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 26, 2002 in Room 231-N of the Capitol.

All members were present except: Senator David Haley
Mr. Norm Furse, Revisor of Statutes
Ms. Emalene Correll, Kansas Legislative Research Department

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

Conferees appearing before the committee: Representative Tony Powell
Ms. Dorinda Bordlee, Staff Counsel with Americans United for Life
Mr. Mike Farmer, Executive Director, Kansas Catholic Conference
Dr. Patrick Herrick, Family Physician, Overland Park
Ms. Orva Hargett, Registered Nurse, Newton
Ms. Paula Koch, Registered Pharmacist, Lawrence
Mr. Matthew Hesse, Associate General Counsel for Via Christi Health System

Others attending: See attached guest list.

Final Action on HB2665 - an act concerning emergency medical services; relating to certification

Upon calling the meeting , Chairperson Susan Wagle asked the Committee to address **HB2665**'s proposed amendments before them. She stated this was the EMS bill that added the "epinephrine pin" to it and was passed as amended out of Committee on March 19, 2002. She stated that Ms. Emalene Correll, Legislative Research, had found that the bill needed one technical change, found on page 2 of the balloon, adding the word "initial" throughout the bill, to emergency medical technician. She then said she would entertain a motion to adopt this amendment with the word "initial" throughout the bill and pass it out favorably again. Senator Harrington made the motion to amend the bill and pass it out favorably and was seconded by Senator Jordan. The motion carried.

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

The Chair then asked the Committee to address a letter from the University of Kansas Medical Center which states that the KU Med Center is remaining neutral on the bill however, they do have some language that they would like to have amended into the bill which is italics on the letter. She stated that they have a concern that if a medical student opt out of a particular procedure and then as a consequence of that they fail that part of the test, they want to exempt the state or the school from lawsuits and they feel this language does this. A copy of their letter is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chair then announced the first of seven proponents to testify, Representative Tony Powell who stated that the bill will guarantee to very health care provider, institution, and payer, the right to not participate in, or pay for, the limited list of medical procedures and services which they and many Kansas find morally or religiously objectionable. He went on to state that this bill:

1) does not patients access and the right of health care providers to perform, the medical procedures and services set forth in this bill;

2) does not prohibit hospitals or medical schools from training or teaching health care professionals about the medical procedures outlined in this bill;

3) contains an emergency exception for those extremely rare situations, such as ectopic pregnancies, when performing one of the medical procedures outlined in the bill, is necessary to protect a patient's life and requires that health care professional comply with any ethical duties they may have to patients so long as they are not required to participate in the provision of a health care service subject to this act;

4) with regard to health care payers, they must pay for all services they voluntarily contract for, regardless of the rest of the bill's provisions; and

5) health care providers must give advance notice to their employer in writing of their objection to performing any of the medical procedures or services set forth in this bill.

A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

Questions for Representative Powell were taken at this time from Senators Praeger, Brungardt, and Barnett ranging from waiting on an ectopic pregnancy, is there an issue if the emergency staff if there, "emergency clause", pre-application, contractual relations, access to information from patient, right to hire, to his thoughts regarding a nurse who "did before" "now she doesn't".

Next to come before the Committee was Ms. Dorinda Bordlee, Staff Counsel with Americans United for Life, who addressed the background of this legislation and "discuss the Supreme Court case law which makes clear that the court-created right to choose abortion does not trump a health care worker's right to choose a profession, and to practice within that profession in a manner best serves both the patient and the professional's highest ethical standards." She also provided a copy of the "Current State Statutes, Overview of Current Rights of Conscience Laws" dated February, 2002. A copy of her testimony and her attachment is (Attachment 3) attached hereto and incorporated into the Minutes by reference.

The next proponent to testify was Mr. Mike Farmer, Executive Director of the Kansas Catholic Conference who introduced Mr. Mike Moses, Associate General Counsel with the United States Conference of Catholic Bishops, who was here to assist Mr. Farmer and the Kansas Bishops. He stated that the bill guarantees that no health care professional, institution or payer will be forced, contrary to its conscience, to provide a health care service subject to this act. A copy of his testimony is (Attachment 4) attached hereto and incorporated into the Minutes by reference.

The fourth proponent recognized was Dr. Patrick Herrick, Family Physician from Overland Park who offered motivation factors for those who object to artificial fertility regulation and provided true stories of health care professionals he knows who have encountered significant organized opposition in following their conscience with these issues. A copy of his testimony is (Attachment 5) attached hereto and incorporated into the Minutes by reference.

The fifth proponent recognized was Ms. Orva Hargett, a registered nurse at Newton, who gave a history of before becoming a Catholic and after and worked in an OB-Gyn office. She stated that this bill would prohibit "...all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons...by reason of their refusal to participate in the provision of..." the health care services described in the act. A copy of her testimony is (Attachment 6) attached hereto and incorporated into the Minutes by reference.

Next was Ms. Paula Koch, registered pharmacist at Lawrence, who related her past 2-years on the job where she faced employee opposition and threatening to fire her because she did not want to dispense the morning after bill. A copy of her testimony is (Attachment 7) attached hereto and incorporated into the Minutes by reference.

The last proponent to testify was Mr. Matthew Hesse, Associate General Counsel for the Via Christi Health System in Wichita, Kansas who stated before he began, he was instructed by Mr. LeRoy Rheault, the Chief Executive Office of Via Christi to submit his written testimony in support of the bill. Mr. Hesse stated that it is not Via Christi's intention to deny others their right to seek healthcare services listed in the Act, but seeks to reaffirm that it, its affiliates and employees, and all healthcare providers of different faiths and beliefs, have the right to refuse to provide and/or pay for them as a matter of conscience and as a matter of private contract between the health plan, employer and employee. A copy of his testimony and Mr. Rheault's are (Attachment 8) attached hereto and incorporated into the Minutes by reference.

The Chair then let the Committee know they had before them written testimony from:

1) Secretariat for Pro Life Activities, United States Conference of Catholic Bishops;

2) Dr. Gary Yarbrough, Family Physician at Parsons, Kansas;

3) Mr. Jerry Slaughter, Executive Director, Kansas Medical Society; and

4) Mr. Tom Bell, Senior Vice President/Legal Counsel, Kansas Hospital Association.

A copy of these testimonies are (Attachment 9) attached hereto and incorporated into the Minutes by reference.

The Chair let the Committee know that from what she understands that Mr. Daniel Young, from the Kansas Choice Alliance, wanted to change his testimony from yesterday and has presented new testimony today. She then asked if the Committee had any questions to ask of the conferees.

As there were none, the Chair closed the hearing.

Adjournment

Adjournment time was at 2:30 p.m.

The next meeting is scheduled for March 27, 2002.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

48 in att.

GUEST LIST

DATE: Tuesday, March 26, 2002

NAME	REPRESENTING
Mike Farmer	KCC
Ron Hargett	self
Arva Hargett	self
Paula Koch	self
Rorinda Bardlee	AUL
Leonore Rowe	HNVK
Bill Grosz	SCSMHS
Rich Guthrie	Health Midwest
LARRY MAGILL	KAIA
Amanda Hubbard	intern
Bruce Dimmitt	Kansans for Life
Kevin Davis	Am Family Ins
Jeffarey Cornejo	Intern Sen. Brungardt
Carla Mahanay	PPKM
Ann Hebberger	Mainstream Coalition
Janis McMillen	League of Women Voters
Dolores Footlede	self
Pat Herrenbruck	self
BEATRICE SWOOPES	KCC

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: _____

NAME	REPRESENTING
Sheila Schuetz	self
Kathleen C. Keating	self
Tom Bell	KHA
Jan Edwards	self
Stephanie Sharp	American Cancer Society
Mike Pedyo	Governor's office
Nicole Schlobohm	KPhA
Taylor Hill	KPhA
Bob Williams	Ks. Pharmacists Assoc
Joanne Ann Power	KAHF
Rebecca Emery	Federico Consulting
Ruth Walker	self
Martha Evans	MPH Respect Life Comm.
Julia Sheerin	Intern
Dan Holtkamp	Wesley Med Center
Edward Rowe	League Women Voters/Ks
Sr Therese Barnett	
Mary Ellen Conlee	Sisters of Charity

The University of Kansas Medical Center

Office of General Counsel

March 26, 2002

The Honorable Susan Wagle, Chair
Senate Committee on Public Health and Welfare
State Capitol, #128-S
Topeka, KS 66612

RE: HB 2711 -- Health Care Providers' Rights of Conscience Act

Dear Senator Wagle:

This legislation was recently brought to my attention and I have subsequently reviewed it on behalf of the University of Kansas Medical Center. Although the University is not a proponent or an opponent of this legislation, we do have a concern with an aspect of the legislation that I believe can be resolved by an appropriate amendment.

The definition of "health care provider" in the proposed act includes "students." This has an implication for our educational curriculum. We believe that a situation could arise in which a student who has exercised the protections of the act and elected not to participate in or observe certain instruction could subsequently fail local or national evaluations or examinations requiring knowledge from this area of the curriculum. In such a situation, a student might argue that this act gives him or her a cause of action against the University for retaliation based on the exercise of rights under the act.

We do not believe the drafters of this act intended such a situation. I would respectfully submit that the bill be amended by adding the following sentence at the end of Section 3, paragraph (a):

> *"'Discriminate' shall not include routine grading, testing, and evaluation of students and applicants for medical licenses and certification under criteria applied uniformly to all such students and applicants."*

On behalf of the University, I appreciate your committee's consideration of this matter.

Sincerely,

James P. Pottorff, Jr.
General Counsel

3901 Rainbow Blvd. • Kansas City, KS 66160-7100 • (913) 588-1400 • FAX (913) 588-1412

Senate Public Health Welfare Committee
Date: March 26, 2002
Attachment #1

TONY POWELL
REPRESENTATIVE, 85TH DISTRICT
SEDGWICK COUNTY
73713 WINTERBERRY
WICHITA, KANSAS 67226
(316) 634-0114

STATE CAPITOL, ROOM 448-N
TOPEKA, KANSAS 66612-1504
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STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TOPEKA

COMMITTEE ASSIGNMENTS
CHAIRMAN: ETHICS AND ELECTIONS
MEMBER: FEDERAL AND STATE AFFAIRS
RULES AND JOURNAL
TAXATION
ALEC STATE CHAIR

TESTIMONY BEFORE THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE IN SUPPORT OF HB2711 BY REPRESENTATIVE TONY POWELL
March 26, 2002

Madam Chairman,

I am pleased to be here today in support of HB 2711, the Health Care Providers' Rights of Conscience Act. This landmark piece of legislation, cosponsored by over 50 members of the House, will guarantee to every health care provider, institution, and payer, the right to not participate in, or pay for, the limited list of medical procedures and services which they and many Kansans find morally or religiously objectionable. Though you may not know it after hearing from the opponents yesterday, it is not an abortion bill. This bill is about civil rights.

This legislation is the product of major rewriting and work with many in the health care field, such as the Kansas Medical Society and Kansas Hospital Association, and strikes the right balance between patient desires for certain medical procedures and the right of a health care provider to conscientiously object to performing such procedures. After hearing the objections to last year's bill, we took those criticisms to heart. We believe we have answered the legitimate questions and solved them. This bill is greatly narrowed in focus to eliminate unintended consequences, but preserves the core rights necessary to protect health care providers and institutions. Countless hours were spent by me and other supporters refining and clarifying the bill's provisions. I am very proud of the work product represented in HB 2711.

After listening to the opponents' arguments against this bill, I am convinced more than ever that this bill is desperately needed. Never during my eight years in the legislature have I heard such baseless and overreaching arguments against a piece of legislation. The opposition's arguments against this bill appear to be based on the Orwellian view that any individual health care provider who dares to stand up for his or her own conscience should be drummed out of the medical profession. Such a view goes against the very foundations of our nation's history. Our nation was founded on religious freedom and the right to dissent. The opponents of this bill-the abortion industry-want to steal these rights away. Why? Because in the case of abortion, they know there is a stigma associated with it, and the only way to ensure access to abortions in the future will be to force health care providers to perform and pay for them.

There is nothing in this bill, I repeat, nothing in this bill that will deny patients access to,

Senate Public Health & Welfare Committee
Date: March 26, 2002
Attachment #2

and the right of health care providers to perform, the medical procedures and services set forth in this bill. Nothing in this bill will prohibit hospitals or medical schools from training or teaching health care professionals about the medical procedures outlined in this bill.

What does this bill do? It simply guarantees the right of any health care provider, institution, or payer from being forced against their will to perform or pay for any of the medical services outlined in the legislation. Those procedures are limited to only the most controversial: abortion, artificial insemination, assisted reproduction, artificial birth control prescribed for a contraceptive purpose, human cloning, embryonic stem cell and fetal experimentation, infanticide, assisting suicide, euthanasia, and sterilization for contraceptive purposes. This bill simply gives conscientious objectors the right to not provide services that everyone agrees are extremely controversial. Only a tolerant society would protect the right of individuals to refrain from doing something which violates their most deeply held beliefs.

This bill, while protecting important conscience rights, bends over backwards to recognize patient desires and needs. It contains an emergency exception for those extremely rare situations, such as ectopic pregnancies, when performing one of the medical procedures outlined in this bill is necessary to protect a patient's life, and requires that health care professionals comply with any ethical duties they may have to patients so long as they are not required to participate in the provision of a health care service subject to this act. With regard to health care payers, contrary to what you may have heard yesterday, they must pay for all services they voluntarily contract for, regardless rest of the bill's provisions. It is untrue to say that insurance companies may use this Act to refuse to pay for the listed procedures on a whim. Health care providers, while gaining new civil rights protections under this bill, must give advance notice to their employer in writing of their objection to performing any of the medical procedures or services set forth in this bill. No other civil rights legislation contains this notice requirement.

It was repeatedly asserted in committee that this bill infringes on patient care rights because it does not contain referral obligations. Well, neither does current law. There is nothing in statute today that requires a doctor, for example, to refer a patient who wants an abortion to an abortionist.

We would ask for two amendments: first, that the House floor amendment allowing pre-employment inquiries be deleted as it will simply allow employers to discriminate by refusing to hire someone who expresses a desire not to perform one of the listed services provided in the Act; and second, that new section 9 be deleted as it will eliminate the liability protection needed by those who exercise their conscience rights.

In short, this bill represents the most definitive effort to date to put into practice one of the cardinal principles of our nation-the right to be true to one's own conscience. It has been successful in other states, like Illinois, with none of the horror stories you no doubt heard about from its opponents. This bill deserves your support. I would be happy to stand for questions.

MERICANS UNITED FOR LIFE™

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Testimony Presented to the Kansas State Legislature Senate Public Health and Welfare Committee

House Bill 2711 Health Care Providers' Rights of Conscience Act

March 25, 2002

Joint Testimony Presented by
Nikolas T. Nikas, General Counsel
Dorinda C. Bordlee, Staff Counsel
Americans United for Life

Madam Chairman and members of the Committee:

We thank you for allowing us to submit testimony on the constitutionality of HB 2711. Health Care Rights of Conscience legislation ensures that the highest level of ethical and professional standards remain available to doctors, nurses, pharmacists and medical students and other health care professionals. This legislation protects a basic tenet of freedom – the freedom not to be compelled to act against your will in the context of one's chosen profession.

We will first address the background of this legislation, and then discuss the Supreme Court case law which makes clear that the court-created right to choose abortion does not trump a health care worker's right to choose a profession, and to practice within that profession in a manner best serves both the patient and the professional's highest ethical standards.

Since last year, AUL has provided legal consultation to over a dozen states seeking to respond to the burgeoning epidemic of discrimination against health care professionals who profoundly respect the dignity of all human life.

HB 2711 merely expands the protection already provided under Kansas law.[1] Modeled on comprehensive legislation that has been in effect for nearly five years in the State of Illinois,[2] Kansas HB 2711 provides much needed protection against discrimination against all health care professionals who wish to exercise the fundamental human right to decline to participate in certain controversial procedures that violate their conscience.

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[1] Kan. STAT. ANN. §65-443, 65-444, 65-446, 65-447 apply to any person who declines to "perform or participate in medical procedures" which result in abortion or sterilization.

[2] 745 Ill. Comp. Stat. Ann. 70/1 – 70/14 (2000); 720 Ill. Comp. Stat. Ann. 510/13 (2000).

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Date: March 26, 2002
Attachment #2

HB 2711 in no way infringes on the rights of patients or the quality of care that they receive. This legislation simply recognizes that a patient's right to choose certain medical procedures does not include a right to force someone to provide it to them.

After consulting with medical students, nurses, pharmacists, and physicians who have experienced discrimination at the hands of employers who are intolerant of their beliefs and convictions, our public interest legal organization drafted model legislation in response to the inadequate protection provided by current statutes enacted shortly after *Roe* in 45 states and Congress.[3]

The abortion right announced in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) is the right of a woman to choose whether to terminate a pregnancy. Those cases cannot be read to give any patient the authority to violate another citizen's fundamental freedom of conscience by forcing a health care provider or institution to perform abortion or any other controversial procedure.

The following words of the United States Supreme Court make this clear:

> "**Men and women of good conscience** can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage." *Planned Parenthood v. Casey*, 505 U.S. 833, 850 (1992)(emphasis added).

> "Whatever one thinks of abortion, it cannot be denied that **there are common and respectable reasons for opposing it,** other than hatred of, or condescension toward (or indeed any view at all concerning), women as a class - as is evident from the fact that men and women are on both sides of the issue. . . ." *Bray v. Alexandria Clinic*, 506 U.S. 263, 271 (1993)(emphasis added).

The Supreme Court has never held that the right declared in *Roe* trumps the fundamental human right of conscience. Nor has it ever held that a physician has a legal duty to perform abortion.

In fact, the Supreme Court has expressly recognized that governments who object to funding abortion cannot be forced to do so. In *Harris v. McRae*, 448 U.S. 297 (1980), the United States Supreme Court ruled that the federal government does not have to fund abortion except to save the life of the mother. Further, in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), the Court upheld a state statute that prohibited state-run medical centers from providing abortions except to save the life of the woman.

The response from those who oppose rights of conscience legislation is absolute intolerance. To health care providers who have a profound respect for human life and the convictions of their conscience, their response is "Get out of the profession. You need not apply." Nothing in the American legal tradition supports this radical position. The Kansas Legislature is free, if it so chooses, to provide legal protection from discrimination and intolerance for health care professionals, institutions and payers.

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[3] See attached appendix of current state statutes.

Current State Statutes

February 2002

OVERVIEW OF CURRENT RIGHTS OF CONSCIENCE LAWS:

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

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

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

ALABAMA

MISSISSIPPI

NEW HAMPSHIRE

VERMONT

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

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

CURRENT STATE STATUTES:

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

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

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

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

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

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

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

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

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

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

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

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

CALIFORNIA	Cal. Probate Code §4734 (2000)(enacted by 1999 Cal. Assembly Bill 891).

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

KANSAS	KAN. Stat. Ann. §65-443, 65-444, 65-446, 65-447 (1992).
MASSACHUSETTS	MASS. Ann. Laws CH. 112, § 12I; CH. 272 § 21B (2001).
NEW JERSEY	N.J. Stat. Ann. §§ 2A:65A-1 TO 2A:65A-4 (WEST 1987).
WISCONSIN	Wis. STAT. Ann. § 253.09 (WEST 1999).

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

ALASKA	Alaska Stat. § 18.16.010(B) (MICHIE 1998)(PERMANENTLY ENJOINED AS APPLIED TO PUBLIC, "QUASI-PUBLIC" NON-SECTARIAN FACILITIES IN *VALLEY HOSP. ASSOC, INC. V. MAT-SU COALITION FOR CHOICE*, 948 P.2D 963 (ALASKA 1997).
ARIZONA	ARIZ. Rev. Stat. Ann. § 36-2151 (WEST 1993).
ARKANSAS	ARK. Code Ann. § 20-16-601 (MICHIE 1991).
COLORADO	Colo. Rev. Stat. Ann. § 18-6-104 (WEST 1999).
CONNECTICUT	Ct. Agencies Regs. § 19-13-D54(f) (Conn. L.J., vol. LVIII, no. 30 (Jan 21, 1997): 8B-9B).
DELAWARE	Del. Code Ann. TIT. 24, § 1791 (1997).
FLORIDA	Fla. Stat. Ann. § 390.0111 (8) (WEST SUPP. 1999).
GEORGIA	Ga. Code Ann. § 16-12-142 (1999).
HAWAII	Haw. Rev. Stat. Ann. § 453-16(D) (MICHIE 1998).
IDAHO	Idaho Code § 18-612 (1997).
KENTUCKY	Ky. Rev. Stat. Ann. § 311.800 (1994).
LOUISIANA	La. Rev. Stat. Ann. §§ 40:1299.31-1299.33 (2000).
MAINE	Me. Rev. Stat. Ann. TIT. 22, §§ 1591-1592 (WEST 1992).

MICHIGAN	Mich. Comp. Laws. Ann. §§ 333.20181 to 333.20184, 333.20199 (WEST 1992).
MINNESOTA	Minn. Stat. Ann. § 145.414 (WEST 1998).
MISSOURI	Mo. Ann. Stat. §§ 188.100, 188.105, 188.110, 188.115, 188.120 (WEST 1996).
NEBRASKA	Neb. Rev. Stat. §§ 28-337 to 28-341 (1995).
NEW MEXICO	N.M. Stat. Ann. § 30-5-2 (MICHIE 1994).
NORTH CAROLINA	N.C. Gen. Stat. §§ 14-45.1(E), 14-45.1(F) (1993).
NORTH DAKOTA	N.D. Cent. Code § 23-16-14 (1991).
OHIO	Ohio Rev. Code Ann. § 4731.91 (ANDERSON 1997).
OREGON	Or. Rev. Stat §§ 435.475, 435.485 (1992).[4]
SOUTH DAKOTA	S.D. Codified Laws §§ 34-23A-11 TO 34-23A-15 (MICHIE 1994); *see also* § 36-11-70 (2001)(Pharmacist Right of Conscience).
TENNESSEE	Tenn. Code Ann. §§ 39-15-204 AND 39-15-205 (1991).
VIRGINIA	Va. Code Ann. § 18.2-75 (MICHIE 1996).

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

CALIFORNIA	Cal. Health & Safety Code § 123420 (WEST 1996).
INDIANA	Ind. Code. Ann. §§ 16-34-1-3 TO 16-34-1-7 (WEST 1997).
IOWA	Iowa Code Ann. §§ 146.1-146.2 (WEST 1997).
MONTANA	Mont. Code. Ann. § 50-20-111 (1997).
NEVADA	Nev. Rev. Stat. Ann. §§ 449.191, 632.474 (MICHIE 1996).
OKLAHOMA	Okla. Stat. Ann. TIT. 63, § 1-741 (WEST 1997).
SOUTH CAROLINA	S.C. Code Ann. §§ 44-41-40, 44-41-50 (LAW CO-OP. 1985).
TEXAS	Tex. Rev. Civ. Stat. Ann. ART. 4512.7 (WEST SUPP. 1999).
UTAH	Utah Code Ann. § 76-7-306 (WEST SUPP. 1998).
WYOMING	Wyo. Stat. Ann. §§ 35-6-105, 35-6-106 AND 35-6-114 (MICHIE 1997).

[4] Oregon also protects the civil rights of employees of the Adult and Family Services Division who refuse to offer family planning and birth control. Or. Rev. Stat. § 435.225 (1992).

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

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

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

NEW YORK	N.Y. [Civ. Rights] Law § 79-l (McKINNEY 1992).
WEST VIRGINIA	W. Va. Code § 16-2F-7 (2000); *SEE ALSO* § 16-2B-4 (2000)("FAMILY PLANNING SERVICES"); § 16-11-1 (2000)(REFUSAL OF A HOSPITAL, MEDICAL FACILITY, OR PERSON TO PARTICIPATE IN OR PERFORM A **STERILIZATION** SHALL NOT BE THE BASIS FOR ANY LEGAL SANCTIONS, RESTRICTIONS, OR CIVIL LIABILITY).

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

CALIFORNIA	Cal. Health & Safety Code § 123420 (B) (WEST 1996).
ILLINOIS	745 Ill. Comp. Stat. Ann. 70/7 (WEST SUPP. 1999).
KENTUCKY	Ky. Rev. Stat. Ann. § 311.800 (5) (1994).
LOUISIANA	LA. REV. STAT. ANN. §§ 1299.31 (WEST 1992).
MAINE	ME. REV. STAT. ANN. TIT. 22, § 1592 (WEST 1992).
MASSACHUSETTS	MASS. ANN. LAWS CH. 112, § 12I (LAW. CO-OP. 1991).
MICHIGAN	MICH. COMP. LAWS. ANN. §§ 333.20181-33.20184, 333.20199 (WEST 1992).
MISSOURI	MO. ANN. STAT. § 188.110 (WEST 1996).
PENNSYLVANIA	PA. CONS. STAT. ANN. TIT. 43, § 955.2 (B) (3) (WEST 1991) AND PA. CONS. STAT. ANN. TIT. 18, § 3213(D) (WEST SUPP. 1999)
TEXAS	TEX. REV. CIV. STAT. ANN. ART. 4512.7 (WEST SUPP. 1999).
WISCONSIN	WIS. STAT. ANN. § 253.09 (3); § 441.06(6); § 448.03(5) (WEST 1999).

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

ILLINOIS	745 ILL. COMP. STAT. ANN. 70/5 (WEST SUPP. 1999).
SOUTH DAKOTA	S.D. Codified Laws §§ 34-23A-11 (MICHIE 1994).

Sixteen states mandate that insurance plans that cover prescription drugs also provide coverage for **contraceptive** drugs or devices. Of the thirteen, **nine** state laws include some form of limited conscience-based exemption for "religious employers" (CA, CT, DE, HI, ME, MD, NV, NC, RI); **seven** state laws have no conscience-based exemption (GA, IA, NH, NM, RI, TX, VT).

Kansas Catholic Conference

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March 26, 2002

Chairman Susan Wagle
Senate Public Health and Welfare Committee

Madam Chairman and members of the Committee:

Thank you for this opportunity to testify on behalf of HB 2711.

I am Mike Farmer, Executive Director of the Kansas Catholic Conference, the public policy arm of the Catholic Bishops of Kansas. With me is Mike Moses, Associate General Counsel with the United States Conference of Catholic Bishops, who is here today assisting me and the Kansas Bishops.

I had the opportunity yesterday to listen to the opponents' testimony on this bill. The principal objection to the bill concerned access to some of the procedures identified in the bill. This is a complete red herring. The bill does nothing whatsoever to interfere with a person's ability to obtain any procedure or service. The bill does not in any way prevent the performance or delivery of any health care service. Under this bill, patients may go to any health care professional or provider they choose, just as they may now. All this bill does is to guarantee that no health care professional, institution or payer will be forced, contrary to its conscience, to provide a health care service subject to this act. In essence, the bill is about freedom – the freedom to practice the health professions consistent with the dictates of one's conscience.

Forcing people and institutions to violate the convictions of their conscience is a characteristic of an entirely different form of government than ours. To trample upon the demands of conscience is far removed from the ideals that are at the heart of the American experiment. Respect for diversity of conscience is a core value for all Kansans and all Americans. Protection and respect for rights of conscience has been a centerpiece of American law from our Nation's founding; it is a value long enshrined in our National and State constitutions. To reject this foundational value now is to ignore, and ultimately to extinguish, an essential liberty, a liberty that led to our Nation's founding and for which men and women have sacrificed their lives.

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Stop to consider for a moment the consequences of not passing this bill. Failure to enact the bill would have a chilling effect on anyone who wishes to participate in the delivery of health services in Kansas yet rejects the practice of abortion, sterilization, cloning, or any of the other morally controversial procedures identified in the bill. Absent this bill's protection, one might just as well post signs in front of our medical, nursing and pharmacy schools stating: "Check your conscience at the door." Indeed, one with such conscientious objections need not even apply for admission to such schools because, absent the bill, there is no guarantee that they will not be forced to choose between following their conscience and practicing their chosen profession. That is the biggest "access" issue of all – forcing people to violate their conscience may well drive them from the health professions altogether, leaving far fewer people to provide health care generally.

"Choose between your conscience and practicing your profession" -- is that the message we want to send to the future health care professionals of this State – that they either must perform these procedures in violation of their conscience or else look for another line of work? As a matter of public policy, do we want to say to our children and the children of our fellow citizens that they either must perform these procedures or give up their long cherished dream to enter the health professions? I am firmly convinced, and I believe the members of this committee will share my conviction, that the answer to both questions is no.

I want to address head on the arguments that were made in the House about what is often labeled emergency contraception for women who are the tragic victims of rape. First, Catholic physicians and health care workers treat such patients with care and compassion. Further, in such cases, if after appropriate testing, there is no evidence that conception has occurred already, the woman may be treated with medications that would prevent ovulation, sperm capacitation or fertilization. It is not morally permissible, however, to initiate or recommend treatments that have as their purpose or direct effect the removal, destruction or interference with the implantation of a fertilized ovum – because it is never morally permissible to take an innocent human life.

Existing Kansas law says that no person shall be required to perform or participate in an abortion or sterilization. Kan. Stat. 65-443, 65-444, 65-446, 65-447. These statutory protections have had a beneficial effect on our health system in ensuring the right of health professionals and institutions to practice medicine consistent with their conscience. We think those protections need to be expanded as this bill would do.

An opponent of this bill testified earlier that "one of the greatest freedoms we have is the freedom to choose." If the taking of a human life were a "freedom," which we think it is not, then I would ask that witness and other opponents of this bill: why is it that you are so willing to deny health professionals, institutions, and payers the choice you claim to defend for others, the choice not to take a human life. Can that choice only be exercised one way? If so, what sort of choice is that? Members of this Committee, that is not a choice at all. That is coercion.

The world envisioned by opponents of this bill is not at all a world of choice and diversity, but a world in which choice and diversity are denied, a world in which all must think and act as proponents of abortion, sterilization and other controversial procedures.

Along with my testimony, I am today also submitting the written testimony of the Secretariat of Pro-Life Activities of the United States Conference of Catholic Bishops, which gives a national perspective on the need for conscience protection.

Mike and I would be happy to stand for any questions.

Health Care Providers' Rights of Conscience Act

Freedom.

This is my idea of freedom: As I would not be the unborn victim of an abortion, so I would not perpetrate that crime upon another. Any state that allows such a crime, to the extent that it allows it, is no free state.[1]

While pro-life sentiment is somewhat popular, I suspect that there is not as widespread an understanding of the interest some have to pursue only natural fertility regulation. My name is Patrick Herrick. I am a family physician. I come before you today, asking you to support the Health Care Providers' Rights of Conscience Act, an interest shared by hundreds of my patients who are your Kansas City area constituents. As a matter of introduction, I offer you the following motivating factors for those who object to artificial fertility regulation.

Contraception and Sterilization – Objections:

- Astute observers have noted, that in cultures where support for contraception is strong, so is support for abortion.
- Artificial contraceptives are, at times, abortifacient in effect.[2]
- Contraceptives propose to render procreation impossible; thus in the occasional (yet certain) failure, users who are indisposed to childrearing will be predisposed to seeking abortion.
- Often used extramaritally, they involve the physician in what amounts to "medicalized fornication"[3].
- This objection is the position of a large Christian denomination, the Catholic Church.[4]
- Increased contraception and sterilization have been associated with an increase in the divorce rate.[5]
- Other arguments, relating to Scriptural passages[6], God's sovereignty in the design of human beings, and marital love as a reflection of God's love.

The following are some true stories of health care professionals whom I know, who have encountered significant organized opposition in following their conscience with these issues.

KK, a registered nurse, provides postpartum care at a large Kansas City hospital. Because she does not administer contraceptive injections, or obtain consent for tubal ligation (recall typical postpartum hospital stays last 2 days), she is routinely "passed over for training and leadership" positions, despite her 20 years of relevant experience. KK states, "It would be worse if I were on Labor and Delivery"; and "I would be in trouble" with physicians, if they knew that sometimes she suggests to patients that they may eventually regret having been permanently sterilized at 23 years of age.

HT is an occupational therapist, a profession which rehabilitates fine motor skills. In her training at an academic Kansas hospital, she was told to counsel preteen psychiatric patients about contraception. When she offered instead to create an abstinence presentation, her

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[1] Line of reasoning and phraseology borrowed from Abraham Lincoln.

[2] FDA labeling for Depo-Provera states that it "results in endometrial thinning. These actions produce its contraceptive effect.". FDA labeling for Ortho Tri-Cyclen states a secondary mechanism of effect is "changes in... the endometrium (which reduce the likelihood of implantation)". (2000 Physicians' Desk Reference, pp. 2435 & 2191). Several journal articles support this contention, e.g. Ling et al., Fertility and Sterility 39:292, 1983 (re "emergency contraception").

[3] Term owing to another physician (LC).

[4] Catechism of the Catholic Church (1994), ¶ 2366-2372; Pastoral Constitution on the Church in the Modern World, Vatican Council II (1965), ¶ 51; The Roman Catechism (under The Sacrament of Matrimony, Marriage as a Natural Contract, The Motives and Ends of Marriage; 1566 A.D.); Summa Theologica (ca. 1265-1274 A.D.), Part II-II, Question 154. Other sources cite the *Didache* of the 1st century as upholding the same position.

[5] From less than 10% to 50%; in contrast, users of natural family planning have less than 5% divorce rate. The Art of Natural Family Planning (Cincinnati: The Couple to Couple League, 1996), pp. 244-5.

[6] Genesis 38:9-10, Psalm 127:3-5, Luke 23:28-9, and passages proscribing *pharmakeia* which has been interpreted as including potions for contraception.

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supervisor called HT's academic advisor, calling HT "narrow minded"; and threatened to fail her if she did not provide contraceptive counseling. She did eventually pass, but with a lowered grade for her objection. During the rotation, when making presentations to large groups of (predominantly male) medical students, her supervisor would make dirty jokes, then state in front of the group, "Oh, we forgot this offends HT – she's into 'abstinence awareness'.".

Ten years ago, after simultaneous completion of M.D. and Ph.D. degrees, I entered obstetrics and gynecology residency in Missouri, aiming to become a medical researcher in the field. Things turned sour, when I asked to not perform sterilizations. Senior residents placed intense pressure upon me, telling me to relent, or leave. Simultaneously, the attending physicians no longer allowed me to assist at any surgery. (A resident must perform surgery, in order to learn it.) I did leave, within a month, grateful to find a position in family practice residency. Today, I am no longer involved in medical research.

LC graduated cum laude from a SUNY medical school. She entered family practice residency in a large Kansas institution, and after settling in, began placing Norplants, prescribing oral contraception, and performing other such practices. After one year, however, she experienced a conversion in her faith, and discontinued artificial contraception and no longer referred for abortion. She then rotated through obstetrics, where an attending told her that her refusal to refer for abortion was "substandard care", and that in "his clinic", he had the authority to make her practice the way he wanted. He gave her a very low evaluation. As a result of the obstetrician's communication, she was called into the residency director's office, a process leading to probation. Three months prior to completion of her residency, she was asked to resign, or be terminated. The reason cited for termination was that she had failed to complete 80% of her clinics within a half hour of the expected time. (Think of that, the next time you wait in a doctor's office.) LC states, "If that contraception/sterilization/abortion issue had not generated friction, I would not have been forced to resign.". As a direct result of not finishing residency, LC cannot be board eligible or certified. Most insurance contracts require board eligibility; imagine the difficulty in finding employment, or otherwise obtaining reimbursement, without board eligibility.

Afterwards, LC applied for her Missouri license. When the state board's reply seemed delayed, LC's potential employer contacted the board, to find that LC's former residency director had failed to state whether LC was recommended for licensure. The employer contacted the director, who explained her action by stating that LC was "too Catholic".

These are some of the stories of those have followed conscience rather than yield to significant pressure. Failure to pass this legislation allows the pressure upon doctors and other practitioners to continue; either ignore their conscience or act against it. How many of you would be comfortable, given today's health care market, to be under treatment by a physician who is accustomed to not listening to their conscience?

One hundred and forty years ago, when abortions were commonplace in the United States, it was the action of committed physicians and legislators, acting to "protest against such unwarrantable destruction of human life....in pursuance of...sacred responsibilities"[7], that stemmed the tide, resulting in the passage of state laws prohibiting abortion, except as needed to save the life of the mother.[8] Today again we have a crimson tide that needs to be stopped.

Planned Parenthood and the Kansas Choice Alliance, probably the biggest backers of legalized abortion in this state, would appear to like nothing better than to defeat this bill. In order to continue to pressure medical professionals to abandon our consciences, they now have to persuade you to abandon yours.

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[7] American Medical Association resolution (unanimously accepted), 1859.

[8] Frederick N. Dyer, "Champion of Women and the Unborn: Horation Robinson Storer, MD", Veterans Health System Journal, Dec. 1999, pp. 55-7.

Testimony in favor of HB2711

March 25, 2002

Chairman Susan Wagle
Senate Public Health and Welfare Committee
State Capitol, Rm. 231-N
Topeka, Kansas

Madam Chairman and Members of the Committee:

My name is Orva Hargett. I have been a nurse for 41 years and involved in women's health for most of that time. Five years ago my husband and I became Catholic and although I touted myself as being Pro-life, there were issues that I never really confronted. I have worked in an OB-Gyn office for 18 years and during that time I handed out oral contraceptives as prescribed by the physician, gave contraceptive injections, counseled patients on the correct use of both of these, obtained surgical consents for tubal ligations, and assisted with the insertion of IUD's. I answered many phone calls regarding the problems patients were encountering with these treatments. The physician I work for is a very caring and compassionate doctor and his patients love and respect him very much. My relationship with him has always been very good and I also respect him very much. Another physician and a nurse practitioner are also in the practice now.

It wasn't until recently that I realized, as a Catholic Christian, I could no longer directly inject the contraceptive medications. I shared this with the two doctors and the nurse practitioner. The new doctor and the nurse were mildly supportive and I was expecting a similar response from the one I had worked for these 18 years. Instead he became very angry. He insinuated that I was being brainwashed and was part of a cult. He then asked me if that meant that I couldn't give out contraceptive pills or handle phone calls regarding problems with contraceptives. He also informed me that my stance would greatly influence any future hiring he would do, not by asking applicants about their religious belief system but whether or not they had problems giving any medications. He also told me that his practice is primarily dealing with women's health issues and a large part of that is prescribing contraceptives and the proper use of these.

Since that conversation I did a lot of soul searching and came to the firm belief that I could not participate in the administration of any contraceptive products, knowing full well that this could result in the loss of my job. There are other tasks that I could do in the office that are not related to the administration of contraception but I don't know if he will give me that option.

I love my job. I have enjoyed it very much and have learned to care deeply for my patients through the years. I have never seen myself as a reactionary or an activist, but this is something I feel very strongly about.

The passage of this bill will probably come too late for me. However, I believe that my recent experience, or one very similar, probably has been and is being repeated many times over with

my nurse-colleagues across this state. This legislation is desperately needed. As health care professionals we shouldn't have to choose between compromising our deeply held convictions or risk losing our jobs.

Section 2 of this bill states that "...people and organizations hold different beliefs about whether certain health care services are morally acceptable." It goes on to say "It is the public policy of the state of Kansas to respect and protect, as a civil right, the right of conscience of all persons to refuse to participate in the provision of...a health care service subject to this act." This bill would prohibit "...all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons...by reason of their refusal to participate in the provision of..." the health care services described in the act.

Please vote yes for HB 2711 and protect health care professionals in Kansas from being coerced or intimidated into doing things against their conscience.

Thank you Madam Chairman and I would be happy to stand for any questions.

TESTIMONY

Senate Public Health and Welfare Committee
Tuesday, March 26, 2002

HB 2711

Madam Chair, and members of the Public Health and Welfare Committee, I would like to thank you for the opportunity to speak today. My name is Paula Koch and I'm a licensed pharmacist in Kansas. I'm sharing this testimony with you to explain why I believe HB2711 is important, relevant, and why it should be passed.

In October of 2000 my employer threatened to fire me because I did not want to dispense the morning after pill, a medication that violates my Christian faith. Approximately 18 months before this incident I had discovered that our clinic dispensed the morning after pill. I made arrangements with the pharmacy supervisor for him to dispense the prescription. I met with the Chief Physician to discuss why I didn't want to dispense the morning after pill and asked if she would come to the pharmacy and dispense the prescription when my supervisor was absent. She agreed.

In the next 18 months, on 3 different occasions the physician dispensed the morning after pill instead of me. In October of 2000 however she refused to dispense the prescription. She stated she was too busy and also refused to let the nurse practitioner come to the pharmacy to dispense it. I was told by the Clinic Administrator that I did not have the option to refuse to dispense any medication. I filed an appeal with the medical staff committee per clinic policy and my pharmacy supervisor attempted to make accommodations with the physician. After the October incident the pharmacy pre-packaged and pre-labeled morning after pills. All the prescriber had to do was walk to the pharmacy or send a nurse to the pharmacy, pick up the pre-packaged prescription and take it to the patient in the exam room. This entire process would take less than one minute.

Despite these changes, the Chief Physician refused to accommodate me. After the medical staff committee meeting where the modifications and my appeal were allegedly discussed, she met with my supervisor and myself. She told me that "Your religion does not matter and as long as I write a legal prescription you have to fill it. I am your commanding officer. If you do not follow my direct order you will be written up for insubordination and consequently fired." She did not mention the proposed accommodations or the fact that they would be necessary two or three times a year. Instead, I was reprimanded about understanding the consequences of my actions and how I had damaged the reputation of the clinic.

After this meeting with the Chief Physician I filed a complaint at the local clinic, requesting a blanket accommodation. This request was denied. I then filed a complaint with the Regional EEO office. Eventually I had to hire an attorney and file a lawsuit. Finally, in July of 2001-nine months after the original incident, my employer agreed to accommodate me.

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During this process I battled many things. First was anxiety over job security. Every time my supervisor was scheduled to be gone I had difficulty sleeping. I worried if that workday would be the day I was commanded to dispense a prescription I believed was harmful. Secondly, I had to deal with the belittling of my job performance. The physician's position was that it had been my responsibility to inform the clinic I would not dispense the morning after pill BEFORE I was hired. Then she stated they would not have hired me and would have hired a pharmacy technician instead. Since I did not want to dispense the morning after pill, I was being equated with a pharmacy technician. My license, six years of pharmacy school, and 3 and ½ years of experience did not seem to matter. Since I did not want to dispense a medication that is considered legal, but that I believe is potentially harmful; I was not worthy of being called a pharmacist. I was also told that a "pharmacist" conscience clause was bizarre because a pharmacist is simply a conduit of the physician's wishes. Pharmacists have worked very hard to be considered partners in the health care team. We are jointly responsible for every prescription that is prescribed and subsequently dispensed by the pharmacy. Physicians have full protection of the law. If they do not wish to provide a health care service based on moral, ethical, or religious convictions they may do so without fear of termination. I firmly believe pharmacists and other health professionals should be granted this same right. HB 2711 gives a health care provider an option to follow his or her conscience.

I have been a pharmacist for less than five years and would like to continue for several more years. I have dedicated my professional life to serving the public and teaching pharmacy students. I've used my vacations to serve as a pharmacist in a Guatemalan mountain village medical clinic. I love being a pharmacist. However, I am unsure how long I will be able to practice pharmacy. As a pharmacist I took an oath to protect life and not harm it. I in good conscience cannot dispense a prescription I believe has the potential to destroy a life. To do so would violate both my religious beliefs and my professional ethics. When an employer commands me to dispense a prescription that violates my conscience, he or she is forcing me to go against the very essence of who I am.

During my lawsuit I was told I needed to separate my spiritual life from my professional life. This simply is not possible. My faith is the foundation of all areas of my life, including my career. We do not ask health care providers to leave their race or ethnicity at the door when they clock into their job. Why should we ask them to leave their ethical, moral, or religious beliefs? These beliefs can define a person as much as race or ethnicity.

In August of this year I had the opportunity to change jobs. During my interview with my prospective supervisor I discussed my conscience objection to the morning after pill. He replied, "I don't have to agree with you to respect you." We then discussed options and alternatives if I was presented with a prescription I conscientiously objected to. I feel very fortunate that my current employer is willing to accommodate me. As I have testified, that is not always the case.

The Kansas Pharmacists Association representatives are officially opposing this bill despite the fact that 86% of Kansas pharmacists support a pharmacist's right of conscientious objection, as reported in the December 2001 issue of The Journal of Kansas Pharmacy. I attended the KPhA annual meeting in September of 2001 where the conscience objection resolution was discussed and passed. We discussed the balance of recognizing and respecting a pharmacist's conscience

with ensuring that a patient has access to a prescribed medication. I believe this bill accomplishes both these goals. This bill requires health care providers to provide prior, written notice to their employer. This prior notification allows each unique health care setting to create its own alternative system. KPhA wants more details of "establishing systems" before it will support this bill. I do not believe this is realistic nor the intention of Kansas pharmacists when they voted for a conscience objection resolution. How can a law encompass exact systems that will accommodate each unique health care setting as well as each health care provider? As a pharmacist I have worked in a hospital, a health clinic, and a retail pharmacy. Creating an alternative system for a conscientious objector would be very different in each of these settings. It would be difficult to pass a law that provided each health care setting a practical system. This bill in its current form gives each health care setting the freedom to establish a "custom-fit" alternative system. I'm very disappointed that my state association is opposing this bill. I do not think KPhA is accurately reflecting Kansas pharmacists or the spirit of the resolution passed at our annual meeting.

Unlike the KPhA, the American Pharmaceutical Association is unequivocal in its recognition of conscience rights. The national association "…recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure patient access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal."

In closing, I would like to ask each of you to think about your own lives. What if your employer demanded you to do something you believed was wrong? How would you respond? It's a big decision with difficult consequences resulting from either choice. Would you do it simply because it was your job and that was expected of you? If you did, would you be able to look at yourself in the mirror every morning and evening, knowing you did something that violated your personal code of ethics? Are you willing to risk losing your job and perhaps your professional reputation? "To thine own self be true", is it worth all the possible consequences? This is the very dilemma that health care professionals are facing. These are not isolated incidents and these issues will not go away. Now is the time to address them. HB2711 gives health care professionals the freedom to make difficult choices without fear of demotion or termination.

Thank you for your time.

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Office of General Counsel

To: Chairwoman Wagle and Members of the Senate Committee on Public Health and Welfare

Re: HB 2711, Health Care Provider's Rights of Conscience Act

Date: March 26, 2002

Chairwoman Wagle, Members of the Senate Committee on Public Health and Welfare, and fellow Kansans, greetings from Wichita! I appreciate the opportunity to appear today and submit written testimony in support of HB 2711, the Health Care Provider's Rights of Conscience Act. My name is Matthew (Matt) Hesse and I am Associate General Counsel for the Via Christi Health System ("Via Christi") in Wichita, Kansas. I am one of three lawyers in our office who advise Via Christi organizations and affiliates, their Administrators, Boards of Directors, Officers, Managers and employees on their respective legal matters.

Before I begin, I was instructed by the Chief Executive Officer of the Via Christi Health System, Mr. LeRoy E. Rheault, to submit his written testimony, and that of Via Christi, in support of HB 2711. Mr. Rheault adequately sets forth the position of Via Christi in support of HB 2711, and so, as I distribute his testimony to you, I incorporate his comments by reference into my testimony here today, but wish to address a few other points, if I may.

As you peruse Mr. Rheault's description of Via Christi and its healthcare mission of service throughout the State of Kansas, you will see that Via Christi is a significant player in the healthcare delivery system in Kansas. As such, and with almost 10,000 employees, many of which are covered by the Via Christi Health Plan, we respect the rights of conscience of all healthcare providers within, and outside, Via Christi Health System -- providers of all faiths -- and support their right to decline to participate in a healthcare service they deem morally unacceptable. We believe they should be able to do so without fear of retribution, discrimination, or even termination of employment. From Via Christi's standpoint, as long as the employee indicates in advance and within a reasonable period of time for management to arrange for another provider to render a particular healthcare service, we honor and accommodate such conscientious objections. From the perspective of a healthcare

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Robert L. Heath Tel 316-268-5084 Matthew C. Hesse Tel 316-268-5088 Roberta R. Johnson Tel 316-268-5107

provider/employer, Via Christi would not want employees who object to rendering certain healthcare services to be involved in delivery of them, as it could affect employee morale, interfere with the quality of healthcare services delivered in the facility and create significant risk problems for the facility/employer.

Kansas has already recognized the right of persons not to be required to perform or participate in medical procedures which result in the termination of a pregnancy or sterilizations (See, K.S.A. 65-443 and K.S.A. 65-446). These particular statutes apply only to termination of pregnancies or sterilization procedures within hospitals and prevents the hospital and its administrator from imposing sanctions on the conscientious objector because of the person's refusal to perform or participate in the procedure. HB 2711 expands this right beyond the walls of a hospital to physician office clinics, senior care facilities, and medical and nursing schools. In addition, HB 2711 gives providers the right to object to participation in other healthcare services which providers may, and frequently do, find morally objectionable. HB 2711 goes further than the existing law by including protections for those aggrieved by unlawful employment practices resulting from exercising their rights of conscience. The Bill prevents employers from discriminating against providers for having deeply held beliefs about being involved in the delivery of some healthcare services and declining to participate in or perform them. In my opinion, HB 2711 is a logical extension of existing Kansas law.

Via Christi also supports the provisions in HB 2711 which protect healthcare payers as well. The Via Christi Health plan and Via Christi's healthcare payer (Preferred Health Systems, Inc.) should not be subject to government or agency imposed rules or regulations which violate fundamental beliefs or principles of faith held by their sponsoring religious congregations or organizations. In every health plan, there are exclusions from coverage or payment of certain products and healthcare services – every health plan has exclusions. Employees who enroll in these plans have access to summary plan description documents, or the plan itself, to determine what is covered or not covered, to decide whether to enroll in that plan or seek enrollment in another plan, or to seek arrangements with their employers to have certain services which are not covered, covered, if circumstances warrant it. To force faith-based institutions/employers and/or their healthcare plans and healthcare payers to provide healthcare services which violate their core values, mission and principles of faith is government intrusion and entanglement and should not be condoned or allowed. HB 2711 will protect faith-based, healthcare institutions and healthcare payers from such impositions which run contrary to the organization's charitable mission and/or principles of faith. Issues of healthcare service coverage are best left to payers and employers to resolve and/or for employers and employees to resolve. Via Christi's Health Plan and its healthcare payer should have the right not to participate in, arrange for, or pay for a healthcare service subject to the Act and that right should be protected. As Mr. Rheault points out in his testimony, healthcare services listed in the Act are presently excluded from coverage in the

Via Christi Health Plan and under the Preferred Health Systems plan, and to date, with its many covered lives and employees, there has never been a legal dispute over non-payment for such services.

As the dust clears from this serious debate, one principle should emerge inviolate; healthcare providers and healthcare payers should have the individual and organizational right of conscience to decline to participate in or pay for healthcare services (subject to the Act) they deem morally objectionable without fear of discrimination, termination, government intrusion or other legal action.

Lastly, it is not Via Christi's intention to deny others their right to seek healthcare services listed in the Act, but Via Christi seeks to reaffirm that it, its affiliates and employees, and all healthcare providers of different faiths and beliefs, have the right to refuse to provide and/or pay for them as a matter of conscience and as a matter of private contract between the health plan, employer and employee.

Please accept this written testimony in support of HB 2711.

Respectfully submitted,

Matthew C. Hesse
Associate General Christi
Via Christi Health System, Inc.

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LeRoy Rheault
President and
Chief Executive Officer

To: Chairperson Susan Wagle and Members of the Senate Committee on Public Health and Welfare

From: LeRoy E. Rheault
Chief Executive Officer
Via Christi Health System, Inc.
Wichita, KS

Re: HB 2711, Health Care Provider's Rights of Conscience Act

Date: March 26, 2002

Chairperson Wagle and Members of the Senate Committee on Public Health and Welfare, I appreciate the opportunity to submit written testimony today in support of HB 2711, the Health Care Provider's Rights of Conscience Act. My name is LeRoy Rheault and I am the Chief Executive Officer of Via Christi Health System, Inc. ("Via Christi") in Wichita, Kansas. Via Christi coordinates a Kansas faith-based, multi-institutional healthcare system to promote and provide healthcare services, educational programs, and charitable activities to improve and protect the health and welfare of all persons, addressing their social, spiritual, mental and physical needs. Via Christi's healthcare mission of service extends particularly to the poor and underserved members of society.

Via Christi is the parent corporation to several Kansas not-for-profit hospitals and has an ownership interest in others (Wichita, Manhattan, Pittsburg, Salina). Through Via Christi Senior Services, Inc., Via Christi owns and operates several not-for-profit senior care facilities (Wichita, Manhattan, Concordia) which address issues specific to our senior citizens. Via Christi owns or manages over 25 private physician offices with 90 affiliated physicians throughout the State of Kansas (Preferred Medical Associates clinics in Colby, Winfield, Iola, Colony, Pittsburg, Emporia, Wichita and Mulvane). Also part of Via Christi is Preferred Health Systems (PHS), a for-profit "health care payer" within the meaning of HB 2711 which insures the lives of 155,777 Kansans and an additional 140,000 covered lives through networks, for a total of 295,777 covered lives. Via Christi employs nearly 10,000 employees in Kansas and hundreds out-of state.

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Via Christi supports the noble objectives of HB 2711 to declare it public policy of the State of Kansas to respect and protect the fundamental rights of conscience of all healthcare providers of all faiths who provide healthcare services within the State of Kansas. HB 2711 establishes and protects a healthcare provider's civil right to decline to participate in a healthcare service offensive to that provider and frees the provider from government intrusion/entanglement and from threat of termination of employment for exercising such rights. No Kansas healthcare provider (hospitals, physicians, nurses, senior care facilities and others) should be compelled by any institution/employer policies, government agencies, laws and regulations, to participate in, or pay for, a healthcare service which violates an individual's moral principles or an organization's healthcare mission of service. Appropriately, HB 2711 provides sanctions under the Kansas Act Against Discrimination against employers for terminating the employment of, or otherwise discriminating against, healthcare providers for exercising their rights of conscience.

With regard to PHS and its health plan, there are exclusions from coverage and payment for healthcare services listed under HB 2711. HB 2711 will protect faith-based institutions and healthcare payers like Via Christi from objectionable government imposed rules and regulations which run contrary to the mission and values of the organization.

Please accept this written testimony from Via Christi Health System in support of HB 2711 as we believe it should be the law of the State of Kansas to provide all healthcare providers of all faiths the right of conscience to refuse to participate in the provision of, or pay for, a healthcare service subject to this Act.

Respectfully submitted,

LeRoy E. Rheault

LeRoy E. Rheault
President & CEO
Via Christi Health System, Inc.

Secretariat for Pro-Life Activities
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Written Testimony of the

Secretariat for Pro-Life Activities
United States Conference of Catholic Bishops

on the Health Care Providers' Rights of Conscience Act (HB 2711)

Submitted to the Public Health and Welfare Committee
Kansas State Senate

March 26, 2002

Thank you for providing us this opportunity to submit written testimony on the Health Care Providers' Rights of Conscience Act (HB 2711). The United States Conference of Catholic Bishops is a nonprofit corporation organized under the laws of the District of Columbia, whose members are the active Catholic Bishops in the United States. The Conference advocates and promotes the pastoral teaching of the Bishops on diverse issues, including access to health care, concern for the poor and vulnerable, the protection of human rights (including religious freedom and rights of conscience) and the sanctity and dignity of human life. As a national conference we do not take formal positions on state legislation, but we lend advice and assistance to local Bishops and state Catholic conferences at their request. We have been asked by the Kansas Catholic Conference to provide some background on the right of conscience on the federal and state levels and to discuss growing threats to this fundamental right.

The Well-Established Legal Tradition on Rights of Conscience

The basic principle that no one ought to be forced to act in violation of his or her conscience is recognized and protected by a vast body of laws. In federal law, this principle is

Senate Public Health & Welfare Committee
Date: March 26, 2002
Attachment #9

recognized in a number of provisions that protect conscientious objection to a range of procedures, including abortion,[1] sterilization,[2] contraception[3] and executions.[4]

This principle is also recognized in the vast majority of states. After Congress first passed legislation protecting the right to refuse to provide abortions in 1973, many states passed similar laws. Today forty-six states, including Kansas, provide some protection for the right of conscientious objection to involvement in abortion. Some states also protect providers who object to other kinds of procedures, including euthanasia, sterilization, artificial insemination, abortifacient drugs and contraception. The State of Illinois has adopted a comprehensive right of conscience law, under which the protection of physicians and other health care personnel extends to *any* procedure "which is contrary to the conscience of such physician or health care personnel." The State of Washington provides comprehensive conscience protection to individual health care providers and to religiously affiliated health care plans and facilities.

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[1] *See* 42 U.S.C. § 300a-7(b) (1995) [prohibiting public discrimination against individuals and entities that object to performing abortions on the basis of religious beliefs or moral convictions]; 42 U.S.C. § 300a-7(c) (1995) [prohibiting entities from discriminating against physicians and health care personnel who object to performing abortions on the basis of religious beliefs or moral convictions]; 42 U.S.C. § 300a-7(e) (1995) [prohibiting entities from discriminating against applicants who object to participating in abortions on the basis of religious beliefs or moral convictions]; 42 U.S.C. § 238n (Supp. 1999) [prohibiting discrimination against individuals and entities that refuse to perform abortions or train in their performance]; 20 U.S.C.A §1688 (2000) [prohibiting federal sex discrimination standards from requiring educational institutions to provide abortions or abortion benefits to students or employees].

[2] *See* 42 U.S.C. § 300a-7(b) (1995) [prohibiting public discrimination against individuals and entities that object to performing sterilizations on the basis of religious beliefs or moral convictions]; 42 U.S.C. § 300a-7(c) (1995) [prohibiting entities from discriminating against physicians and health care personnel who object to performing sterilizations on the basis of religious beliefs or moral convictions]; 42 U.S.C. § 300a-7(e) (1995) [prohibiting entities from discriminating against applicants who object to participating in sterilizations on the basis of religious beliefs or moral convictions].

[3] *See* Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 4507a, 115 Stat. 514, 555 (2001) [prohibiting health plans participating in the federal employee health benefits program from discriminating against pharmacists who refuse to dispense contraceptives on the basis of religious beliefs or moral convictions, and protecting the right of health plans that have religious objections to contraceptives to participate in the program].

[4] *See* 18 U.S.C. § 3597(b) (2001) [prohibiting discrimination against correctional personnel who have moral or religious objections to participating in federal executions].

Inadequacies in Current Legal Protection

While the principle of protection for conscience rights is widely acknowledged, its implementation has been far from perfect, creating a need for more comprehensive and forward-looking legislation.

Most federal conscience protections apply only to specific federal programs or are tied to the receipt of federal funds.[5] Their scope is limited by this fact, and by the narrow range of procedures covered.

Though the majority of states acknowledges and protects rights of conscience, their laws suffer from similar inadequacies. Most of these laws are limited to abortion. Only a few states protect health care providers from being forced to perform sterilizations. Few existing laws protect the full range of individuals and institutions that may be involved in providing health care in our increasingly complex health care system. Many states do not protect the rights of conscience with respect to newly created technologies such as cloning or embryonic research, or even current misuses of older technology such as "surrogate" motherhood. States have also not addressed the need to protect providers with respect to new threats to human life at the end of life, such as physician-assisted suicide and euthanasia. As noted by one commentator: "As the range of medical technologies continues to expand..., the number of medical services involving potentially serious conflicts of conscience is certain to increase."[6]

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[5] *See* 42 U.S.C. §§ 300a-7(b), 300a-7(c), 300a-7(e) (1995)[conscience protections limited to entities that receive and individuals who work in entities that receive federal funds under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act]; Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 4507a, 115 Stat. 514, 555 (2001) [protections under only the federal employee health benefits program]; and 18 U.S.C. § 3597(b) (2001) [protections only for correctional personnel in the context of federal executions].

[6] Lynn D. Wardle, "Protecting the Rights of Conscience of Health Care Providers," 14 J. OF LEGAL MED. 177, n. 2 at 181 (1993).

Finally, with new organized threats to conscience on the horizon, it is especially important for states to expand and strengthen their existing protections now. These threats have become especially apparent in recent years in the fields of abortion and contraception, as reviewed below.

Attempts to Force Health Care Providers to Perform Abortions and Other "Reproductive" Services

Existing conscience laws are under increasing attack by abortion rights activists, who want to require all health care personnel and hospitals to provide "the full range of reproductive services," including abortion. Not two years ago, there was a bold and unsuccessful attempt at a meeting of the American Medical Association's House of Delegates to win AMA endorsement for legislation requiring all hospitals to provide a "full range of reproductive services."[7] Fortunately the delegates ultimately defeated this misguided proposal, instead reaffirming AMA policy supporting conscience which states that "neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles."[8]

There have been other attempts to force hospitals to provide abortions and other morally controversial services. In 1997, for example, the Alaska Supreme Court ordered a private non-sectarian hospital that had a policy against abortion to begin performing abortions.[9] And in New Hampshire in 1998, after "reproductive rights"groups learned that a newly merged hospital would no longer perform elective abortions and sterilizations, they approached the New

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[7]AMA House of Delegates, Annual Meeting, 2000, Resolution 218.

[8]*See Proceedings of the 2000 Annual Meeting of the AMA House of Delegates* (American Medical Association, Chicago, IL), June 2000, at 447.

[9] *Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997).

Hampshire attorney general to challenge the merger. The New Hampshire attorney general issued an opinion concluding that the merger is subject to the law of charitable trust and must be reviewed in probate court. Under the pressure of the attorney general, the merger dissolved. Subsequently, abortion rights groups made this case a model for one of their strategies to prevent mergers if such procedures will not be performed or to force newly merged hospitals to perform them.[10] The American Civil Liberties Union (ironically named in this context) recently has published a report and advocacy kit aimed at requiring all hospitals, including Catholic hospitals, to perform abortions and other procedures which violate their conscientious convictions.[11]

Contraceptive Mandates and "Emergency Contraception"

Attacks on conscience have not always been as overt as these. A large part of the campaign to undo conscience rights in the abortion context has proceeded subtly and incrementally and has trampled on other conscience rights along the way. For example, to gain momentum for their campaign, abortion rights activists have begun to erode the right of conscience as it relates to paying for and providing contraception. Eighteen states now have adopted mandates that require employers to provide insurance coverage for contraceptives if they provide coverage for other prescription drugs.

Advocacy to mandate contraceptive coverage is noteworthy for a number of reasons, not the least of which is the fact that in all but one state, these mandates extend to so-called "emergency contraception." "Contraception" is a misnomer in this case, because this regimen commonly operates not to prevent conception *but rather* to ensure the death of an embryo after

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[10]*Hospital Mergers and the Threat to Women's Reproductive Health Services: Using Charitable Assets Laws to Fight Back,* National Women's Law Center, 2001.

[11]ACLU, "Religious Refusals and Reproductive Rights," January 2002.

conception by interfering with implantation in the womb.[12] It is thought that "this mode of action could explain the majority of cases where pregnancies are prevented by the morning after pill."[13] These efforts to mandate "contraceptive" drug coverage are therefore attempts to obscure or destroy the line between abortion and contraception, and to universalize coverage of abortifacient drugs at the expense of conscience rights. Virtually all the mandates enacted thus far provide either no conscience protection or inadequate "protection." Only one mandate safeguards religious and moral beliefs. Thirteen of the mandates contain provisions protecting religious employers, but six of these define "religious employer" so restrictively that the vast majority of religious organizations are not covered. In some cases, the statutory language ignores the religious character of organizations such as Catholic Charities and Catholic grade schools, treating them instead as "secular" institutions with no conscience rights whatever.

National groups advancing this campaign have had a federal contraceptive mandate introduced in Congress as well. That bill not only fails to provide any conscience protection (contradicting many federal laws that protect religious beliefs and moral convictions), but would even override all existing conscience protections in state contraceptive mandates, inadequate though many of these already are.[14] This bill, too, would cover abortifacient "emergency contraception." The movement to impose contraceptive coverage is really a movement to mainstream abortion as a medical norm and chip away at the right of conscience.

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[12] *See* Preven Emergency Contraception Prescribing Information, http://www.preven.com/prodinfo/prescinfo.asp (visited 02/12/02)

[13] F. Grou and I. Rodriguez, "The Morning After Pill, How Long After?" 171 AMERICAN JOURNAL OF OBSTETRICS AND GYNECOLOGY 1529-34 (1994).

[14] Equity in Prescription Insurance and Contraceptive Coverage Act of 2001, S. 104, 107th Congress (2001).

Mandating "Emergency Contraception" in Hospitals

Conscience rights are also at risk in bills to mandate the administration of "emergency contraception" to rape victims. All Catholic hospitals observe ethical directives which allow provision of emergency contraception to rape victims when its mode of action would be contraceptive, i.e., preventing ovulation or fertilization. Catholic hospitals, however, will not administer this drug as an abortifacient, if conception has already occurred. A handful of states[15] are considering or have considered emergency contraception mandates, which are designed to override the conscience rights of Catholic hospitals and others.

Though only a few state legislatures are considering such measures, an organized national effort—the Abortion Access Project—is operating in twenty-one states[16] to garner support for them. It is quite clear from the project's materials, including fact sheets and resources on the project's website, that it has targeted Catholic hospitals.[17] Mandating these abortifacient drugs is an incremental means to requiring hospitals to perform abortions generally—indeed, the group's materials on emergency contraception are included in a kit titled: "Designing A Campaign To Increase Hospital-based Abortion Services."[18]

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[15]Illinois, Florida, Maryland, New York, Wisconsin.

[16]*See* Abortion Access Project, "Hospital Access Collaborative Newsletter" Fall 2001, www.abortionaccess.org/AAP/campaigns/HAC/HAC_news_fall01.htm, (visited 02/15/02).

[17]*See* Abortion Access Project web site, www.abortionaccess.org, for Fact Sheets, "Catholic Hospitals and the Charity Myth" and "The Impact of Catholic Hospital Mergers on Women's Reproductive Health Services," and the manual "Designing A Campaign To Increase Hospital-based Abortion Services," especially Section C2, "Catholic Hospitals and Emergency Contraception."

[18]Abortion Access Project, "Designing A Campaign To Increase Hospital-based Abortion Services," available at www.abortionaccess.org/AAP/campaigns/hospital/designing_a_campaign_to_increase.htm#The Need To Increase (visited 02/11/02).

Why Are There Efforts to Undermine Conscience Now?

With conscience laws on the books for nearly thirty years, what accounts for these renewed efforts to undermine rights of conscience? Part of the answer lies in a desperate desire by abortion proponents and others to legitimize procedures that carry a stigma in the medical profession and society at large. Legalizing abortion has not made it respectable, and few doctors want to train in or perform abortions. Half of Americans consider abortion equivalent to murder.[19] If abortion had to be provided in all hospitals, this would lend the impression that it is basic health care. In 1995, when he called for intensified efforts to require abortion training for all medical residents, abortion advocate Dr. David Grimes declared that "making abortion training a routine part of any residency...will put abortion back in the mainstream of medicine."[20]

The procedures covered in the proposed Kansas legislation all have this dynamic in common – that is, none of them is truly established on medical or ethical grounds *as* basic health care, and so organized campaigns are required to *make* them so by requiring everyone to be involved in them. All these procedures are morally problematic or controversial; some of them are illegal in all states (infanticide, euthanasia); some, though quite new, are already illegal in a number of states (cloning, destructive embryo research); and none of them can claim to treat or cure an illness.

In the case of abortion, renewed threats to conscience can also be explained by the fiercely competitive and commercial nature of the abortion business. To generate the most business, abortion clinics have located in urban areas almost exclusively, where there is a large

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[19]NY Times/CBS Poll, N.Y. TIMES, Jan. 16, 1998, A1.

[20]MED. & HEALTH, Feb. 29, 1995.

population base. "Abortion clinics are no different from other speciality services, said Dr. William Ramos, who runs an abortion clinic in Las Vegas. 'In the entire state of Nevada, there is only one Lexus dealer and only one Acura dealer', he said." With abortion, Dr. Ramos continued, "there is less work and more income." But to achieve the income that most abortionists expect, they must remain in cities. "Clinic owners say they have little choice but to cluster in cities—that is the only way they can find enough patients." Additionally, in order to maintain their niche in the market, they often refuse to train other physicians. "One doctor in Detroit....said that when he finished medical school, trained in obstetrics and gynecology, he asked abortion doctors in the area to train him. He was turned away."[21]

The reality is that public sentiment against abortion has grown even stronger in recent years, and fewer women are seeking abortions. Hence clinic owners have become even more protective of the "business" they already have, and less willing to extend their reach to rural areas where few women seek abortion. Rather than "setting up shop" in such areas at a risk to their profit margin, they are advocating that all hospitals be required to perform abortions.

Conclusion

Legislation that will protect conscience by prohibiting discrimination against health care providers is urgently needed to counteract these attempts nationwide to undo existing protections. Respect for conscience has never been, nor should it be, especially controversial. Even Planned Parenthood of Kansas and Mid-Missouri recognizes the right of conscience in theory, saying that it is committed "to ensure an environment which affirms...exercise of the

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[21]Gina Kolata, *As Abortion Rate Decreases, Clinics Compete for Patients*, N.Y. TIMES, Dec. 30, 2000, at A1.

individual conscience."[22] The problem is that Planned Parenthood's respect for conscience is partial and selective, and does not take account of the conscience rights of individuals and institutions that disagree with its own view of "reproductive health."

The proposed bill and other conscience protections recognize a basic principle: no one, least of all a health care provider committed to healing, should be forced to violate his or her conscience by participating in procedures that he or she deems to be harmful or morally wrong. Out of respect for religious freedom, concern for the ethical integrity of the medical profession, and appreciation for the diversity of our health system and our society, all should agree to help prevent such coercion.

[22]http://www.ppkmo.org (visited 02/12/02).

March 25, 2002

Senator Susan Wagle, Chair

Senate Public Health and Welfare Committee

Topeka, Kansas

Dear Senator Wagle and Committee Members:

I am a board-certified family physician in practice for twenty years, the last eight here in Parsons, KS. Earlier this month we had a Saturday "Legislative Coffee" which Senator Umbarger attended. I spoke at that town hall meeting regarding HB2711, and he suggested I testify to you regarding this bill. Having a prior commitment in Wichita for March 26, I cannot appear personally so I am faxing this to you, outlining my wife's and my personal history pertinent to this bill. We hope it will help as you deliberate this legislation.

Dianne and I met while I was a student at the California Institute of Technology and she a nursing student at Los Angeles County General Hospital. We married on September 7, 1968, and I dropped out of school to work as a hospital orderly so she could finish nursing school. I had planned to return to college to pursue medicine but received a "Greetings" letter from the draft board. I enlisted in the U.S. Navy which sent me to San Diego for Hospital Corpsman training. When we moved there Dianne was hired for Labor and Delivery nursing at the University of San Diego Medical Center. What she didn't know was that the University Hospital was doing mid- and late-term saline abortions. Some of these infants were born alive. This was abhorrent to us as Catholics, and my wife spoke to her supervisor asking not to be assigned to abortion patients in the future. Her feelings about this were acknowledged but she was still going to be assigned to abortion patients. Dianne then gave her two weeks notice, during which she was constantly harassed by other

staff who did not accept a baby's right to life. Having quit that job out of conscience and was fortunate to find another position at a different hospital where abortions were not performed.

After military discharge in 1972 we moved to Tucson, AZ (I had grown up in Phoenix). We had two of our four children by then, so we both worked for a year to get on our feet financially so I could return to college. Dianne worked in Labor and Delivery at Tucson Medical Center, where she was assured that not only did they not do abortions, but never would start doing them. However, the day after the Supreme Court decision January 22, 1973, Tucson Medical Center began doing abortions in Labor and Delivery. Again Dianne had to resign her job for reasons of conscience and find one where abortions would truly never be done, St. Joseph's Hospital, a Catholic facility.

By 1975 I was to graduate from the University of Arizona with a B.A., Summa Cum Laude, Phi Beta Kappa, with a 4.0 GPA. I had scored 800 out of 800 on the Medical College Admission Test, and was ranked the #1 premedical applicant by the Pre-Medical Committee. When I applied to the University of Arizona College of Medicine, at each of the three required interviews I was asked my views on abortion. I replied that as a Catholic gentleman I would never want to participate in that procedure as I felt it was the taking of an innocent life. When I received my letter from the Admissions Committee, I was deeply disappointed to have been rejected. The letter encouraged those not accepted to contact the Dean if interested in reapplying for the following year. I did meet with the Dean of Admissions and asked what I might do to enhance my chances for the next year, and he replied, "Nothing. There is nothing you can do, as the committee felt you were rigid

and judgemental." Since no opinions were asked of me except as regards abortion, it was quite clear that that was the reason I was denied admission. The following year I was accepted at St. Louis University School of Medicine, and began there in September 1996 when our fourth child was only six weeks old.

We have in our lives personally suffered from discrimination both in education and employment simply because we wanted to preserve the integrity of our moral and professional lives. We urge your committee (and the full Senate) to pass this bill so that others will not have to suffer from this type of discrimination or persecution simply because their moral values are incompatible with the medical procedures enumerated in the bill.

Very truly,

Gary Yarbrough MD

Gary Yarbrough, MD

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To: Senate Public Health and Welfare Committee

From: Jerry Slaughter
Executive Director

Date: March 26, 2002

Subject: HB 2711; concerning health care providers' rights of conscience

The Kansas Medical Society appreciates the opportunity to appear today on HB 2711, which codifies the right of health care providers to refuse to participate in patient care procedures or services which they may have objections to on moral grounds.

Let me say from the outset that we have tried to approach this legislation objectively, looking carefully at its actual content, and keeping separate the fairly obvious religious, political and emotional dynamics associated with it. Most particularly, our interest in this legislation should not be construed as a statement on abortion, for it is not. We take no position on that issue.

When this bill was introduced last year we identified several concerns which we discussed with the sponsors. During the intervening months the bill was substantially altered to address many of the concerns we raised. Our objections to the bill were related to the specific language and approach, not the underlying philosophy.

It is a universally accepted ethical principle in medicine that a physician should be free to choose whom to serve, except in the case of an emergency, or if the refusal would constitute discrimination. Said another way, the right of a physician to not participate in certain procedures and services is imbedded in medical ethics. However, the obligation of a physician is to put the best interests of the patient above all else, and in cases where a physician chooses to not participate in a service, that obligation can be met by identifying a qualified substitute physician for the patient. Obviously, that means there may be times when the physician's desire to not participate is subordinate to the welfare of the patient. In such cases, such as emergencies, the physician must participate in providing the service to the extent of their capability. The overarching ethical principle involved in this legislation is fundamental to the physician-patient relationship, and we support it. That ethical principle, by the way, also applies in the affirmative. A physician is ethically free to choose to participate in certain services, so long as they are legal and within his or her current competence.

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A couple of key areas of the bill that we identified concerns with should be mentioned. Because physicians have an ethical obligation (and probably a legal one as well) to provide life-saving services in the case of emergencies, we asked the sponsors to remove the reference to blood transfusions, which has been done. Obviously, it is unacceptable and contrary to the well-being of a patient to have a health care provider refuse to participate in a blood transfusion in an emergency or when it is medically necessary.

Another concern had to do with emergency situations as a whole, wherein it would be detrimental to the best interests of the patient to have a physician or health care provider refuse to provide medically necessary care. This also was addressed in the amendments to the bill, and is intended to make it clear that a provider's duty to provide emergency care takes precedence over the provider's desire to not participate. The committee may want to consider language in the emergency exception that is not quite so narrow as that which appears in the bill at the present. There are emergency situations that, while not immediately life-threatening, nevertheless present substantial risk of harm to the patient.

Another concern of ours was the reference to sterilization. There are times when a hysterectomy (surgical removal of the uterus) is clearly medically necessary for reasons unrelated to contraception. Qualifying language was also added to address those situations. Another issue was that of contraceptive services. Sometimes there are medical reasons unrelated to contraception - such as for drug therapy prescribed for endometriosis - that require the prescription of contraceptive drugs. That also has been addressed with qualifying language.

We sincerely appreciate the willingness of the sponsors to address our concerns. Particularly as it relates to emergency situations, this bill recognizes the greater weight that must be given to the well-being of the patient, even if it means subordinating the desires of the provider. Our view is that these changes are in the best interest of patients, and go a long way to assuring that this bill will not result in medically necessary care being interrupted or withheld. Our goal was to make sure that the bill strikes the correct balance between recognizing the rights of providers while protecting the rights of patients to receive medically necessary care.

An issue that has come to our attention since the House consideration of the bill has to do with the applicability of the legislation to the teaching of medical students and residents. When we initially reviewed the bill, we did not believe it could be interpreted in such a way that the educational process would be compromised for medical students and residents. It is very important that physicians in training at our medical school receive a comprehensive and complete education, not only so they are prepared properly for the practice of medicine, but also so they can pass the required licensing and board examinations. We have no problem with the student declining to participate in a particular service when he or she is a licensed, practicing physician, but in order to first be licensed, the student should go through the complete educational experience that is required for all medical students. We have some questions about

whether the provisions in the bill could be used in such a way as to diminish the educational experience to the detriment of the medical student, and ultimately patient care. This is an area that should be addressed by the committee.

We continue to have some concerns about the language as it relates to health care payers. Our concern is that we would not want to create a situation where an insurance company could refuse to pay for a medically necessary service on the grounds that it had a moral objection to the service, unless it had an explicit mission or corporate philosophy that clearly was in conflict with the particular service. Frankly, at this point we do know whether the language in the bill will be interpreted by the courts to allow such an outcome or not. That is an area that we should continue to monitor so that if there are unintended consequences they can be corrected.

We have not aware of instances of physicians being forced to participate in certain services against their will in our state. However, we realize this bill affects all health care providers, many of whom are employees, which puts them in a little different situation than most physicians. With the addition of the amendments discussed above, this bill is consistent with well established ethical principles, and we can support it. Thank you for the opportunity to offer these comments.

Memorandum

KANSAS HOSPITAL ASSOCIATION

Donald A. Wilson
President

March 26, 2002

To: Senate Public Health and Welfare Committee
From: Thomas L. Bell
Senior Vice President/Legal Counsel
Re: House Bill 2711

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of House Bill 2711. This bill creates the Health Care Providers Rights of Conscience Act. Such a law would codify the notion that a health care provider has the right to refuse to perform certain specified health care services. It would also establish a procedure for the exercise of this right.

KHA is in general support of this right of conscience. It is an idea that the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) has recognized and required to be included in hospital policies. Having said this, we want to be quick to point out the JCAHO also recognizes the patient's right to treatment or service within the hospital's capacity, its stated mission and philosophy, and relevant laws and regulations. The JCAHO structure is instructive and provides a good template for how numerous hospitals currently deal with this issue:

The hospital attempts to accommodate employees who provide advance notification to their supervisor that they do not wish to participate in an aspect of care or services because of cultural values, ethics, or religious beliefs. The policy addresses:

- *The fact that the employee is informed during orientation that he or she may request to not participate in an aspect of care because of cultural values, ethics, or religious beliefs.*
- *That if the employee identifies an aspect of care or service in which he or she does not wish to participate, he or she should make a request in writing to be excused from participation. The request should include the cultural, ethical, or religious reasons and the aspect of care or service from which he or she wishes to be excused.*
- *The fact that the supervisor will review the request to justify appropriateness and to see if accommodation is possible.*

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- *That if accommodation is possible, the supervisor will notify the employee and others who need to be involved in the accommodation. There will be an understanding that if events prevent the accommodation at a specific point because of an emergency situation, the employee will be expected to perform assigned duties so he or she does not negatively affect the delivery of care or services.*
- *That if an accommodation is not possible, the employee will be allowed to explore other job opportunities within the hospital where an accommodation might be possible.*
- *That if an employee does not agree to render appropriate care or services in an emergency situation because of personal beliefs, the employee will be placed on a leave of absence from his or her current position and the incident will be reviewed.*

This JCAHO policy generally mirrors the structure set out in HB 2711. The biggest difference, however, is that HB 2711 does not adequately recognize emergency situations. It is especially in these kinds of circumstances that the patient's right to care and treatment weighs the heaviest. In our opinion, there needs to be greater recognition of emergencies both in the delineated health care services subject to the act and elsewhere. For example, there is an "emergency" exception contained in the bill. However, it is based on what the particular health care provider considers to be an emergency. There needs to be a more objective standard applied here, such as the one contained in the federal Emergency Medical Treatment and Active Labor Act.

In summary, the policy set out in HB 2711 is one that is generally recognized in the health care setting and one that we support. There are, however, amendments that should be made to the bill.

Thank you for your consideration of our comments.