Approved: March 13, 2003
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 February 24, 2003 in Room 231-N of the Capitol.

All members were present except: Senator David Haley
Senator Chris Steineger
Senator Nancey Harrington

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

Conferees appearing before the committee: Mr. Bud Burke, Lobbyist for the Physical Therapists
Mr. Daryl Menke, PT.
Mr. Mark Dwyer, PT., MHA
Ms. Pam Palmer, PT.
Ms. Rebecca Rice, Legislative Council, Kansas Chiropractic Association
Dr. Darrel Force, Legislative Committee, Kansas Chiropractic Association
Ms. Maggie Kelley, Massage Professional, Kansas Association.of Therapeutic Massage & Bodywork, Inc.

Others attending: see attached guest list

**Hearing on SB225 - an act relating to physical therapy; providing for licensure of physical therapists**

Upon calling the meeting to order, the Chair announced that the Committee would be hearing **SB225**, an act relating to physical therapy; providing for licensure of physical therapists and asked Mr. Norm Furse, Revisor of Statutes, to give a brief overview. Highlights of Mr. Furse's overview are as follows:

1) Section 1: changes "registration" to "licensure" and the definition of physical therapy throughout the bill, it protects the scope of practice (currently for PT.'S being registered, the title PT. and some other terms are protected, but the scope of practice is not, the bill changes this.). It makes a technical change for the Board of Healing Arts (referring to the Board of Healing Arts as "Board" throughout the bill) and the Examining Committee for Physical Therapy renamed as the Physical Therapy Advisory Council. Also, certain protections regarding terminology and abbreviations, and definitions are expanded considerably (ex.; "practice of PT."). Mr. Furse provided a handout reflecting the current law and the proposed changes. A copy of the handout is (Attachment 1) attached hereto and incorporated into the Minutes as referenced. Lastly, a number of the proposed terms are used in other acts (ex. Physiological appears in the Occupational Therapy Licensure Act and a similar type of term appears in the Chiropractics Statute 65-2871).

2) Section 2 commences the language on the examining committee and the deletions and additions (eliminate the examining committee reference as they no longer give the exams) and use the new terminology physical therapy advisory council.

3) Section 3 provides the committee or councils appointments (lines 21 through 27 stricken because outdated).

4) Section 4 sets terminology changes throughout the bill (ex. State board of healing arts to only read "board").

5) Section 5 consists of technical changes (ex. registration to licensure), inserts language similar in other Board of Healing Arts statutes, allowing applicants, who attended a program not approved by the Board, to provide an evaluation showing the educational program met the criteria and deletion of outdated language.

6) Section 6 deletes the American registry of physical therapists and in ©), adds new language to provide for a temporary permit expiring one year from date of issue or Board approval.

7) Section 7 deletes ©) requiring physical therapists to maintain a policy of professional liability insurance.

8) Section 8 inserts a section placing the maximum fees that are charged for physical therapist licensure in the statute itself; (2) allows the board to charge fees for exams that it gives or requires the applicant to pay the examining service the fee; and, (3) adds "fees fixed by the Board will continue in effect until different fees are fixed by the Board."

9) In Section 9, currently the Board, in disciplining PTs, may revoke or suspend their license, the additional italicized language allows the license or certificate may be limited or censured by the Board; regarding the definition of unprofessional conduct, the bill adds "as defined by rules and regulations adopted by the board."

A key element in the physical therapist's act that is not being changed in this proposal, states on page 9, lines 18 through 21, that the physical therapist works on the prescription of a licensed physician, podiatrist, or dentist.

10) Section 10 refers to language relating to the terms and scope of practice and deleting the wording in lines' 30-32 and pulled down to lines 33 thru 37 in the italicized language, making no change in the law. The change is in lines 42 and 43 which provides that it is unlawful for any person to engage in the practice of physical therapy. This protects the scope of practice by making it a violation of this subsection as a class B nonperson misdemeanor; (b) is the language for the certified physical therapists; ©) commencing on line 16, are exclusions from the act. (Typically in these types of licensure acts, there is a broad definition of what constitutes the practice of a particular group of professional people and then a "laundry list" of what is excluded. These exceptions would be applicable as long as the person listed or enumerated in the exceptions did not hold themselves out in a manner prohibited under (A) or (B), so does not hold themselves out by title that is protected for physical therapists for this act); nothing in the act will be construed to permit the practice of medicine or surgery; no statute granting authority to licensees of the state Board of Healing Arts will be construed to confer authority upon physical therapists to engage in any activity to confer by this act.

11) Section 11 - terminology changes (ex. Registered changed to licensed);

12) Section 12 and adding new enforcement authority for the Board of Healing Arts (ex. (b) seeks injunctions & ©) allows the board to seek a civil fine);

13) Sections 13 & 14 - terminology changes (certificate to registration) and adding "acts amendatory of the provisions thereof or supplemental thereto.";

14) Subsequent sections are those where the term currently is in ending statutes (ex. page 14, line 35 changing registered to licensed physical therapists). The one difference here is in Sec.40-3401 stating physical therapists are no longer under the health care stabilization fund, necessitating amending two Sections which reference this statute pulling it out of here to keep those other sections all the same and needed to insert license physical therapists and the reference to this Sec.(ex. Page 25, line 10 and 15);

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

15) The remaining sections are terminology changes consistent with prior sections, (ex. Sec.30 states how long the bill will be in force, and this was used because last year the legislature in passing the occupational therapy act used April 1, 2003 as the effective date).

Questions from Senators Wagle and Barnett for Mr. Furse ranged from: is professional liability insurance required in this bill; clarification on page 10 & 11 regarding exceptions from scope of practice or this act will not be construed to include those individuals so long as they do not hold themselves out to be physical therapists; how are the chiropractic statutes written (protected scope of practice and part of the healing arts act); could a chiropractor say they are going to give physical therapy to (referencing page 11, line 3) if a student is in an athletic trainer program, would this be an accredited health care educational program?

As there were no further questions of Mr. Furse, Chairperson Wagle called on the first proponent to testify, Mr. Bud Burke who acknowledged his presence and stated he was there to represent the physical therapists. He offered no written testimony.

The second proponent conferee was Mr. Daryl Menke, Physical Therapist, who provided the three elements of the physical therapy profession and the curriculum for an accredited physical therapist program and suggested amendment language (Page 2, Section C, line eight, inserting the term "anatomical" after the term "mechanical" and on Page 6, Section C, line 16, elimination of "one year" which were placed in error and replace with three months ( was agreed upon and approved by the Kansas City Board of Healing Arts); and language currently in **SB225** not consistent with current language. A copy of his testimony and proposed amendment changes is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The next proponent was Mr. Mark Dwyer, Physical Therapist, MHA, who stated what the broad scope of practice allows, what the interventions physical therapists may include, what is a physical therapist and how techniques are carried out, and a trend that further illustrates the need for patients to be confident in the qualifications of who is providing their care is a large pending change in how commercial insurance is administered to employees (ex. "defined contribution plans"). A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

The last proponent conferee to testify was Ms. Pam Palmer, Physical Therapist, who stated that the physical therapists of Kansas do not wish to limit any other profession's ability to perform their interventions or procedures, made evident by the exclusionary list added to the bill, however, with regard to scope of practice, there is and will continue to be overlap between professions. A copy of her testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

Three consumer advocates, Mr. Anthony Fadale, Mr. Lloyd Langston, and Dr. YeVonne Kimmitt, offered proponent testimony, but because of time constraints, would submit as written testimony. Copies of their testimonies are (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

The Chair began opponent testimony with the introduction of Ms. Rebecca Rice, Legislative Council, Kansas Chiropractic Association, who stated she would first comment on the KDHE credentialing committee procedure, then offer several amendments KDHE believe are necessary to avoid action that would further encourage a rush of other health care providers to change their credentialing level. A copy of her testimony is (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

The second opponent conferee recognized was Dr. Darrel Force, Legislative Committee, Kansas Chiropractic Association, who stated he was here to offer information concerning definitions and educational requirements relating to the scope of practice language contained in **SB225**. A copy of his testimony is (Attachment 7) attached hereto and incorporated into the Minutes as referenced.

The final opponent to testify was Ms. Maggie Kelley, Massage Professional, representing the Kansas Association of Therapeutic Massage and Bodywork, Inc. who asked that "Massage Therapists/Practioners" be added to the exemptions and requested that the exemption also include KS Board of Healing Arts 65-2872F. A copy of her testimony is (Attachment 8) attached hereto and incorporated into the Minutes as referenced.

The Chair then announced that there were three neutral conferees and asked that they be available to address the Committee tomorrow, February 25, 2003, at 1:15 p.m. then there would be time today to ask questions of the physical therapists and chiropractors.

The Chair then asked for questions from the Committee. Senators Barnett, Wagle, Salmans asked questions ranging from if the Committee acted upon this, would they be opposed to liability insurance, have the physical therapists seen the amendments that the chiropractors proposed, what is grade four thrust manipulation and would they be using it, qualifications with regard to training, regarding the request from Maggie Kelley, would it be consistent or inconsistent with the current language of the bill, to concerns with KDHE's evaluation process being inadequate regarding the difference between registration and licensure.

As there were no further questions from the Committee, the Chair also announced that Ms. Marla Rhoden, Director, Health Occupations Credentialing, was signed up to testify today, but cancelled due to illness. A copy of her testimony supporting the bill is (Attachment 9) attached hereto and incorporated into the Minutes as referenced.

**Adjournment**

The Chair then announced the neutral testimony would be heard tomorrow and adjourned the meeting. The time was 2:30 p.m.

The next meeting is scheduled for February 25, 2003.

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

## GUEST LIST

34

DATE: Monday, February 24, 2003

| NAME | REPRESENTING |
|---|---|
| Tuck Duncan | Kansas Occupational Therapy Association |
| Carolyn Bloom | Ks Physical Therapy Assoc |
| Pam Palmer | KS. P.T. Assoc. |
| Candy Bahner | KS P.T. Assoc. |
| Mark Dwyer | KS. Physical Therapy Association |
| Thomas Litney | President Kansas Occupational Therapy Association |
| Tami Litney | OT |
| Bud Burke | P.T.'s |
| Paul Silovsky | KPTA |
| Daryl Menke | PT |
| Stephanie Johnson | PT |
| Justin Hoover | PT |
| Tom Bruno | Ks Athletic Trainers Society |
| Keith R Landis | Christian Science Committee on Publication for Kansas |
| Loretta M. Hoerman | KAPA |
| J.M. Byrnes | Sen. Salmans |
| Christina Collins | KMS |
| Linda Lubensky | KS Home Care Assoc |
| Maggie Kelley | KS Ass'n of Therapeutic Massage & Bodywork Inc (KATMB) |

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

## GUEST LIST

DATE: Monday, February 24, 2003

| NAME | REPRESENTING |
|---|---|
| Anne Casebeer | KS Assoc. Therapeutic Massage & Bodywork |
| Denise Gum | KATMB inc. |
| Robin Haag | KATMB inc. |
| David Sanderson | KPTA |
| Chip Wheelen | Ass'n of Osteopathic Med |
| Larry Buening | Bd of Healing Arts |
| Rebecca Rice | Ks Chiropractic Assn. |
| Darrell Fore, D.C. | Ks. Chiropractic Assn |
| Charles Mossman, DC | Ks Chiropractic Assn |
| Jane Kelly | Ks Chiropractic Assn |
| Gary Counselman, DC | KCA |
| Anthony A. Fadale | Admin/AoA - consumer agency |
| Brad Langston | Langston & Associates |
| John Peterson | Ks Govt Consulting |
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Physical Therapy Definition

Current Law

- Evaluation, treatment or instruction to assess, prevent and alleviate physical disability pain
- Administration and evaluation of tests and measurements of bodily functions and structures in aid of treatment
- Planning, administration, evaluation and modifications of treatment and instruction
- Use of physical measures, activities and devices for prevention and therapeutic purposes
- Consultative, educational and advisory services for the purpose of reducing the incidence and severity of physical disability and pain

Proposed

- Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions
- Determining a diagnosis for physical therapy, prognosis, plan of therapeutic intervention and assess the ongoing effects of physical therapy intervention.
- Alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions
- The interventions may include therapeutic exercise, functional training in self-care and in-home, community or work integration or reintegration, manual therapy, therapeutic massage, prescription application
- Fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment, airway clearance techniques, integumentary protection and repair techniques, debridement and wound care, physical agents or modulation
- Mechanical and electrotherapeutic modalties, patient-related instruction
- Reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life
- Engaging in administration, consultation, education and research

Prepared by Norm Furse, Revisor of Statutes

Senate Public Health & Welfare Committee
Date: February 24, 2003
Attachment 1-1

att 2

# TESTIMONY

**SENATE BILL 225**

**Daryl Menke, PT**
**February 24, 2003**

During the late 1970's and early 1980's, your distinguished colleagues from the legislation developed and enacted nine criteria detailed in K.S.A. 65 – 5001 et. seq.. Known as the *Kansas Credentialing Act,* this statute provides a mechanism for a structured evaluation and objective analysis of health care personnel. The published purpose is to establish the correct level of credentialing (***formal recognition of professional competence***) that will protect your constituent's health, safety, and welfare.

Ratified and confirmed by a unanimous affirmative vote on November 21, 2002; January 16, 2003; and again on February 4, 2003 by the Kansas Department of Health and Environment, Kansas Physical Therapists have met the statutory requirement of ***clear and convincing evidence*** that there is a definitive need to further protect the Kansas public's health, safety, and welfare by **licensing** Kansas physical therapists. **(*note: the clear and convincing evidence presented resulted in the committee ONLY needing 1 hr. and 2 minutes on Nov. 21 and ONLY 14 minutes on Jan. 16 to* ratify and confirm the application by a unanimous affirmative vote.)**



Senate Public Health & Welfare Committee
Date: February 24, 2003
Attachment 2-1

The Secretary of the KDHE stated: "***The practice of physical therapy requires an identifiable body of knowledge acquired through a formal period of advanced study that can be obtained in Kansas; and the public needs, and does benefit, from assurances of initial and continued education***." The Secretary further states: "***Nationally recognized standards of education for providing physical therapy services exist and are identifiable***".

** As demonstrated in The Guide to Physical Therapy Practice, the three elements of the physical therapy profession are:

The disablement model typifies the practice of physical therapy and is the model for understanding and organizing practice.

Physical therapist practice addresses the needs of both patients and clients through a continuum of service across all delivery settings–in critical and intensive care units, outpatient clinics, long-term care facilities, school systems, and the workplace–by identifying health improvement opportunities, providing interventions for existing and emerging problems, preventing or reducing the risk of additional complications, and promoting wellness and fitness to enhance human performance as it relates to movement and health. Patients are recipients of physical therapist **examination, evaluation, diagnosis, prognosis, and intervention** and have a disease, disorder, condition, impairment, functional limitation, or disability. Clients engage the services of a physical therapist and can benefit from the physical therapist's consultation, interventions, professional advice, prevention services, or services promoting health, wellness, and fitness.

Physical therapist practice includes the five essential elements of patient/client management **(examination; evaluation; diagnosis; prognosis, including the plan of care; and intervention**), which incorporate the principles of the disablement model.

All accredited physical therapist education programs in the United States must adhere to the guidelines of the *Normative Model for Physical Therapy Education* which outlines the areas of clinical and education preparation. All states require that physical therapists graduate from an accredited program. Physical therapy **DIAGNOSIS** is part of the *Normative Model for Physical Therapy Education:*

1) Apply knowledge of clinical, behavioral, and basic sciences and knowledge of clinical measurements when determining a physical therapy diagnosis
2) Assess factors, including age, gender, and previous history, when determining a physical therapy diagnosis
3) DIAGNOSIS: a label encompassing a cluster of signs and symptoms, syndromes, or categories. It is also the decision reached as a result of the diagnostic process, which is the evaluation of information from the patient examination organized into clusters, syndromes, or categories.
4) Physicians utilize labels that identify disease, disorder, or condition at the level of the cell, tissue, organ, or system, ***Physical Therapists use labels that identify the impact of a condition on function at the level of the system (especially the movement system and at the level of the whole person)***
5) No state law, rule or regulation completely prohibits or prevents physical therapists from making a physical therapy diagnosis, but some prevent physical therapists from making a medical diagnosis or a diagnosis of disease.

** Physical Therapy is a distinct profession that is not replicated by any other profession or group of medical providers. To be a physical therapist in Kansas, or in any other state in the United States, one must first complete rigorous and comprehensive pre-requisites in science and liberal arts, then apply for, and be accepted to, a nationally credentialed school of physical therapy. (Criteria II, VII, IX) The curriculum of a physical therapy program includes physiology, anatomy, neurology, biomechanics, clinical therapeutics, and professional ethics. (Criterion II) Students are given instruction and clinical experience in a broad range of diseases and impairments to prepare them to treat patients of any age. The range of training for all physical therapists is from developmental disabilities of pediatric patients to the musculoskeletal, neurological conditions, and diseases of the geriatric patient. The agency that accredits physical therapy schools is The Commission on Accreditation In Physical Therapy Education (CAPTE). Please refer to "A Normative Model of Physical Therapist Professional Education", Version 2000" for specific information on curriculum requirements. (12) (Criteria II, IX) **

** Graduates of a school of physical therapy must then pass a comprehensive national exam to be credentialed to practice. The Statutes and Rules and Regulations for registration and renewal are in K.S.A. 65-2910 and K.A.R. 100-29-9 respectively. (13, 14) A minimum of 40 hours of continuing education is required every two years. (14) In order for a physical therapist to maintain his/her credentials, these continuing education hours are reviewed by the Kansas Physical Therapy Association for content and quality before being accepted by the Kansas Board of Healing Arts. (Criteria II, IX)

** 212 accredited PT education programs in U.S. 2 in Kansas (University of Kansas Medical Center and Wichita State University)

** All accredited programs are Master Degree Transitioning to Doctorate of Physical Therapy

** Residencies, Fellowships, Specialties Certification

** Education process recognized by **

1) All 50 State agencies that regulate PT (recognized Kansas since 1963 per KSA 65-2901 et. seq.)
2) Commission on Accreditation of Physical Therapy Education (CAPTE)
3) U.S. Department of Education
4) Council for Higher Education Accreditation
5) JCAHO, CARF, National Committee for Quality Assurance, Medicare, Medicaid, Commercial Ins. Carriers
6) State and Federal Courts
7) American Medical Association

The Secretary stated: "***The unlicensed practice of physical therapy can harm the public and the potential for harm is recognizable and not remote***". The Secretary concluded: "***I concur that sufficient evidence was presented to warrant a change in the level of credentialing for physical therapists in order to protect the public, and that licensure of physical therapists is the appropriate level of credentialing to ensure protection from the documented harm***"

**CURRENT LAW DOES NOT PROVIDE LIMITS OR RESTRICTIONS ON THE USE AND PROVISION OF THE TERM "PHYSICAL THERAPY" FROM PERSONS WHO HAVE NOT ACCOMPLISHED PRESCRIBED EDUCATIONAL ANDTRAINING LEVELS**

FINAL FINDINGS AND CONCLUSIONS: *"Evidence has been provided that provision of "physical therapy" by practitioners other than registered physical therapists and physical therapist assistants* ***poses a threat to consumers*** *that is* ***recognizable and not remote****, and that the current system of* ***registering physical therapists is not adequate to protect the public****".*

*** 94 % (47/50) of States license physical therapists ***

*** Physical therapists routinely work with patients that have major physical illnesses, life threatening conditions, or conditions that alter life functions ***

*** Level of responsibility that physical therapists work under is parallel with licensed physical therapists in other states, as well as other licensed professions in Kansas ***

*** Mechanical devices and chemical substances are frequently used that will harm the public if used incorrectly or inappropriately ***

** A review of written orders received from physician's reveals 45% of the prescriptions having no diagnosis or a general diagnosis (pain, strain, sprain, etc.), 66% of the prescriptions state "evaluate and treat", and all prescriptions require independent judgement by the physical therapist **

Licensure is defined in K.S.A. 65 – 5001 (d) ***licensure means a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without license is unlawful.*** Further, K.S.A. 65 – 5007 (a) (3) ***licensure is the appropriate level when statutory regulation and registration are not adequate to protect the public's health, safety, or welfare and when the occupational or professional groups of health care personnel to be licensed perform functions not ordinarily performed by persons in other occupations or professions.***

Not all individuals who claim to provide "physical therapy" are identified and or regulated. No one assures that these individuals have minimum occupational or professional skills. Therefore your constituents are ***unable*** to establish a substantial basis for relying on the services of such individuals.

*** Physical therapy is not a generic term. It is an independent body of knowledge with a well-established theoretical and scientific basis that when applied incorrectly or by unqualified individuals can result in harm to your constituents. This is supported by the following legal and judicial findings and precedents:*

***a)*** Kan Circuit Court 1936; CCA 10 (Kan) 1936, Brinkley v. Hassig 83 F 2d 351
***b)*** Kan App. 1980; KSBHA v. Burwell, 616 P.2d, 1084, 5 Kan. App. 2d 357
***c)*** J. 243-1998, the Supreme Court of Pennsylvania, Middle District
***d)*** Ariz. App. 1975, Sanfilipo v. State Farm Mutaul Auto. Ins. Co. (1975) 24 Ariz. App 10, 535 P 2d 38.
***e)*** Neilson v. Ruoti, 45 Pa. D. & C. 4th 518, 1999
***f)*** Penn. Supreme Crt. 2002
***g)*** 27 civil cases from Malpractice Update, PT Magazine, April 1996, pages 69-70 (48% resulted in rulings favoring the public)
***h)*** 20 legal cases from LEXIS-NEXIS legal search
***i)*** 5 disciplinary actions from the KSBHA
***j)*** 11 legal cases from Healthcare Providers Service Organization
***k)*** Liability and Loss Trends, PT Magazine, November 1996, pages 30 and 33
***l)*** Reality Sets In, Clinical Management, Vol. 12, No. 1, January/February 1992, pages 18-21
***m)*** I'm in Good Hands, Clinical Management, Vol. 12, No. 2, March/April 1992, pages 20-23

In addition, Physical Therapists perform functions not ordinarily performed by persons in other healthcare occupations or professions. ***Ordinarily*** is defined (The American Heritage Dictionary, page 875) *"as a general rule, usually; in the regular or usual manner; to the usual extent or degree; common and familiar."* Delegating to others is not synonymous with performance. ***Perform*** is defined (The American Heritage Dictionary, page 921) *"to begin and carry through to completion; do. To take action in accordance with the requirements of; fulfill. To carry on; function. Perform stresses the skill or care involved in carrying something out by established procedures.* Other healthcare professions advertise that they utilize manual techniques as well as other physical agents and activities, however they do not ***ordinarily*** perform physical therapy, nor does the public have a ***common and familiar substantial basis for relying*** on these services as being synonymous with physical therapy. Further, not all other healthcare providers are involved in the care of the public in the ***ordinary*** settings that physical therapist are involved in (hospitals, school settings, nursing homes, etc.)

The scope of practice for physical therapy in the State of Kansas is ***identifiable*** as required by K.S.A. 65-5006 (a) (7) and affirmed by the Secretary and technical review committee for the KDHE. The techniques, procedures and interventions utilized by physical therapists have a distinct and identifiable degree of risk and danger that has been supported by statutory educational and training requirements, research findings, legal precedents, and judicial findings. The observation of a physical therapist and another health care provider treating any of your constituent's would **verify the substantial differences** in the theoretical and physical application of the techniques, procedures and interventions utilized to assist the constituent in their recovery. The Secretary and technical review committee of the KDHE concluded after a 3 month comprehensive review of clear and convincing evidence: ***"from the information provided, it appears that licensure of physical therapists would have minimal effect on the scope of practice of other health care personnel." "licensure of physical therapists is the appropriate level of credentialing to ensure protection from the documented harm."***

Kansas does not have any statutes, rules, or regulations on who performs "physical therapy". Due to this insufficiency, it is impossible to properly track specific incidents in which harm has been created by non-qualified and non-credentialed individuals or entities. This is acknowledged by the:

a. State of Kansas Office of the Attorney General
b. Kansas State Board of Healing Arts
c. Kansas Department of Health and Environment
d. Kansas Department of Insurance
e. Kansas Case Law
f. Multiple Professional Liability Insurance Carriers

When your constituent's make a complaint regarding physical therapy, they are typically referred to the Kansas State Board of Healing Arts. If the individual whom the complaint is alleged is not regulated by this body, the case is either referred to another regulatory body if the alleged is regulated by this other regulatory body, or the complainant is encouraged to seek private legal counsel. Therefore tracking of this is impossible. Further, when a regulated individual has a complaint registered against them in relation to the provision of "*physical therapy* ", the case is documented under that specific profession or occupation and not as "physical therapy" (i.e.: medical doctor, chiropractic, athletic trainer, etc.). Therefore tracking of this is impossible.

Kansas Physical Therapists have legal and liability responsibilities when providing services to your constituents. Under the law he/she is required to use the same degree of ***professional skill and judgment that any other competent physical therapist*** acting under the same or similar circumstances would use. Failure to use that degree of professional skill and judgment may constitute legally actionable professional negligence – negligence that could result in harm to your constituent's. The standards of care of the physical therapy profession – as found in judicial decisions, state statues and regulations and as supplemented by the APTA Standards of Practice for Physical Therapy – mandate that treatment must be provided at a level "consistent with current physical therapy practice".

Competence is defined ( The American Heritage Dictionary, Page ) as the possession, application, and evaluation of requisite knowledge, skills, and abilities that meet or exceed standards of performance for a specific profession. Legal, regulatory and accrediting bodies expect that individuals whom provide health care services are able to integrate and apply knowledge, skills, and abilities in a manner consistent with the standards of the profession (Millette D. Badali: I. Canadian Alliance of PhysioTherapy Regulators, May 17, 1999). Further, a qualified and competent professional is expected to maintain that minimal level of knowledge, skills, and abilities, while concurrently developing complimentary and advanced knowledge, skills, and abilities. The benefits of competence developed, standardized, and assessed by a given profession provides a higher level of protection for your constituents against substandard performance and care. Your constituents entrust their health to individuals with the faith and conviction that these healthcare providers have the appropriate qualifications and competence that can be documented. Consumer payment for unqualified care violates the basic perceptions and rights of your constituents.

The opposition attempts to confuse the issue of protection of the public by implying that physical therapy is a generic service, while offering no clear and convincing evidence contrary to the established facts. Does the opposition mean to deny your constituents the morale, ethical, and legal right to be assured that the physical therapy services they receive are provided and performed by individuals formally educated, trained, tested, credentialed, and regulated in physical therapy? It has already been established by clear and convincing evidence that "***The practice of physical therapy requires an identifiable body of knowledge acquired through a formal period of advanced study that can be obtained in Kansas; and the public needs, and does benefit, from assurances of initial and continued education***." The statement's from public members in letters contained in Criterion I of the Kansas Physical Therapy Associations credentialing application and from verbal and written testimony during the public hearing is more than alleged, it is fact. The public expects, demands, and has the morale – ethical - and legal right to receive the highest quality of health care that fully ensures their health, safety, and welfare.

Thank you.

## SUGGESTED AMENDMENT LANGUAGE
## TO SENATE BILL No. 225

**Page 2, section (c), line 8.** Please insert the term ***anatomical*** after the term mechanical. This was inadvertently left out.

7 (c) "Practice of physical therapy" means examining, evaluating and
8 testing individuals with mechanical, ***anatomical,*** physiological and developmental....

**Page 6, section (c), line 16. Please eliminate the words "one year" which were placed in error, and replace with *3 months* . This was agreed and approved upon by the KSBHA.**

15 required under K.S.A. 65-2911 and amendments thereto. Such temporary
16 permit shall expire ~~one year~~ ***3 months*** from date of issue or on date that the

SUGGESTED AMENDMENT LANGUAGE
**TO SENATE BILL No. 225**

**Page 7, section (b) (1), lines 40 – 43 and Page 8 lines 1 – 5. These are not consistent with our current language (Authorized by K.S.A. 2001 Supp. 65-2911; implementing K.S.A. 65-2910; effective March 21, 1997; amended May 1, 1998; amended Sept. 29, 2000; amended Nov. 15, 2002.).**

**Please amend to read as follows:**

40 ~~Application fee, not more than... $100~~ ***Application based upon certificate of prior examination ....$80.00***

41 ~~Temporary permit fee, not more than ... 40~~ ***Application based on examination.... $100.00***

42 ~~Renewal fee, not more than...60~~ ***Annual renewal.... $70.00***

43 ~~Late renewal fee, not more than...70~~ ***Late renewal fee.... $75.00***

1 ~~Reinstatement fee, not more than...~~80 ***Reinstatement.... $80.00***

2 ~~Certified copy of license or certificate, not more than...80~~ ***Certified copy ....$15.00***

3 ~~Written verification of license or certificate, not more than...~~15 ***Duplicate certificate.... $15.00***

~~4 Duplicate license or certificate~~

5 Temporary permit $25.00

**THANK YOU**

att 3

**February 24, 2003**

**Senate Public Health and Welfare Committee**

Dear Committee Members,

Thank you for giving me the opportunity today to speak in favor of Senate Bill 225 regarding the licensure of physical therapists. I have been a physical therapist since 1987 and have practiced in both Wyandotte County, Kansas and in Johnson County, Kansas, currently in Olathe.

The scope of practice of physical therapy is broad and allows us to help people in all stages of their lives, from birth to death, and to be able to do so in a multitude of settings, such as within hospitals, long term care facilities, in the home, in outpatient clinics, in the school setting, in wellness settings, and in other settings within the community. The practice of physical therapy means examining, evaluating and testing individuals with mechanical, physiological, and developmental impairments, then alleviating those impairments, functional limitations, and disabilities by designing, implementing, and modifying therapeutic interventions. We work with patients after neurological incidents, such as stroke, head injury, spinal cord injury, Parkinson's disease, etc. as well as musculoskeletal impairments, such as neck or back pain, shoulder dysfunction, knee injuries, ankle sprain, and following surgery (e.g., total hip/knee/shoulder replacement), etc. We also treat those with developmental disabilities resulting from cerebral palsy, muscular dystrophy, and other diseases.

Interventions physical therapists use may include, but are not limited to: therapeutic exercise, functional training in self-care and in home, community or work integration, manual therapy, therapeutic massage, integumentary protection and repair techniques, debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities, patient related instruction, the promotion and maintenance of fitness, health, and quality of life, and many others.

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In my practice, we see people suffering from the above ailments and many, many more. For example, we may see people due to a stroke or low back pain, for which there is no standard treatment plan since the manifestations of stroke and low back pain can be significantly different from one patient to the next. Each therapist, whether in the hospital setting, in the outpatient setting, or in the home health setting, examines and evaluates our patients to determine a diagnosis for physical therapy which then guides us in the formulation of a plan of care and in the determination of the interventions we will use. From that beginning we treat our patients, constantly re-examining and re-evaluating in order to adjust the treatment to achieve the best possible outcome.

Physical therapists are trained to perform these tasks as per their education, which is specific to physical therapy. Each therapist's diploma states they have received a degree in **PHYSICAL THERAPY**, which no other provider can state. As such, physical therapy has a well defined body of knowledge which then results in very detailed educational requirements as enforced by the Commission on Accreditation of Physical Therapy Education, the body that accredits all physical therapy schools in the country. The only graduates from these programs are physical therapists, who then must sit for a national physical therapy board examination which they must pass before being able to seek credentialing in their state. It is sometimes said that the term "physical therapy" is generic. However, if that is the case, how can there be a well defined body of knowledge, accredited educational programs, and national board exams all dedicated to physical therapy?

In today's health care environment, people suffering from a neurological or musculoskeletal injury have a growing number of choices in health care providers, yet very little information is available to them about the providers of those services. Some of those providers may say they provide physical therapy when in fact none are physical therapists. Techniques may be used by numerous professions, with one example being therapeutic exercise, but the rationale behind the use of any given treatment procedure as well as how it is carried out can vary greatly due to the difference in educational background. Only physical

therapists are educated in how to carry out these techniques under a physical therapy plan of care. Consumers should not be misled about who is providing the health care services they are receiving, and in the case of physical therapy, it should be provided by graduates of accredited physical therapy education programs.

A trend that further illustrates the need for patients to be confident in the qualifications of who is providing their care is a large pending change in how commercial insurance is administered to employees. A new type of coverage plan is being used on the West and East coasts called "defined contribution plans," and many consider these to be the successors to our current managed care system of HMO's and PPO's. In these plans, the patients are given a medical savings account and it then is up to the patient to choose his or her health care service and provider. Under this type of plan it will be even more important for patients to know exactly who is providing the services and what their background is as the dollars available to patients will be limited. Making a choice for physical therapy and seeing a provider other than a physical therapist will cause the patient to use funds from their medical savings account in a way they had not intended. With this, patients should be protected in knowing that when they seek out physical therapy services they are being provided by qualified individuals that have graduated from accredited physical therapy education programs.

Thank you for again for allowing me to speak in favor of Senate Bill 225. I hope that you will support passage of this licensure bill for physical therapists.

Sincerely,

Mark Dwyer, PT

Mark Dwyer, PT, MHA
Physical Therapist
4802 Wedd Street
Merriam KS 66203-5414
913-677-4838

February 24, 2003

Senate Public Health and Welfare Committee

Dear Committee Members:

I'm a Physical Therapist who has practiced in the state of Kansas for 18 years. I have a degree in Physical Therapy from Wichita State University. My diploma states that I have "conferred the degree in Physical Therapy." That's not a generic degree nor is my education generic. Physical therapy education is very specific. It is derived from the Normative Model of Physical Therapist Professional Education. Currently, all physical therapists graduate with a masters degree in physical therapy. Eventually, all PTs will graduate with a doctoral degree. Wichita State University will transition its PT program to a doctorate by 2004 or 2005. Please refer to written testimony from Dr. Cam Wilson, director of the Wichita State University Physical Therapy department, for additional information regarding the educational process for physical therapists. Given this information, it's extremely offensive to have anyone portray my profession as generic. Only Physical Therapists perform physical therapy. The public deserves to be protected from those individuals who are not qualified to perform physical therapy services.

Our proposed practice act includes a definition of physical therapy practice which is more defined than the past definition of physical therapy. This has undoubtedly raised opposition from other professions. The reality is, many professions overlap with regard to procedures performed. A clinician may perform any procedure she has been trained to perform and which is within the scope of her practice. But it doesn't mean that more than one profession can't have the educational background and scope of practice to perform that procedure as well. No one entity "owns" specific education nor do they "own" a procedure. A physician and an osteopath have different educational backgrounds, but they perform the same or similar procedures. The same is said of PTs, Chiropractors, OTs, and ATCs. The difference, however, is that a physical therapist performs the procedure with a unique body of knowledge from a PT educational background. For example, I perform physical therapy spinal manipulation (which I have been trained to do) whereas the chiropractor performs chiropractic spinal manipulation with their own unique body of knowledge. The Physical Therapists of Kansas do not wish to limit any other profession's ability to perform their interventions or procedures. This is made evident by the exclusionary list added to our bill. However, with regard to scope of practice, there is and will continue to be overlap between professions.

When a patient comes to me for physical therapy, I perform an examination and evaluation. I then make an assessment. I must also make a diagnosis that relates to physical therapy. I'm *not* formulating a medical diagnosis such as pathologies or fractures. I use my diagnosis to describe the patient's condition in terms that will guide my plan of care and interventions. Only then can I effectively treat my patient. For example, many times I have received a referral from a physician which lists the

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patient diagnosis as low back pain. There is no "cookbook" treatment for low back pain. I must assess the cause of the low back pain, from a physical therapist standpoint, and treat it accordingly. I may determine that there is a decreased motor or muscle performance associated with a spinal disorder or possibly impaired joint mobility. Each of these problems may be treated with different interventions.

The Physical Therapists of Kansas have met the criterion for licensure as established by the KDHE. We have been recommended to be credentialed at the level of licensure. We deserve to be licensed. I would greatly appreciate your support of SB 225.

Sincerely,

Pam Palmer, PT
Physical Therapist
316.733.1845

att 5

February 24, 2003

Anthony Fadale
3001 SW Lydia Street
Topeka, KS 66614

Senate Public Health and Welfare Committee
Capitol Building
Topeka, KS

Chairwoman Wagle and Committee Members:

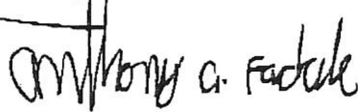
I urge your support of S.B. 225 and am testifying as a consumer of physical therapy on the importance of letting the public have a level of assurance in the services they will be receiving. This is an issue not to go against any particular organization or method of treatment, but rather to ensure that people who are consumers know what to expect in health care treatment.

This is why Kansas should regulate the term 'physical therapy' to the care of a physical therapist or a physical therapist assistant under the direct supervision of a physical therapist.

My physical therapist provides manual therapy with joint manipulation that is instrumental to my treatment program and has been very beneficial over the years.

Please allow licensure and term protection of physical therapy in Kansas. Simply, the term "PT" should stand for what it means. I will be pleased to answer questions.

Sincerely,



Anthony Fadale

Senate Public Health & Welfare Committee
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att 5

February 24, 2003

Lloyd Langston
3400 SW 35th Terrace
Topeka, KS 66614

Kansas Senate
Health and Welfare Committee
Capitol Building
Topeka ,KS

Senator Wagle and Committee Members:

Please support S.B. 225 as presented without amendments.

As a Vocational Rehabilitation Counselor, an expert witness in medical/legal cases, and a consumer of physical therapy care, I recognize the importance of having a professional physical therapist provide physical therapy care in Kansas. Clients and patients are frequently not aware that non-physical therapists in Kansas are allowed to advertise and profess to provide 'physical therapy'. Through the National Academy of Sports Medicine, a fee of $459 will allow anyone to become a 'certified personal trainer' and prescribe exercises to any person or patient in Kansas and call it 'physical therapy' (www.nasm.org).

The Secretary of the Kansas Department of Health and Environment stated: "The practice of physical therapy requires an identifiable body of knowledge acquired through a formal period of advanced study that can be obtained in Kansas, and the pubic needs, and does benefit from assurances of initial and continued education". My physical therapist has been very beneficial in diagnosing and treating my physical needs, and teaching me continued self care.

It is very important to protect the citizens of Kansas with licensure and term protection of Physical Therapy. Please pass S.B. 225. I will answer questions.

Sincerely,

Lloyd Langston

February 24, 2003

Dr. YeVonne Kimmitt
PO Box 398
Topeka, KS 66601

Senate Public Health and Welfare Committee
Capitol Building
Topeka, KS

Chairwoman Wagle and Committee Members:

Thank you for allowing me to address my support of S.B. 225 and request your passage of this bill without amendments.

I am a practicing clinical psychologist and I understand the importance of term, title and scope of practice protection of professional health care practitioners in order to protect the public. The Secretary and the technical review committee of the Kansas Department of Health and Environment agreed with the need to license physical therapists in Kansas.

The Master's degree for entry level education, with mandatory ongoing competency education assure physical therapists the ability to evaluate, examine the functional limitations, determine a diagnosis, prognosis, and provide the treatment intervention.

Harm and confusion to the public exists when persons who are not physical therapists state they can perform 'physical therapy', especially with a $1590 per year cap on physical plus speech therapy services to Medicare patients. Those limited dollars require the focused, skilled care of a licensed physical therapist.

I urge your passage of S.B. 225 as originally presented to this Committee. I will answer questions.

Respectfully submitted:

Dr. YeVonne Kimmitt

**TESTIMONY PRESENTED TO THE**
**SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE**
**re: SB 225**

**February 24, 2003**

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

Chairman Wagle and members of the Committee, my name is Rebecca Rice and I appear before you today on behalf of the Kansas Chiropractic Association to express opposition to SB 225. I first want to comment on the KDHE credentialing committee procedure, then offer several amendments we believe are necessary to avoid action that will further encourage a rush of other health care providers to change their credentialing level.

**KDHE Credentialing Committee**

In an effort to curb the efforts of all non-licensed providers to become credentialed or change their credentialing, the legislature adopted legislation requiring KDH&E to conduct initial "first cut" hearings and make a recommendation to the legislature regarding their findings. It is questionable, however, whether the purpose of the statutory plan has been realized. Because of that question, interim committees in previous years have studied the problem and corrective legislation has been offered but not adopted.

Until 2002, however, I had not observed a KDHE credentialing process from beginning to end. It was remarkable to watch but – as implemented - I do not believe it meets the statutory requirement that the KDHE-appointed committee make findings in an objective, unbiased manner. The committee is statutorily required to conduct fact-finding hearings, receive testimony from persons in support and from persons opposed to the application, and otherwise investigate the application.

The following is the schedule followed by the committee in conducting an investigation into the merits of the PT's application:

**Meeting #1** – Three hours devoted to receiving information exclusively from the applicant that included highlighting information contained in the application and providing supplemental information.

**Meeting #2** – One hour devoted to drafting the committee's recommendation based on the applicants testimony from meeting #1. No independent staff or committee investigation information was provided at the meeting. The committee determined that all criteria had been met and therefore they would recommend licensure. No information had been sought or invited from any source other than the applicant organization. Questions were directed to the applicant at various times during the meeting.

**Meeting #3** – A public hearing apparently intended to meet the criteria of seeking information from sources other than the applicant. The hearing was to begin at 10:15 and conclude at 3:00 with each conferee limited to 10 minutes. The conferees consisted of 2 opponents and 3 *neutrals* with the balance being supporing conferees who were either physical therapists or PT patients.

Despite having one full meeting to receive supporting information from the applicant and a second meeting where additional information was received from the applicant through questioning, the public hearing restricted information from opponents to 10 minutes per conferee. The committee

was apparently concerned about being "fair" so rather than vary the established agenda, the committee and the public attendees simply sat for long periods and waited for the next conferee.

I assume that receiving 20 minutes of information from opponents (and any additional information the committee chose to read independently) is the action the committee took to meet the statutory requirement that the committee make findings in an *objective, unbiased manner*, that they conduct *fact-finding hearings*, receive *testimony from opponents* and *otherwise investigate the application*.

**Meeting #4** – The committee made a few minor changes to the recommendation drafted at meeting #2 and included a caveat statement saying that they were not recommending licensure if the legislation included language that violated criterion 8.

The point of reciting the committee's meeting process was to request that you limit your reliance on the findings of the credentialing committee. I hope that process doesn't qualify as an objective, unbiased, fact-finding committee that independently investigates. I suspect that of the 16 or 17 reviews conducted by the committee, any conducted in this manner were all found to have met the criteria.

I included the following statement in my testimony to the KDHE committee:

> *We are first and most concerned with the lack of opposing information provided to the review committee. Without examination of opposing information, it is virtually impossible to reach a well-informed, objective decision. The statutes and rules do not specify how this committee is to obtain information that might contradict the information provided by an applicant. Therefore, you have only received information favorable to the application. You have received a large notebook of information supporting one side of an issue, and it appears that this meeting will be devoted primarily to hearing much of the same information from the applicant.*
>
> *This committee has little organizational discretion under the statute and little under KDHE regulations. However, when a topic is highly controversial, a public body will typically divide the hearing time equally between proponents and opponents. Additionally, opponents have been scheduled to appear first, in part I assume to ensure that the opponents receive the full 10 minute segment. Unfortunately, that also allows any information provided by the opponents to be disputed by the proponents without opportunity for rebuttal. Although you might question why one rather than the other should speak last, I note that the proponents have had, in essence, two full days to plea their case. Therefore, although it would not be expected that the opponents would get a day to also present their arguments, the result is severe time limitation and disadvantage.*
>
> *But, equal time is not the issue. The issue is that the critical thinking that the legislature needs from this committee is difficult when the organizational structure limits the committee's ability to receive alternative information. Therefore, the information the committee receives is insufficient to objectively determine whether this applicant has provided "clear and convincing evidence" that the practice of physical therapy: 1) is definable; 2) can harm or endanger the public and that the danger is real and not remote nor hypothetical, 3) will not intrude upon the practice of other licensed health care providers; and (4) will not increase the cost of health care.*

### Requested Amendments

We are surprised that much of the language of SB 225 is the original language from last session's SB 583. Amendments made by this committee to SB 583 were not incorporated in SB 225. With a bill introduced late in the session and facing deadlines, it would seem prudent to have started with the committee's preferred language from the previous year. In any event, many of our requested

amendments incorporate those committee amendments, so I have reproduced certain sections of SB 583 as amended by this committee and request similar amendments to SB 225 as indicated.

## SB 583 (2001)

*(c) ''Practice of physical therapy'' means examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, plan of therapeutic intervention and to assess the ongoing effects of physical therapy intervention. The ''practice of physical therapy'' also ~~means~~* ***may include*** *alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; functional training in self-care and in home, community or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction~~. The ''practice of physical therapy''~~ also means**,** reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations and engaging in administration, consultation, education and research.* ***Such practices shall not be construed to be exclusive to physical therapists.***
*(d) The use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the practice of ~~medicine and surgery~~* ***the healing arts as defined by K.S.A. 65-2802, and amendments thereto,*** *are not authorized or included under the term ''physical therapy'' as used in this act.*

## Requested amendments to SB 225

*(c) ''Practice of physical therapy'' means examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions in order to determine a~~ diagnosis for~~ physical therapy* ***treatment****~~, prognosis,~~ plan ~~of therapeutic intervention~~ and to assess the ongoing effects of physical therapy intervention. The ''practice of physical therapy'' also* ***may*** *include~~s~~ alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; functional training in self-care and in home, community or work integration or reintegration;~~ manual therapy; therapeutic massage; prescription,~~* ***recommendation****, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; patient-related instruction; reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations and engaging in administration, consultation, education and research. The ''practice of physical therapy'' does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization,* ***chiropractic adjustment or manipulation that takes a joint beyond its normal physiological range of motion*** *and the practice of ~~medicine and surgery~~* ***the healing arts as defined by K.S.A. 65-2802, and amendments thereto****.*

The PT's have expressed to us several times that the PT education is sufficient to provide the full range of treatments that falls under the term "manual therapy". Because of that, we are requesting an amendment to strike the term "manual therapy" and an amendment clarifying that only chiropractors are licensed to perform adjustments and manipulation.

Additional amendments we request are as follows:

Page 1, line 22:

> *(a)* "Physical therapy" ~~means~~ **includes**

We believe this amendment will lessen the concerns of many that Section 1 could be interpreted to limit the term "physical therapy" to physical therapists.

Page 2, line 4:

> may initiate treatment only after consultation with and approval by a ~~physician licensed to practice medicine and surgery~~ **licensee of the healing arts**, a licensed podiatrist or a licensed dentist in appropriately related cases.

Page 9, lines 42 and 43:

> be guilty of a class B nonperson misdemeanor*; or (2) to engage in the practice of physical therapy* ***with the exceptions noted under (c) of this section.***

The intent of this amendment is to specify that the qualifying language on page 10, line 22 does not prohibit other providers from practicing physical therapy whether or not they have the specific laundry list of items in their practice that are included in this legislation.

Kansas statutes contain over 100 references to persons "licensed by the Board of Healing Arts" and "licensees of the healing arts". The difference between the two is substantial and must remain so as the legislature continues to blur the line between terminal degree licensees with exclusive scopes of practice and mid-level practitioners. We are certain the Revisor has addressed all statutory language that might be affected by this change from registration to licensure to ensure that no incorrect authority is inadvertently conferred to PT's by virtue of this change in terminology.

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

att 7

TESTIMONY PRESENTED TO THE
SENATE COMMITTEE ON PUBLIC HEALTH
re: SB 225

February 24, 2003

by: Dr. Darrell Fore, Legislative Committee
Kansas Chiropractic Association

Madam Chair, Committee Members, other Conferees, and guests

I am Dr. Darrell Fore, a Doctor of Chiropractic from Lenexa, Kansas. Thank you for allowing me time to address this Committee.

First, let me assure this Committee I did not come here to degrade the occupation of physical therapy. I believe that physical therapists perform a beneficial service to the citizens of Kansas and to their patients. I am here to offer information concerning definitions and educational requirements relating to the scope of practice language contained in S.B. 225.

The term "physical therapy" is a generic term. According to Mirriam-Webster's Medical Dictionary copyright 2002, *"physical therapy"* is defined as:

> "The treatment of disease by physical and mechanical means (as massage, regulated exercise, water, light, heat, and electricity) -- called also *physiotherapy*".

The terms "exercise, massage (physiotherapy), infrared and ultraviolet (light), electrotherapy (electrical), hydrotherapy (water), and thermal (heat or cold)" were included in 1957 in the chiropractic scope of practice statute contained in the Kansas Healing Arts Act.

> **65-2871. Persons deemed engaged in practice of chiropractic.** For the purpose of this act the following persons shall be deemed to be engaged in the practice of chiropractic: (a) Persons who examine, analyze and

diagnose the human living body, and its diseases by the use of any physical, thermal or manual method and use the X-ray diagnosis and analysis taught in any accredited chiropractic school or college **and (b) persons who adjust any misplaced tissue of any kind or nature, manipulate or treat the human body by manual, mechanical, electrical or natural methods or by the use of physical means, physiotherapy (including light, heat, water or exercise)**, or by the use of foods, food concentrates, or food extract, or who apply first aid and hygiene, but chiropractors are expressly prohibited from prescribing or administering to any person medicine or drugs in materia medica, or from performing any surgery, as hereinabove stated, or from practicing obstetrics.
History: L. 1957, ch. 343, § 71; L. 1976, ch. 273, § 32; Feb. 13.
(emphasis added)

Doctors of Chiropractic are the primary providers of "treatment of disease by physical and mechanical means (as massage, regulated exercise, water, light, heat, and electricity" and any provider "treating disease" or adjusting or treating misplaced tissue of any kind or nature by manual, mechanical, electrical, natural or physical methods is practicing chiropractic which requires a chiropractic license. Chiropractors have been the providers of non-prescription drug treatment and therapy since the first Chiropractic license was issued by Kansas to Dr. Anna Mae Foy in 1915.

The terms *physical therapy* and *physiotherapy* were coined at the National College of Chiropractic, Chicago, IL, in 1908. (Re: "Synopsis of the History of the National College of Chiropractic's First Physiotherapy Offering", from Dr. R. P. Beideman, dated May 20, 1988). So, you can understand our consternation when we are told chiropractors don't provide physical therapy or that some other provider does provide it.

Unfortunately, the definitions for "Registration" and "Licensure" have become blurred and inspecific over the past few years. That is unfortunate because the public no longer knows what professions have terminal degrees with additional formal education only being obtained by specialists. The purpose of this legislation is – theoretically - the protection and safety of the Public. Perhaps the chiropractic profession should have opposed the physical therapists in 1963 when they first sought credentialing explaining to the legislature then that the use of the term physical therapist would cause confusion for the public because of the chiropractic scope of practice states that an individual who treats the human body by manual

or physical means is engaged in the practice of chiropractic. We did not object to the PT's effort to obtain a minimal credential and now we are attempting to protect our scope of practice against a full assault to invade our scope of practice.

Several reasons have been given for licensing physical therapists. The two primary ones are: public safety requires it and everyone else (other states) does. That raises this question:

> If S.B 225 is approved by the Legislature and becomes law on July 1, 2003, will physical therapy performed by a "licensed physical therapist or physical therapy assistant, under the direction and supervision of a licensed physical therapist", be safer on July 1, 2003, than on June 30, 2003, when the physical therapists were "registered"?

We don't think so. There appears to be neither additional educational requirements nor qualifications before a registered physical therapist can become a licensed physical therapist. How does the same requirements for licensure as for registration result in greater safety? Is it the effort to limit other providers – including chiropractors – the reason the public is safer? How can other providers be limited when we were assured the PT's were making no effort to limit other credentialled providers (Criterion 8 of KDHE required evidence).

The 'potential danger' of physical therapy has been discussed numerous times both this year and during the 4 or 5 sessions prior to this session. I agree that physical therapists pose a *potential danger* to the public. However, my memory of the incidences of actual injury to Kansas patients investigated by the Board of Healing Arts involve either a PT engaging in treatment that could be defined as the practice of chiropratic but is, arguably, allowed due to physician delegation or were due to equipment misuse or malfunction. Why does setting up future legislatures for PT efforts at independent practice provide greater public safety?

Included in the proposed scope of practice is the term "manual therapy". During our conversations with KPTA leadership, we were informed that "manual therapy" does include manipulation **including Grade 4 thrust manipulation**. Apparently all forms of manual therapy - from passive mobilization to thrust manipulation - are included under the general term *manual therapy*. The current definition for the treatment called physical therapy does

not include this term. The reason seems obvious – it is included in the *exclusive scope of practice for chiropractors.* (Persons who examine, analyze and diagnose...by the use of...manual method and...who adjust...manipulate or treat...by manual, mechanical, electrical or natural methods or...physical means, physiotherapy)

We understand why the PT's want to provide chiropractic treatments because of their proven healing abilities. However, the application of thrust manipulation requires considerable training and skill. This procedure is very beneficial but can be dangerous if performed in an unskilled, uneducated manner - as with all the healing arts.

Information was submitted to the K.D.H.&E. credentialing committee indicated the following educational requirements at KU that might teach PT's *manual therapy*:

- 25 Credit hours (with lecture & lab.) in Anatomy, Neurology, Biomechanics, and Neuromuscular Technique (which did not separate 'spinal and extremity);
- 13 Credit hours in Clinical.

Total Credit hours for all subjects – as I interpreted the documents - are 74.5 (These hours were only given in "Credit hours"). Then they must successfully complete the National Physical Therapy Examination.

By comparison, minimum chiropractic educational requirements are:
51.5 Credit hours [990 clock hours] (with lecture & lab.) in Anatomy, Neurology, Biomechanics, and Neuromusculoskeletal Technique (which did separate 'spinal from extremity').
22 Credit hours [630 clock hours] in Clinical.

Total minimum credit hours for all subjects to obtain a doctorate in Chiropractic are 241 (4410 clock hours). An additional 13 Credit hours (405 clock hours) in manipulation/adjusting technique are available as electives. Chiropractors must then successfully complete of Parts I, II, III, and IV Examination administered by the National Board of Chiropractic Examiners.

I am not suggesting physical therapy education is inferior for those things that they are trained and registered to do. They are neither trained nor licensed to perform those treatments they are – apparently – claiming to provide under the term *manual therapy.* We do have an amendment that will be presented that might resolve some concerns regarding that particular term. However, I ask that you weigh the actual benefit to greater public safety if PT's are licensed rather than registered when no additional education is required.

Additionally, it must be remembered that, while PT's may claim to provide many of the same treatments that are provided by chiropractors under the healing arts act's licensing requirements, those treatments have been at the direction of a licensed medical doctor. Without clarification, this legislation raises the question of whether the legislation intends PT invasion of the chiropractic statutory scope of practice, exclusion of other lesser credentialed or less protected providers from their current treatments and, thus intends for PT's to obtain equal stature and responsibility for a licensee of the healing arts.

I ask that you defeat SB 225.

**Kansas Association of Therapeutic Massage & Bodywork**

*Mission Statement: We are a heart-centered community of Massage Therapists and Bodyworkers dedicated to promoting wellness.*

February 24, 2003

To: The Honorable Susan Wagle, Chairman
and Members of Public Health and Welfare Committee

Re: Request for Exemption to SB 225

My name is Maggie Kelley. I represent the KATMB (Kansas Association of Therapeutic Massage and Bodywork, Inc.). KATMB was founded in 1984 and is incorporated in the State of Kansas. I have been a Massage Professional for 23 years here in Topeka.

In reviewing the text of SB 225, we noticed the exemptions listed on page 10, starting with line 23. Since we as Massage Professionals (Therapists/Practioners) were not mentioned, we would like to be included in those exemptions. We are NOT Physical Therapists, but it does say on page 2, line 12...The "practice of physical therapy" also includes...(skip to line 17) manual therapy; therapeutic massage;...

We, as Massage Therapists/Practioners would not want it confused that the 'manual therapy or therapeutic massage' mentioned on this page as practiced by Physical Therapists, includes us or that we pretend to be Physical Therapists. Our goal is stress reduction and relaxation.

Therefore, we are asking that "Massage Therapists/Practioners" be added to the exemptions as mentioned earlier.

We would request that the exemption also include KS Board of Healing Arts 65-2872F. It states, "Persons, who massage for the purpose of relaxation, muscle conditioning or figure improvement, provided no drugs are used and such persons do not hold themselves out to be physicians or healers".

If you have any questions, I can be reached at 785-273-8253.

Maggie Kelley

Maggie Kelley

Senate Public Health & Welfare Committee
Date: February 24, 2003
Attachment 8

p+e9

K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Senate Bill No. 225**

**to the**
**Senate Committee on Public Health and Welfare**

**by**
**Marla Rhoden, Director, Health Occupations Credentialing**
**February 24, 2003**

Chairperson Wagle, I am pleased to appear before the Senate Committee on Public Health and Welfare to discuss Senate Bill 225. The Kansas Department of Health and Environment bears responsibility for the administration of the Kansas Health Occupations Credentialing Act, K.S.A. 65-5001 *et seq.*, the purpose of which is to review the public's need for a new health occupation to be credentialed in Kansas according to statutory criteria. Several health occupations have sought to become credentialed without the benefit to the legislature of this standardized review. This is a disservice to you, the legislature, in making fully informed decisions. Standardized and comparative data are not always brought to your attention which may be significant to your interest in public health and safety.

In June of 2002, the Kansas Physical Therapy Association provided a letter of intent and then in September 2002 submitted a formal application according to the Kansas Health Occupations Credentialing Act for a change in the level of credentialing for physical therapists from registration to licensure. A technical review committee was convened and in January 2003 the technical review committee found that the applicant group met all ten criteria outlined in the statute. The Secretary of Health and Environment concurred with the technical committee's findings as reflected in his report to the Legislature dated February 4, 2003. The provisions of this bill are consistent with the technical review. The only difference is that there has been additional work outlining the composition of a physical therapy advisory council and the fee structure.

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Passage of this bill serves to demonstrate the successful processing of an application for credentialing under the law. The department asks that the legislature act favorably on this bill as the applicant group has thoroughly demonstrated the need and rationale under the legislature's criteria for the licensing of physical therapists. Failure to support this legislation could further diminish the effectiveness of this important tool, the Kansas Health Occupations Credentialing Act, by ignoring an opportunity to demonstrate its purpose and success.

Thank you again for the opportunity to comment on Senate Bill No. 225. I would gladly respond to any questions you may have.