House Committee on House Health and Human Services

February 20, 2019
Oral Testimony of Robert Eye
On behalf of Trust Women Foundation, Inc., Opposing HB 2274

My name is Robert Eye. I am a lawyer and I represent Trust Women Foundation, Inc. regarding HB 2274. Trust Women Foundation, Inc. owns and operates health care clinics in Wichita KS, Oklahoma City OK and Seattle WA. The clinics provide various health care services including abortion care.

Trust Women Foundation, Inc. is opposed to HB 2274. Other conferees will cover the medical objections related to HB 2274. Because other conferees opposed to H.B. 2274 discuss the medical questions inherent in HB 2274 my testimony focuses on several policy questions raised in the bill.

Subsection (b)(1) deals with the notice that the bill requires and includes the following:

The notice shall also include information about the department of health and environment website, required to be maintained under K.S.A.65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

The contemplated notice implies that useful and reliable information may be obtained through "relevant telephone and internet resources" but otherwise HB 2274 does not specify sources of information. Without proper vetting of the sources of information the notice runs the risk of directing patients to web or telephone contacts that lack the qualifications to render sound medical advice.

To the extent subsection (b) intends to direct KDHE to specify the "other relevant telephone and internet resources" it should be amended to make clear that intent. And if KDHE makes such specification, presumably, the agency will engage a fact finding process that would separate the reliable from the unreliable sources of information. Upon what criteria should KDHE determine whether medical advice is reliable concerning the reversals of medical abortions? And if sources of information are abortion providers, will they be included as a "relevant telephone and internet resources"? And will organizations that oppose abortion rights and are known to disseminate misinformation about abortion be recognized as reliable information sources? Presumably, the sources of information will meaningfully attempt to assist women regarding the health issues related to medication abortions. In this regard, must the source of information be a licensed physician? Should the quality of medical information received midway through a medication abortion be less than that provided by the physician who counsels the patient before administrating Mifepristone?

The ambiguities inherent in the notice provision of subsection (b) are likely to cause confusion among patients, providers and regulators. And in a worst case scenario these ambiguities may cause injury by directing patients to unreliable information sources. Trust Women, Inc. fully supports the right of women to make informed decisions about all phases of abortion care. But Trust Women, Inc. opposes legislation that leaves open the possibility of cloaking an unqualified source of medical information with the imprimatur of legitimacy because the source is listed in

an official notice. HB 2274 is an open invitation to unqualified medical charlatans to designate themselves as "relevant" sources of abortion care information without an adequate basis to do so. The notice provision of HB 2274 has the possibility of making abortion care less safe by allowing unfettered misinformation from unqualified telephone or web sources to masquerade as sound medical advice.

This ambiguous notice requirement also forces medical professionals to potentially be involved with the dissemination of misinformation. Subsection (c)(1)(B) requires a physician to tell patients, at least 24 hours before a medication abortion that uses mifepristone, that,

> information on reversing the effects of a medication abortion that uses mifepristone is available on the department of health and environment's website, required to be maintained under K.S.A. 65-6710, and amendments thereto, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

Internet and telephone sources known for disseminating misinformation but that appear in the notice are required to be part of the pre-procedure patient disclosures under subsection (c)(1)(B). Does a physician owe a duty to inform patients of their doubts concerning the reliability of information from a source(s) notwithstanding the source's inclusion of reliable information? May physicians, for good cause, warn patients of known or suspected sources of unreliable information notwithstanding the inclusion of such sources in the notice? Would doing so open physicians to civil and/or criminal liability under subsection (h) of HB 2274? Does a failure to do so open a physician to a charge of unprofessional conduct under K.S.A. 65-2836(b)? By providing a source of information listed in the notice but that is otherwise unreliable cause a physician to violate the Healing Arts Act, K.S.A. 65-2836(d), by using "false or fraudulent advertisements"? This is the proverbial "damned if you do and damned if you don't" circumstance with patient welfare and/or a physician's license at stake. This is an untenable circumstance for patients and physicians.

Finally, the fee shifting provision at subsection (h)(3) sets a double standard. A plaintiff may collect fees by prevailing. On the other hand, a defendant may recover fees only if the plaintiff's case is frivolous and brought in bad faith. This double standard does put parties in litigation on equal footing. Moreover, subsection (h)(3)(B) conflicts with K.S.A. 60-211(b)(2) that already requires all claims, defenses and contentions to be nonfrivolous. And K.S.A. 60-211(c) presently provides for sanctions, including attorney fees, for frivolous claims, defenses and contentions. Adding the fee shifting provision at subsection (h)(3) is unnecessary and because parties to litigation are afforded adequate remedies under K.S.A. 60-211(c). Moreover, K.S.A. 60-211(c) subjects all litigants to the same standards while subsection (h)(3) of HB 2274 unfairly and unjustifiably tilts the playing field in favor of plaintiffs.

This concludes my testimony.

If the Committee has questions I'll do my best to answer such.

Thank you.