

Approved: May 10, 2002
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on March 25, 2002 in Room 231-N of the Capitol.

All members were present except: Senator Chris Steineger
Senator Nick Jordan (EA)
Ms. Emalene Correll, Kansas Legislative Research Department

Committee staff present: Mr. Norm Furse, Revisor of Statutes
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Ms. Carla Mahany, Kansas Public Affairs Director,
Planned Parenthood of KS & Mid-Missouri
Dr. Delores Furtado, Professor Emerita, retired
Mr. Bob Williams, Executive Director,
KS Pharmacists Association
Mr. Terry Leatherman, Vice President - Legislative Affairs,
KS Chamber of Commerce and Industry
Ms. Lisa Nathanson, Legal Director,
ACLU of KS & Western Missouri
Mr. Ron Pope, Attorney
Member of Kansas Trial Lawyers Association
Executive Committee

Others attending: See attached guest list.

Hearing on HB2711 - an act enacting the health care providers' rights of conscience act

Upon calling the meeting to order, Chairperson Wagle the Committee would be hearing opponent testimony on the above bill. Proponent testimony would be heard tomorrow. She then asked that Mr. Norm Furse, Revisor of Statute, explain the bill.

Mr. Furse began by stating that COW amendments are shown in the bill in brackets. He then gave an over view of the sections as follows:

- Sec.1 titles the bill;
- Sec.2 is a policy statement of legislative findings;
- Sec.3 is the definitions section (definition ex. Right of conscience act, discrimination, etc.) containing a floor amendment defining euthanasia. Health Care Services subject to this act is a key definition (ex. cloning, stem cell and fetal experimentation, etc.);
- Sec. 4, 5, and 6 are similar as they all relate to health care (4) provider (5) institution and (6) payers. He stated the wording shown in **bold** was added by the House committee.
- Sec.7 applies to health care providers recourse for unlawful employment;
- Sec. 8 covers liability if entered into a contractual agreements or accepted federal or state funds;
- Sec. 9 added by the HOW and touches on civil or criminal liability;
- Sec 10 applies to "do not resuscitate";
- Sec.11 provides that the act does not supersede;
- Sec.12 this particular act does not intend to prohibit or permit any of the health care services;
- Sec.13 is a severability clause; and
- Sec.14 is a statute clause.

Chairperson Wagle then asked him about the statutes relating to this bill he had mentioned to her before the Committee started. Mr. Furse stated the two statutes are: 1) 65-443, dated 1969, says that no person will be required to perform or participate in procedure which relates to termination of pregnancy in any hospital or similar facility and 2) 65-446, first enacted in 1971, has similar language that no person that is a health care provider required to perform or participate in a medical procedure that would result in serialization. The Chair recognized Senators Praeger and Barnett who asked of Mr. Furse questions regarding ectopic pregnancy, is it covered, contradictory statements regarding payment (page 6 line 8 and page 2 line 7), does the bill effect insurance companies, and is "abortion" defined in another statute.

The Chair then began the hearing by introducing the first opponent Ms. Carla Mahany, Kansas Public Affairs Director, Planned Parenthood of Kansas and Mid-Missouri who stated that in its eagerness to protect the ability of health care providers to refuse to provide any of the targeted services they find objectionable, it allows for the wholesale denial of care for patients. She also provided suggested amendments, some of the things the bill does do in its current form, what it allows, and a "Journal of the House" showing explanation of vote and protests opposing the bill. A copy of her testimony and attachment are ([Attachment 1](#)) attached hereto and incorporated into Minutes by reference.

The second opponent was Dr. Delores Furtado, Professor Emerita, retired, who stated she wanted to speak to the impact of this bill on faculty members, students and residents, which the bill includes (medical faculty and medical schools among the health care providers). With her testimony, she included written testimony from two medical students and a physician. A copy of her testimony and the three letters are ([Attachment 2](#)) attached hereto and incorporated into Minutes by reference.

The third opponent was Mr. Bob Williams, Executive Director, Kansas Pharmacists Association who stated that the bill does little to protect the patient's legal right to obtain services. He also attached a resolution that the KPhA believes allows equal protection for the health care provider and patient. A copy of his testimony and suggested amendment is ([Attachment 3](#)) attached hereto and incorporated into Minutes by reference.

The fourth opponent was Mr. Terry Leatherman, Vice President of Legislative Affairs for the Kansas Chamber of Commerce and Industry who stated that the sole reason behind KCCI's testimony is how this bill will affect the employment-at-will doctrine, that permits an employer or employee to conclude an employment arrangement for any reason, or no reason at all, has served this state well for years. A copy of his testimony is ([Attachment 4](#)) attached hereto and incorporated into Minutes by reference.

The fifth opponent was Ms. Lisa Nathanson, Legal Director, American Civil Liberties Union of Kansas and Western Missouri who stated that under this bill: health care providers, institutions, and payers can refuse to provide or pay for certain reproductive and other health care services for any reason; does not require that patients receive advance notice that the care or coverage will be denied; nor does it require that patients be given referrals for denied services. A copy of her testimony is ([Attachment 5](#)) attached hereto and incorporated into Minutes by reference.

The last opponent to testify was Mr. Ron Pope, Attorney, and a member of the KTLA Executive Committee who stated that this bill which would allow health care providers and facilities and insurance companies to refuse to perform or pay for certain health care services because the object to them on moral not medical grounds. He also provided a few examples that KTLA felt illustrated the negative impact of the bill. A copy of his testimony is ([Attachment 6](#)) attached hereto and incorporated into Minutes by reference.

The two written opponent testimonies presented were from the American Society for Reproductive Medicine and Ms. Sylvie Rueff, Kansas National Organization for Women. Copies of these testimonies are ([Attachment 7](#)) attached hereto and incorporated into Minutes by reference. The neutral written testimony was provided by Mr. William Minner Executive Director, KHRC. A copy of his testimony is ([Attachment 8](#)) hereto and incorporated into Minutes by reference.

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE, Room 231-N,
Statehouse, on March 25, 2002
Page 3

The Chair then asked for questions or comments from the Committee. Questions were asked by Senators Haley, Praeger, Wagle, and Barnett ranging from where did this concept come from, is there similar in Missouri, were the conferees aware of the other two statutes Mr. Furse referred to, what if staff division in a small hospital, statute does not permit but does not not permit, to what is the law on patients receiving advance notice.

As there were no further discussions, comments, or questions, The Chair adjourned the meeting

Adjournment

Adjournment time was at 2:24 p.m.

The next meeting is scheduled for March 26, 2002.

TESTIMONY IN OPPOSITION TO HB 2711

Senate Public Health and Welfare Committee, March 25, 2002
Carla Mahany, Kansas Public Affairs Director (913.915.9636)
Planned Parenthood of Kansas and Mid-Missouri

Legislation protecting the rights of health care providers to refuse to participate in certain health care services can be drafted in a way that protects the rights of patients. HB 2711 in its current form is not it.

Planned Parenthood of Kansas and Mid-Missouri opposes House Bill 2711 because in its eagerness to protect the ability of health care providers to refuse to provide any of the targeted services they find objectionable, it allows for the wholesale denial of care for patients.

Patients have a reasonable expectation that they will receive comprehensive and complete information about their health condition and the health care services related to their condition; the health care services prescribed or ordered by their health care provider; and if insured, payment for the prescribed or ordered health care services from their health care payer as covered under their policy.

Some health care providers may wish to refuse to participate in certain health care services for religious reasons (much better understood in law than 'moral' reasons).

However, when the rights of patients to receive prescribed health care services are in conflict with the providers' right to refuse them, who should prevail?

It's the job of the state to weigh in when these rights of different constituencies are in conflict. If you support HB 2711, you're giving preference to health care providers, institutions and payors to refuse services to patients. If you oppose HB 2711, you're saying you prefer to side with patients in those cases when both rights cannot be accommodated. Otherwise, we don't have a health care delivery system in this state – we have a health care denial system.

How can both of these rights be accommodated?

A patient referral requirement should be added, so patients may still receive services when their own provider denies it to them. HB 2711 also needs to add patient notice and posting requirements. And it must also include a meaningful health and life exception. These things would make the bill meaningful for both the provider who may exercise their right of conscience, and for the patient to receive services.

Please take note of the following suggested amendments for providers, institutions and payers respectively:

1. Any health care provider who refuses to participate in health care services pursuant to this act shall communicate the refusal in writing to his or her employer and shall communicate the refusal orally and in

*Senate Public Health & Welfare Committee
Date: March 25, 2002
Attachment #1*

writing to the person requesting the health care service that is refused or omitted. The notice of denial of services must be accompanied by a referral to a health care provider that the person claiming an exemption knows is capable of and willing to provide the health care services.

2. Nothing in this act shall be construed as authorizing a health care provider to refuse to participate in health care services if necessary to preserve the life or health of a patient.

3. Any health care institution that refuses to participate in health care services pursuant to this act shall communicate the refusal orally and in writing to a person requesting the health care service that is refused or omitted. The notice of denial of services must be accompanied by a referral to a health care provider that the institution claiming an exemption knows is capable of and willing to provide the health care services. If a pharmacy employs a person who has exercised an exemption claim, that pharmacy shall have at least one person on duty at all times that is willing to dispense the medication.

4. Any health care institution that refuses to participate in health care services pursuant to this act shall post a prominent sign notifying patients of the excluded health care services in an area of the institution that is open and visible to patients seeking those health care services. A health care institution that violates this requirement shall be liable to the State for a civil penalty of \$10,000. Such a violation shall create in the patient a private right of action for damages, including medical expenses incurred and emotional distress inflicted as a result of the non-disclosure. Nothing in this act shall be construed as authorizing a health care institution to refuse to participate in health care services if necessary to preserve the life or health of a patient. Nothing in this act shall be construed as authorizing a pharmacist to refuse to dispense medication if the patient cannot obtain the medication within the time necessary for utilization.

5. Any health care payer that declines to pay for health care services pursuant to this act shall notify current and prospective enrollees in the health care payer's health plan of the exclusions and shall communicate the exclusions in writing to any enrollee requesting payment for the health care service that is refused or omitted. Nothing in this act shall be construed as authorizing a health care institution to refuse to participate in health care services if necessary to preserve the life or health of a patient.

Here are some of the things HB 2711 does in its current form, and things it allows. It defines "health care providers" to include all employees of a hospital, adult care home, pharmacy, medical or nursing school, teachers, students, counselors, researchers and others to walk away from any health care service that they construe to relate, however vaguely, to one of the targeted

procedures in this act. Employers have to be given notice, but once they're received notice, there is nothing they can do to the employee to make them do the job they were hired for.

This bill would allow an LPN (licensed practical nurse) to refuse to help a patient who has had a tubal ligation for contraceptive purposes. It would allow all employees of a pharmacy to refuse to dispense birth control pills, and certainly condoms. How does a pharmacist, or the pharmacist's cashier, know why the pills are being dispensed? Are they going to ask each woman if she needs the pills for a therapeutic reason unrelated to contraception? If they refuse to fill this or other prescriptions, the patient will be left to her own devices.

If a patient in an already underserved rural area (like most of Kansas) is denied Emergency Contraception (EC) by her local pharmacy, what then? According to the sponsors of HB 2711, she can simply go elsewhere.

Perhaps she can. But only if she is computer literate, has ready access to a computer, and can pay for overnight shipping on top of the cost of the pills, and can find the website of a pharmaceutical supplier who stocks EC and can get the pills to her in time, she may be able to keep herself from getting pregnant as a result of date rape. But she only has 72 hours, and EC is more effective the sooner it is taken. And if she isn't computer literate, doesn't have access to a computer, doesn't know how to find the right web site or phone number, and can't afford the extra shipping charge, what then?

Of course, this bill is also specifically targeted at preventing her from getting the prescription for EC in the first place.

Her physician may want to give her the prescription, but he may work in a hospital that doesn't allow him to do so. In fact, under HB 2711, he can be prevented from even discussing EC as an option. The patient may not know EC exists, so she won't know where else to go.

Of course, the physician himself may personally object to contraception. In this case, even if he works for a hospital or clinic that supports EC, he can simply refuse to mention it or write a prescription for it. And there's nothing the hospital, clinic, or of course, the patient can do about it. Any action against an institution or individual who refuses to participate in a health care service is considered discrimination, just like race discrimination.

Thank you for your careful attention to this "landmine" legislation. We ask you to oppose HB 2711.

JOURNAL OF THE HOUSE
FORTY-SIXTH DAY, MARCH 20, 2002

EXPLANATIONS OF VOTE AND PROTESTS OPPOSING HB 2711

EXPLANATIONS OF VOTE (EXCERPTED):

DEENA HORST, CINDY HERMES

I cannot vote for a bill that in the name of religious or conscientious objection promotes the possibility of invasive questions posed by a pharmacist to any woman regarding the reason that their physician prescribed contraceptive pills. Frankly, it disrespects the privacy of all women. In addition, individuals in remote areas of Kansas face the possibility of refusal of medical treatment. Unfortunately, the rights of the patient to quality health care treatment are ignored for the rights of the health care provider and health insurance providers.

SHARON SCHWARTZ

I feel there is nothing wrong with acknowledging the right of individual health care providers to refuse to participate in health care services they find objectionable for religious reasons, as long as the patient receives the care in a timely and effective manner from another provider or in another way. Under the provisions of HB 2711, the possibility for patients to be denied access to services exists especially in rural Kansas where the options are limited.

JIM MORRISON

Insurance companies already deny payment for many "services," including birth control. This legislation MAY cause insurance companies to begin denying even more payments. Worse yet, the divide between pro-life and pro-choice will be widened with this legislation. That is not a Christian thing to do.

SUE STORM, ANNIE KUETHER

...[T]his bill protects the consciences of one group, but does not protect the exercise of conscience by others in the health professions. This is inequitable and unfair.

KENT GLASSCOCK

I voted against HB 2711 because I believe it will have a chilling effect on at will employment in Kansas...If forced to keep workers on my payroll who do not perform the necessary tasks, I would likely be unable to stay in business. Allowing exceptions to at will employment in the health care field is a slippery slope towards a full-scale change in employment laws for all small businesses in Kansas.

MELANY BARNES

As an advocate for consumers of health care, "The Patients," I cannot vote yes for HB 2711, due to the provision in the bill for the payor. I do not believe insurance companies have a conscience, they have a bottom line. Denial of claims and delay of authorization will result, women's health will be at risk, and it could be life threatening.

MARY COMPTON

Insurance companies look for ways to keep from paying certain services now. This bill will encourage more denials. The rural areas who have one pharmacy, and/or a small community hospital with limited staff could put patients at risk. I vote no on HB 2711.

PROTEST

WARD LOYD, DALE SWENSON

MR. SPEAKER: I offer these comments not as an explainer of my vote under House rules, but rather in protest to HB 2711 in accordance with Art. 2, § 10 of the Kansas Constitution.

Today in Kansas religious liberty is recognized and protected by § 7 of the Bill of Rights to our Constitution, and has been so protected since adopted by convention and ratified by electors in 1859. These rights we are powerless to limit or deny.

Our Bill of Rights proclaims to Kansans that never "shall any control of or interference with the rights of conscience be permitted." Yet, members of this body would alter and believe they must legislatively improve our founders' wisdom.

HB 2711 adds nothing to fundamental, constitutional rights, nor can it. What it does do is grant immunity from liability to those businesses and insurers which would attempt thereby to evade or avoid the legal and moral obligations of contracts voluntarily entered into and undertaken; contracts paid for by hard earned Kansas dollars. What it does do is subject an unsuspecting, law abiding and tolerant citizenry to the tyranny of a zealous minority. What it does do is create numerous new tort claims and causes of action not previously contemplated. What it does do is mandate, at page 5, on lines 15-16, that aggrieved parties shall recover, in addition to monetary damages, all costs and attorney fees. This stirs up a whirlwind only the trial lawyers will ride, and provides a windfall only they will reap, but only over my objection.

For these and the many other reasons saved for repeating another day, including equal protection and other infirmities, but always with great respect for concerns deeply held by the proponents of this measure and their right to express them, I vote no on HB 2711.

PROTEST

CLAY AURAND

MR. SPEAKER: I offer these comments to protest HB 2711 in accordance with Art. 2, § 10 of the Kansas Constitution.

I whole-heartedly agree with this bill in saying that no individual or organization can or should be required by the government or any sanctioning body to perform tasks in which they have a moral objection. This bill unfortunately goes beyond these obvious protections and starts down a path which we should all be wary to travel.

For years, my conservative friends and I have agreed that groups, such as the Boy Scouts of America, should have discretion in hiring and retaining people who express, proclaim or do things that run counter to their fundamental values. The Supreme Court recently agreed.

By the same token, a small town pharmacy should not be required to retain an employee who, for whatever reasons, refuses to perform duties essential to that business and their community.

Unfortunately, this House is using the same flawed method of expanding the true meaning of civil rights we have so vehemently opposed in recent years.

We can all agree that civil rights must include race, ethnicity and sex. It is and should be illegal to discriminate against someone based upon those inherent characteristics with which they are born.

Moving beyond race, ethnicity and sex and toward lifestyle choices, ideology or even matters of conscience, opens a Pandora's Box of an ever expanding list of so-called 'rights.' This path will only lead us into a morass from which we may never extract ourselves.

Mr. Speaker, I vote 'No' on HB 2711.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
March 25, 2002

Testimony in Opposition to HB 2711

Dolores Furtado, Ph.D.

Madam Chair and members of the Committee:

I am Dolores Furtado, Professor Emerita. I retired 6 months ago from the faculty of the University of Kansas School of Medicine after over 31 years of teaching medical students.

House Bill 2711 includes medical faculty and medical schools among the health care providers. I want to speak to the impact of this bill on faculty members, students and residents.

As professionals in the basic and clinical sciences, faculty members are responsible for the education of students, that is, imparting the truth - current knowledge based on data, the technologies involved, and the pros and cons for dealing with information. Academic Freedom protects the right to do so. HB 2711 would permit any faculty member to selectively omit information on the basis of his or her conscience, ethics, religious beliefs or morals. selectivity deprives students of a complete education. Students trust that the faculty will teach that which is known and true. For any faculty member to exclude knowledge on the basis of personal belief is wrong. To do so violates the academic freedom of the students to learn. If faculty members are legally able to be selective, the cohesive, collegial relationship among faculty will be eroded. selectivity in the imparting of knowledge takes away truth and objectivity. This will lead to discord, disagreement and disruptions. It will not take long to abandon academic responsibility, damage the curriculum and destroy the reputation of a college or university.

Students who enroll in undergraduate, graduate or professional schools - be it medicine, nursing or any other field - as well as the residents in training in Kansas city or Wichita - all must be assured that, in Kansas, they will be taught by experts whose knowledge is current and comprehensive. They must know that the experts will fully share that knowledge. Today you have been given a copy of the testimony presented by Daniel Jung, a second year medical student at University of Health Sciences. Please note his concerns: being competent, being able to pass the National Board exam in order to become licensed and about holes in his education that could deny him access to a competitive, high quality residency. I want to assure you, based on my 31 years of teaching bacteriology, medical students are anxious about their knowledge, understanding and competence. An unintended consequence of this bill: to heighten their anxiety.

At the same time, students can not be selective about the knowledge they want to learn, based on their conscience, ethics or morals. I have had personal experience with medical students who, because of religious beliefs, are uncomfortable with the education. We reviewed one case where a student refused to share knowledge..... this student refused to counsel, that is, to inform or

Senate Public Health & Welfare Committee
Date: March 25, 2002
Attachment #2



Kansas Pharmacists Association
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

TESTIMONY

Senate Public Health and Welfare Committee
Monday, March 25, 2002

HB 2711

My name is Bob Williams, Executive Director of the Kansas Pharmacists Association.

Thank you for this opportunity to address the Committee on HB 2711.

During the Kansas Pharmacists Association Annual Meeting last September a resolution was passed regarding conscientious objection. Attached to my testimony is a copy of that resolution. As the resolution indicates, KPhA recognizes and supports the right of health care providers to object to morally, religiously, or ethically troubling therapies. However, KPhA also recognizes the patient's rights to obtain legally prescribed and medically indicated treatments. For that reason, the attached resolution includes language which "supports the establishment of systems" that protect the patient's right to obtain those services.

While HB 2711 does a fine job of protecting the health care provider's right to object, it does little to protect the patient's legal right to obtain services. For that reason, KPhA cannot support HB 2711. The adoption of the attached resolution was the result of much debate. We published the resolution in our monthly newsletter and on our Web site. We also surveyed our membership (attached) regarding the resolution. During the debate regarding the resolution at our Annual Meeting, the balance between a health care provider's rights and a patient's right to obtain legally prescribed services was discussed. Our conclusion, which resulted in the adoption of the resolution, was that a patient's rights must outweigh those of the health care providers. All

*Senate Public Health & Welfare Committee
Date: March 25, 2002
Attachment #3*

Individuals who enter the health care field do so knowing there may come a time when they may be called upon to participate in procedures or services to which they object. It is therefore important for those health care providers to be protected from repercussions for their refusal to participate in services to which they object as long as there is no denial to of the patient's right to obtain legally prescribed services. KPhA believes the attached resolution allows equal protection for the health care provider and patient. We believe HB 2711 should be amended to include language that requires the establishment of systems that protects the patient's right to obtain legally prescribed and medically indicated treatments.

Due to a shortage of pharmacists, many pharmacies are understaffed in Kansas. In many cases there is only one pharmacist on staff at a time. Additionally, many retail pharmacists also serve as hospital pharmacists in rural Kansas. With no provision in HB 2711 to protect or even accommodate the patient's right to legally prescribed services, an undue hardship will be placed on patients in their attempt to obtain these services.

Tomorrow you will hear from Paula Koch, a pharmacist who experienced repercussions as a result of her objection to providing services. Ms. Koch's experience was instrumental in crafting our resolution and supports 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 providing those treatments/services. 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 its current form, HB 2711 would protect Ms. Koch from termination or reprisals, but would not require the implementation of a system to protect the patient's rights as Ms. Koch attempted to do. That is a significant deficiency in this legislation.

Another issue is found in Section 4 (d) of the bill. The first sentence of that subsection purports to preserve the legal requirements for a health care provider to inform a patient of the

patient's condition, prognosis and risks of a "health care service subject to this act." Yet, the next sentence states that the health care provider is under no duty to participate in the provision of a "health care service subject to this act." For a pharmacist, these two sentences present a conflict. There is no statutory duty, much less an opportunity, for a pharmacist to consult with a patient regarding risks of a prescription medication, except in connection with the dispensing of the prescription. The dispensing of the prescription medication, within the context of HB 2711 would be the "health care service subject to this act." Therefore, if the pharmacist has no duty under the second sentence of this subsection to participate in the "health care service subject to this act," (has no duty to dispense the medication) the first sentence is moot at best and does little to accommodate the patient.

In conclusion, we would be remiss if we only viewed HB 2711 in the context of what is available today. Passage of HB 2711 will not only affect products and services currently available, but all future products and services as well. It is therefore incumbent upon us to make sure HB 2711 is crafted in such a way as to not deny the availability of future products and services. KPhA believes it is not necessary for one group (patients) to give up their rights in order for another group (health care providers) to have the right to object to participating in a given service.

Thank you.

Kansas Pharmacists Association
Professional Policy #01-01

Conscientious Objection

Adopted: 9/22/01

By: Board of Trustees

KPhA recognizes a pharmacist's right to conscientious objection to morally, religiously, or ethically troubling therapies and supports 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.



KANSAS PHARMACISTS ASSOCIATION

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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 Schrater, President
Kansas Employee Pharmacists Council

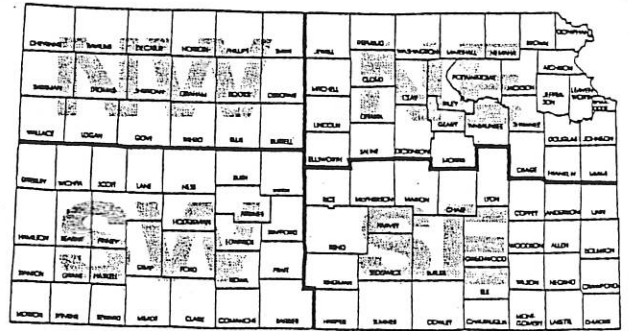
A. Demographic and Primary Practice Setting Information

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 (4 or more stores) d. Consultant
 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?
- | | |
|--|---|
| <input type="checkbox"/> a. Legislative Reports | <input type="checkbox"/> e. Calendar of Events |
| <input type="checkbox"/> b. Product Ordering | <input type="checkbox"/> f. Update Newsletter |
| <input type="checkbox"/> c. Meeting Registration | <input type="checkbox"/> g. Message Board |
| <input type="checkbox"/> d. Links to Other Sites | <input type="checkbox"/> h. S.P.I.N.s* |
| | <input type="checkbox"/> 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 1

"Hot Topics 2001"



by Suzie Schrater, PharmD, MPH
President, KEPC

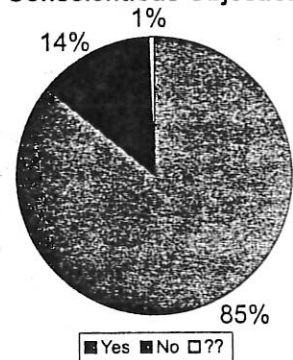
Introduction

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

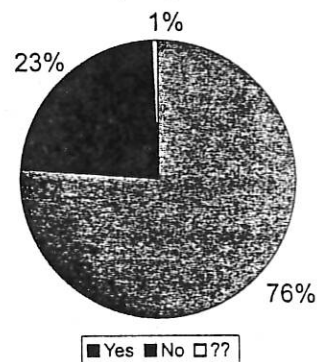
For a number of years, through various committees and task forces, KPhA has attempted to develop a policy regarding "conscientious objection." An increasing number of diseases will be treated by medication in the future, and advances in the treatment of diseases may involve procedures such as gene therapy 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.

Conscientious Objection



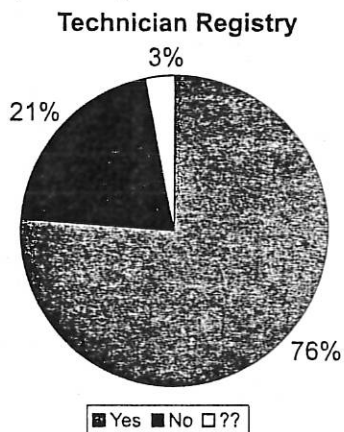
The next question was in reference to dispensing sterile syringes. Currently, Kansas is one of only two states in the nation that makes it a crime for a physician to prescribe and a pharmacist to dispense a sterile syringe to illegal drug users. Under the Kansas Controlled Substances Act, a syringe is 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.

Syringes



(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.



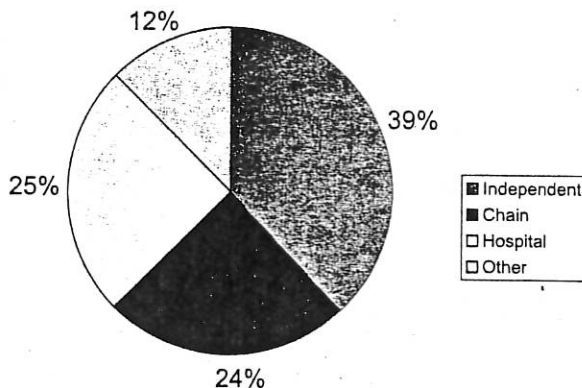
Methods and Demographics

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.

*Making your workplace a
KEPC better place!*


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)



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(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!!!!!!!!!!!!!!



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LEGISLATIVE TESTIMONY



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HB 2711

March 25, 2002

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Public Health and Welfare
by

Terry Leatherman
Vice President – Legislative Affairs
Kansas Chamber of Commerce and Industry

Madam Chairperson and members of the Committee:

My name is Terry Leatherman. I am the Vice President of Legislative Affairs for the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to comment on HB 2711.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The sole reason behind KCCI's testimony today is how this bill will affect the employment-at-will doctrine that has served this state well for years. In short, that doctrine permits an employer or employee to conclude an employment arrangement for any reason, or no reason at all. There are exceptions to employment-at-will in Kansas. The best known exceptions are employment actions for

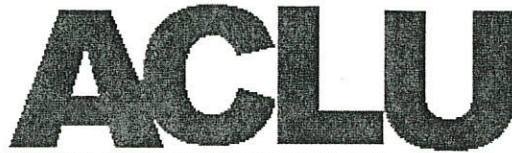
*Senate Public Health & Welfare Committee
Date: March 26, 2002
Attachment #4*

discriminatory reasons, such as a dismissal based on someone's race or gender. Section seven of HB 2711 would add a new exception, the right of conscience of a health care provider when faced with certain employment requirements.

It is important to recognize the limited construction of the employment-at-will exception in HB 2711. The authors limited the scope of the bill in several ways. The protection is only for health care workers. Further, those workers would have a grievance only when employment action is taken for their refusal to perform a specific list of functions. The bill also provides a procedure where disclosure of the worker's objections are given in advance, avoiding a situation where the right of conscience is expressed when service is about to be rendered.

The bill's careful construction raises a question. If this limited exception to employment-at-will is adopted, where will one draw the line on the next exception to the doctrine? In light of this, especially in cases involving the performance of job duties, KCCI stands next to the doctrine itself. In situations where the questions raised by this bill surface, KCCI respectfully suggests the appropriate resolution should be between employer and employee, rather than the subject of litigation.

Madam Chairperson, thank you for the opportunity to comment on HB 2711 and the important doctrine of employment-at-will in Kansas. I would be happy to respond to any questions.



AMERICAN CIVIL LIBERTIES UNION OF KANSAS AND WESTERN MISSOURI
3601 Main Street, Kansas City, MO 64111 (816) 756-3113 Ext. 305

BEFORE THE SENATE PUBLIC HEALTH and WELFARE COMMITTEE
March 25, 2002

*Testimony of Lisa Nathanson, Legal Director, in Opposition to **HB 2711***

The "Health Care Providers' Right of Conscience Act" (HB2711) unconscionably jeopardizes patients' access to medical services. The bill demonstrates complete disregard for the rights and health of patients throughout the state.

Under this bill, health care providers, institutions, and payers—including physicians, nurses' aides, adult care home employees, pharmacists, hospitals, clinics, insurance companies, and others—can refuse to provide or pay for certain reproductive and other health care services for any reason whatsoever. Moreover, the bill does not require that patients receive advance notice that the care or coverage will be denied, nor does it require that patients be given referrals for denied services.

This bill will leave many patients, especially poor patients, and most especially, poor patients in rural areas where alternatives are limited or nonexistent, uninformed and stranded. Health care providers and institutions cannot only refuse to treat but also withhold complete and accurate information about medically accepted treatment options.

If this legislation becomes law, a woman seeking birth control could discover that her doctor will not write her a prescription for the pill or her insurance plan will not cover the costs. Likewise a man seeking a vasectomy could have trouble finding a doctor willing to perform the operation or may discover that his insurance plan will not pay for it.

Even in an emergency situation, a patient could find her health threatened. A hospital could refuse to offer a rape survivor, or even tell her about, emergency contraception so that she will not become pregnant as a result of the assault.

These are just a few examples of how this bill could harm the health of the citizens of this state.

Senate Public Health & Welfare Committee
Date: March 25, 2002
Attachments #5

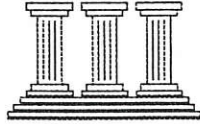
It is often possible and appropriate to accommodate an *individual* health professional's refusal to provide a service—if the patient is ensured safe, timely, and feasible alternative access to treatment. This bill does not include even the minimal safeguards needed to protect the public health.

This bill allows health care providers to make assumptions about patients without examining them, and the resulting harm to patients could be deadly. A woman with a malignant tumor might mistakenly believe she is pregnant and seek an abortion. If a health care provider refuses to provide the treatment that patient seeks without examining the patient, the patient will not learn the truth or be able to seek treatment for her real condition.

Another example of the dangers of this bill to the very lives of the citizens of this state is the inclusion of “embryonic stem cell... experimentation,” a process that holds great promise for curing patients dying of cancer, diabetes, and AIDS. Do you really want the precious lives of your loved ones to depend on a health care provider's personal opinion about the medical procedure the patient needs to survive?

Individual providers' rights of conscience and patients' rights to prescribed health care are not always mutually exclusive both important, and often these rights can co-exist. But when these rights do conflict, the medical interests of the patient must prevail.

As a practical matter, you should reject HB 2711 as an invitation to expensive civil liability for the denial of the right to health care, injury or death suffered by patients that result from the denial of treatment under this bill, because the bill's attempts to provide immunity from such liability will surely not survive judicial scrutiny. Reject HB 2711 as a dangerous measure that elevates personal opinions above the Constitution and above the very lives and well-being of people in need of health care.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Public Health Committee

FROM: Ron Pope
Kansas Trial Lawyers Association

RE: HB 2711

DATE: March 25, 2002

*Cy to be
Ectopic pregnancy*

Chairman Wagle and members of the Senate Public Health Committee; thank you for the opportunity to address you today in opposition to HB 2711. I am Ron Pope, a practicing attorney from Topeka and a member of the KTLA Executive Committee.

The Kansas Trial Lawyers Association strongly opposes HB 2711, which would allow health care providers, health care facilities **and insurance companies** to refuse to perform or pay for certain health care services because they object to them on moral – *not medical* – grounds. While we recognize that there may be situations in which a health care professional cannot, because of personal convictions, participate in performing a procedure, we believe these matters are best dealt with between the individual employee and his or her employer. Instead, HB 2711 violates the fundamental liberty and constitutional rights of *all* Kansans to make decisions about their own medical treatment.

HB 2711 Denies Patients Medical Care. The consequences of this bill are as various and numerous as the individuals who seek medical care, but here are a few examples that illustrate the negative impact of HB 2711:

- A health care provider or facility could refuse to provide a patient with any form of contraception, including but not limited to birth control pills or any form of sterilization, including a tubal ligation or a vasectomy.
- A rape victim who becomes pregnant by her attacker could be refused counseling and treatment.
- A couple could be denied medical assistance with their infertility problems.
- A hospital could force a terminally ill patient with a living will to remain in a permanent vegetative state, contrary to the patient's express wishes, and force the patient's family to pay for such "treatment."

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw@ink.org

*Senate Public Health & Welfare Committee
Date: March 25, 2002
Attachment #6*

Equally objectionable is the fact that even if the health care provider and medical facility agree to provide such services, the patient's insurance company can refuse to pay for them on "moral" grounds. At a time when many Americans have no health insurance coverage at all or whose coverage is limited at best, this bill gives profit-minded insurance companies and medical facilities more reasons to deny medical treatment. Worse yet, Under HB 2711, there is no requirement that patients be informed about the health care services they may be denied. How is the consumer to know what services are provided, who will provide them and whether or not they will be covered?

Greatest Impact on Rural and Medically Underserved Individuals & Areas. All Kansans who seek the services covered by this bill are at risk. However, HB 2711 disproportionately affects rural and lower-income Kansans. If you live in an area served by one health care facility, where do you go when you are denied treatment? A 1998 report by the Alan Guttmacher Institute on this issue examined the impact of this kind of legislation on the new health care landscape:

"The marketplace is now dominated by huge medical corporations rather than the traditional private practices that once provided the bulk of medical care. This has blurred the once-sharp line between the providers and the payers of care, leading to an array of questions about which entities should appropriately be entitled to claim a conscientious objection to providing 'sensitive' medical services. To the extent that the competition among health care providers has led to a wave of consolidations and mergers between religious and secular institutions, issues concerning the dominance of one organization's religious dictates over those of previously secular organization have also come to the fore...

"Most managed care plans restrict enrollees to a prescribed pool of health care providers, or at the very least make it much more financially advantageous to do so. **Limiting the easily available pool of providers clearly heightens the impact of laws allowing individual providers and facilities to decline to provide particular services.**" (Emphasis added)

Similarly, lower-income families may not have the financial resources to seek an alternative health care provider in another town or state.

HB 2711 Conflicts with Federal Law. In at least two instances, HB 2711 is contrary to federal law. The federal Medicaid statute, for example, requires that Medicaid recipients be given access to family planning services, which could be denied by this bill. [42 U.S.C. 1396d(a)(4)(c)]. It also conflicts with a recent decision by the U.S. Equal Employment Opportunity Commission (The EEOC found that an employer's failure to include insurance coverage for prescription contraceptives in an employee health benefits plan, when it covers other prescription drugs and devices, constitutes unlawful sex discrimination under Title VII of the Civil Rights Act of 1964.

We appreciate the opportunity to express our opposition to HB 2711. This bill is the wrong response to the moral questions raised by individual health care providers and their employers. **We urge the committee protect *all* Kansans by rejecting HB 2711.**



AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE
Formerly The American Fertility Society

March 22, 2002

The Honorable Susan Wagle
Chair, Public Health and Welfare Committee
Kansas Senate
State Capitol
Topeka KS 66612

Dear Senator Wagle:

On behalf of the American Society for Reproductive Medicine (ASRM) the leading professional association for physicians, scientists and other professionals involved in reproductive medicine – including infertility care, we are writing to express our very serious concerns with HB 2711.

We agree with section 2 of the bill that “people and organizations hold different beliefs about whether certain health care services are morally acceptable.” In most cases, we support the right of individual health care providers not to provide services they find objectionable. Physicians do however have an ethical obligation to assist their patients in finding a physician who can provide the service.

The non-discrimination provisions found in section 4c of the bill are particularly troublesome. We are well aware there are some religious groups who oppose any use of medical therapies such as insemination, contraception or in vitro fertilization; just as there are religious groups who oppose therapies such as blood transfusion. Individuals should not be forced to use such services, or perform them.

However, those persons or entities should not be allowed to deny others access to those same medical therapies. A medical facility that provides such services should be able to make participation in those services a condition of employment. There should be no legal right to seek employment at a facility whose actions one has a moral objection to in order to stop that facility from engaging in those actions. Rather than simply protecting the rights of

individuals not to participate in activities they may find objectionable, HB 2711 would allow individuals or entities to deny access to care to others.

HB 2711, rather than protecting the rights of individuals to live up his or her own moral code, allows any individual to impose his or own moral code on all of us. This outcome is simply not in keeping with the pluralistic tradition of the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Tipton", written over a horizontal line.

Sean Tipton
Director of Public Affairs

Testimony for the Senate Public Health and Welfare Committee

In Opposition to the Passage of HB 2711

Hearing Scheduled for March 25, 2002

Offered on behalf of the Kansas National Organization for Women - by Sylvie Rueff

Chair Senator Wagle, and Respected members of the Committee,

Women who get abortions are your mothers, your daughters, your sisters, grandmothers, aunts, wives, lovers and yourselves.

- 43% of all women will have had at least one abortion by the time they are 45 years old.
- Doctors have performed abortions for women from 8 to 53 years old.
- 33% of abortion procedures are for women with annual household incomes of less than \$11,000.
- 6 out of 10 abortions are for women who were using birth control that failed.
- 33% of the women who have abortions describe themselves as Catholic or following a Fundamentalist religion.
- In the U.S. about 16,000 women have abortions each year because they became pregnant as the result of rape or incest.

Abortion is not used as a primary form of birth control. If it were, a typical woman would have 2 or 3 pregnancies per year.

Abortions happen when women are failed by their families, the men they trust, their government, their communities and the health care sciences. When we have a perfect world:

- when children are seen as our entire futures and valued as they should be,
- when mothering is respected as the highest of professions,
- and all fathers strive to be equal to mothers in their selflessness toward their children,
- when all children are born out of love,
- when communities cherish children of all kinds,
- when all people are respected and treated equally,
- when people have all the health information and care they need,
- when medicine is 100% effective without side effects,
- and when everyone is born with equal chances for happy fulfilled lives,

then we won't need abortions. But, until that day, a woman of any age needs to be able to make the important personal and private decisions about bearing her children with only those people with whom she chooses to share this part of her life.

Thank you.

For questions and comments, I may be reached at:

818 Avalon Rd.

Lawrence, KS 66044

832-2992 phone & fax (call first)

Sylvie@mailandnews.com

TESTIMONY OF KANSAS HUMAN RIGHTS
COMMISSION REGARDING H.B. 2711, MARCH
25/26, 2002

ATTENDING HEARING: WILLIAM V. MINNER, EXECUTIVE DIRECTOR,
ROBERT M. HOLLAR, ASSISTANT DIRECTOR AND BRANDON L. MYERS,
CHIEF LEGAL COUNSEL

It is KHRC's understanding that H.B. 2711 proposes to establish bases upon which to file complaints with KHRC under the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq., hereinafter "KAAD"). The bill prohibits certain actions against health care providers who decline to participate in specified procedures.

Usually when a bill proposes to add to an agency's responsibilities and authority, the agency receives a request for input on a fiscal note about the impact on the agency if the bill passes. KHRC has not received such a request as to this bill, but presumes there would be some fiscal impact on the agency that needs to be addressed. At this point we have no firm understanding as to predictions of what number of complaints might be filed with KHRC, so it is very difficult to provide accurate fiscal assessments to the Committee.

It goes without saying that the Commission and its staff would make every effort to efficiently and effectively administer any new duties and authority assigned it through the legislative process. However, the Commission has had some reticence to add to its responsibilities and authority for several years. As the Legislature is aware, in recent years the Commission faced a massive problem of having a large backlog of discrimination complaints on file awaiting investigative processing. This resulted in inordinate delays and a general displeasure with the Commission. The Commission, with the assistance and forbearance of the Legislature, the Governor and the general public, was able to instigate a strategic plan which improved the efficiency and effectiveness of its administration of the Kansas antidiscrimination laws. The Commission is now functioning successfully and satisfactorily.

Over the last decade, several legislative proposals have arisen or been considered that would have increased the authority of the KHRC and increased its jurisdiction. These include proposals to add military status discrimination, discrimination based upon occupation, union membership discrimination, assign the long-term care ombudsman to the Commission, add multicultural commission responsibilities, etc. These proposals were not adopted to be put under the purview of the Commission. For instance, military status discrimination was statutorily prohibited, but enforcement was by means of a private lawsuit right, placed in the statute. Part of the reason such proposals were not assigned as responsibilities of the Commission was because they would have added to the work of this small agency and might have added more cases to a backlog we were diligently trying to reduce. It was thought that the agency simply had enough to do without adding to its work. There were concerns that we would return to the days of a large backlog and untimely processing of complaints. The Committee may wish to consider

*Senate Public Health & Welfare Committee
Date: March 25, 2002
Attachment #18*

adopting a private lawsuit procedure for this bill rather than set up an administrative agency procedure requiring investigation, conciliation, etc.

In 1999 prohibitions against genetic testing/screening were added into the Kansas Act Against discrimination, but it was anticipated (correctly, as it has turned out) that such additions would portend no significant increase in our caseload or require increased resources to administer.

Any such proposal carries a fiscal cost and requires the Commission to ask for more employees, resources to train the staff on new areas of responsibility, and for funding to expand our information programs. We presume increases in KHRC resources would be necessary to administer the provisions of this bill in order to avoid the agency returning to the days of backlogged cases and processing delays. We would request appropriate budget enhancements to deal with those costs should this bill be adopted.

The Kansas Act Against Discrimination and Kansas Age Discrimination in Employment Act, which are administered by KHRC, traditionally have reflected legislative intent to prohibit discrimination based upon so-called "immutable characteristics", such as race, sex, national origin, age, etc. The prohibitions contained within the proposed legislation concerning discrimination based upon rights of conscience might be seen as inconsistent with such an intent regarding the types of things the act should deal with, but that is clearly a policy decision for the Legislature. An exception to the "immutable characteristics" approach with KAAD arguably is discrimination on the basis of religion. However, if persons refusing certain tasks in their employment can be asserted as requirements for reasonable accommodation due to their religion, protections already exist within the KAAD. KHRC generally follows the line of cases, emanating from Federal antidiscrimination law in this regard (see: *TWA, Inc. v. Hardison*, 432 U.S. 563 (1977) and *Ansonia School Board of Education v. Philbrook*, 492 U.S. 60 (1986). The bill seems to go further and protect actions based upon conscience, which might not be also based upon religious beliefs.

There appears to be a number of issues as to how this legislation would operate in practice that we would look to legislative intent to clarify.