being. In addition, the family and friends involved with the victim will receive support services. Communities also benefit by higher prosecution rates.

How does SANE/SART help a victim?

Victims are provided with compassionate, non-judgmental services by individuals who have the knowledge, experience, and advanced education key to assisting victims. Collaborative efforts by each team member assist in reducing the risk of additional trauma to the victim. Exams are performed by a nurse examiner who is educated and experienced in the procedure, ideally in a private room away from the busy emergency room. Evidence is collected more efficiently and consistently to aid in future prosecution. A support structure for the victim is provided and follow-up is readily available.

FAILURE TO PROVIDE PRESCRIPTION COVERAGE FOR CONTRACEPTIVES VIOLATES PDA

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance that the failure to provide coverage for prescription contraceptives where a group health plan provides prescription coverage for the prevention of other conditions violates the Pregnancy Discrimination Act of 1978 (PDA). The EEOC has made this a high-profile matter by publishing its adverse determinations in December 2000 and pursuing claims against several employers including UPS and American Airlines. Recently, a U.S. District Court in the Ninth Circuit became the first court to endorse the EEOC's rationale by following the EEOC guidance and finding an employer's failure to provide coverage for prescription contraceptives a violation of the PDA. *See Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266 (2001). A U.S. District Court in Minnesota has denied UPS's motion to dismiss similar claims. The Ninth Circuit Court of Appeals also recently held that a religious organization's insured plan was subject to the state insurance law requiring coverage of contraceptives.

What Should Be Covered? According to EEOC guidance, a prescription plan should cover each of the available prescription contraceptive options. Further, the U.S. District Court in *Erickson*, following the EEOC guidance, ordered the employer to "cover each of the available options for prescription contraception to the same extent and on the same terms that it covers other drugs, devices and preventative care. . . ."

Does This Affect Your Plan? As many as 13 states require insured health plans to provide coverage for prescriptive contraceptives. However, self-funded health plans are not subject to state law. The EEOC guidance is binding solely upon the employers against whom it brought the action. However, employers in the Ninth Circuit (Arizona, California, Idaho, Montana, Nevada, Oregon and Washington) should review their plans to determine the extent of their plan's prescription coverage and whether they risk litigation on this issue. Employers elsewhere should determine whether they run a risk of litigation from their employees on this issue.

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