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**Testimony Re: Sub HB 2159
Senate Public Health and Welfare Committee
Presented by Ronald R. Hein on behalf of
Kansas Physical Therapy Association
March 15, 2012**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Physical Therapy Association. The Kansas Physical Therapy Association (KPTA) is a non-profit, professional association representing physical therapists, physical therapist assistants who are licensed to practice in Kansas, and Kansas physical therapist students and physical therapist assistant students. KPTA is a chapter of the American Physical Therapy Association (APTA), the national professional organization representing more than 80,000 members.

KPTA requested introduction of and supports passage of HB 2159, which would permit the citizens of Kansas to access the services of a Licensed Physical Therapist for treatment of muscular/skeletal issues in addition to their ability to access Licensed Physical Therapists for an evaluation, without having to incur the additional costs of first seeking treatment from and receiving a referral from an M.D., a D.C., a D.O. or any of the other practitioners currently listed in K.S.A. 65-2921. Unrestricted patient self-referral is permitted in 17 states, and patient self-referral with some minor restrictions in an additional 18 states. In all 35 states, there has been NO HARM to the public, no increase in PT malpractice claims, no increase in PT malpractice rates, and no increase in healthcare costs resulting from such law. In fact, there have been numerous studies establishing a reduction in health care costs with this legislation.

Compromise

Although we met with various groups that opposed this legislation last year during the fall of 2012, our attempts at negotiation did not yield any positive responses **at that time**. After HB 2159 passed out of House Health an Human Services Committee on an overwhelming voice vote, with only 2 "Nay" votes, the Kansas Medical Society and the KPTA engaged in serious negotiations, under the auspices of House Health and Human Services Committee Chairman Brenda Landwehr, who indicated that we should arrive at a compromise prior to the bill running on the House floor.

During those negotiations, Mr. Jerry Slaughter, Kansas Medical Society, conducted the negotiations ostensibly on behalf of a group of healthcare organizations who had opposed HB 2159, including the Kansas Association of Osteopathic Medicine, the Kansas Academy of Family Physicians, and the Kansas Orthopaedic Society. During these negotiations, communications between Jerry and me were cc'ed to the lobbyists for each of these organizations. The negotiations were difficult, occasionally contentious, and frustrating, but after significant efforts, we arrived at a compromise between all of the parties involved.

The compromise was that the bill would be amended on the floor of the House during General Orders to reflect the content of current Sub HB 2159, that all of the parties to the agreement would honor the agreement throughout the entire legislative process, and that, in addition, the KPTA would present a letter of Legislative Intent to address an insurance provision issue which arose on the House side. The letter was to avoid putting the insurance language into the scope of practice act, and was also to honor the request of the Kansas Association of Health Plans who were concerned about the provision being in the bill and permitting the bill to be amendable to an insurance mandate when the bill was debated on the House floor. Every word of the House floor amendment was vetted by Jerry Slaughter and me, and copies were made available to all of the parties involved prior to the bill being run on the House floor.

A copy of that letter with reference to legislative intent regarding insurance is attached to my testimony, in fulfillment of the KPTA obligations pursuant to our compromise.

Opposition expressed after the bill was sent to the Senate. I understand that individuals who may or may not be members of the parties that agreed to the compromise may have their own personal opinions in opposition to the bill. I also understand that legislators are not necessarily bound by compromises reached by external groups, although in most cases compromises pass the legislature easily.

I appreciate this hearing being granted, even though we have been informed that the committee chairman does not intend to work this bill. I am truly interested in seeing who now opposes the bill despite the compromise.

I have confirmed with the Kansas Medical Society, the Kansas Association of Osteopathic medicine, and the Kansas Academy of Family Physicians that they all still agree to the compromise on HB 2159.

It is my understanding that either individual orthopaedic surgeons, whether members of

the Kansas Medical Society, or members of the Kansas Orthopaedic Society, or both, have now raised objections to the compromise bill. I will leave it to the Kansas Orthopaedic Society to explain their position on the compromise bill.

This is my 39th year around this legislature, and in those 39 years I have never before seen a situation where there is a compromise agreement reached on legislation, especially a compromise reached on a scope of practice bill, that the compromise was NOT honored during the entire legislative process.

I understand that the insurance industry has now been brought into this legislation, despite the fact that this bill does not involve insurance provisions whatsoever, and despite the fact that the insurance industry did not oppose this legislation until a few short days ago. We have been submitted an amendment by Kansas Association of Health Plans lobbyist Marlee Carpenter, with which we could probably find agreement if, in fact, adoption of the amendment would actually result in another compromise and if the bill were to be passed if my client were to agree with the provision, but since the bill is not going to be run no matter what my client agrees to, my client has decided that they will agree to no further compromise provisions.

The KPTA is saddened and angered that the compromise that was reached has not been honored, and as a result, we have been advised that this bill is not to be worked by this committee, thus virtually killing this bill for this session.

KPTA thus intends, instead of pursuing this compromise, to continue to point out the reduced health care costs that result from patient self-referral to physical therapists, to point out the lack of harm in any of the 35 states with patient self-referral without the restrictions which Kansas requires, and to educate this legislative body of the strong benefits for this type of legislation which have been endorsed by groups as diverse as the American Legislative Exchange Council and the National Black Caucus of State Legislators.

HB 2159 Substantive Arguments

HB 2159 as introduced was a compromise approach to unrestricted patient self-referral which is permitted in 17 states, and original HB 2159 merely puts Kansas into the middle of the pack with regards to states laws regarding patient self-referral for PT treatment.

We also presented irrefutable evidence to the KMS, KOS, KAOM, and KCA that no harm has resulted in the multitude of 17 states that permit unrestricted patient self-referral or in the 18 states which permit greater patient self-referral, but not totally unrestricted patient self referral.

But most importantly, **NONE** of the three groups refuted our evidence. They oppose the bill, but have offered no refutation to our evidence or studies. We presented evidence of a PT's extensive education and training, with current law requiring a Doctoral degree in physical therapy. We provided significant studies showing that PT's can provide the same or greater level of diagnosis of muscular/skeletal problems than can most medical providers other than, specifically, Orthopaedic Surgeons. We also provided studies indicating costs savings from greater utilization of physical therapy rather than other diagnostic and/or treatment modalities. Lastly, we challenged the three groups to contact their colleagues in other states which permit patient self-referral and identify for their own knowledge that there have been **NO**, absolutely **NO** problems in those states for the scores of years where patient self-referral has worked, and worked admirably.

And in the end, **NONE of the three provided ANY refutation to the EVIDENCE or STUDIES that we provided them.** They simply are opposing this legislation again.

Their opposition stems from opinion based upon speculation, and they lack any studies of evidence to support their position.

In at least 35 states in the United States, patients have greater patient self-referral ability than they do in Kansas. Kansas is at the bottom of the states in allowing our citizens the freedom to have self-referral to physical therapists.

There has been absolutely **NO HARM** resulting from patient self-referral, which this legislation proposes, in the multitude of states allowing self-referral nationwide. We are not proposing **unrestricted patient self-referral, which 17 states permit.** Our original bill prior to the House floor amendment was a compromise between unrestricted patient self-referral and current law. Original HB 2159 required that the physician be notified of the PT evaluation within 5 business days and that a physician referral be required if a patient does not demonstrate objective, measurable or functional improvement within 45 days.

Original HB 2159 **IS** the compromise between unrestricted patient self-referral which has worked successfully in 17 states for years, and the current Kansas law, which drives up healthcare costs needlessly, and which requires your citizens to see a physician, and **WAIT** to see a physician, before they can seek treatment, and save themselves time and money.

The protection for the patient begins with the vast degree of knowledge, education, and training of the physical therapist, which is well recognized, acknowledged, and not refuted by our opponents; and, the requirement that the physician be notified. This provision insures that the physician will NOT be in the dark at any time.

This legislature hears issues all of the time, with competing arguments. But generally the arguments for or against an issue entail the groups advocating for or against legislation presenting facts, evidence, studies to the legislature. Here, the KPTA is presenting the facts, the studies, the healthcare costs savings studies, the fact that there has been no harm in the practical world study of the majority of the states who have recognized the rights of their citizens to seek treatment with a PT.

I am not sure what our opponents will say with regards Sub HB 2159, but they will have no studies to document any alleged harm in the multitude of other states where this law has been in place for scores of years, no evidence challenging our costs savings studies, and no evidence of any threat to the health of Kansas citizenry.

I have set out some facts with regards to the course of the negotiations, and will leave for this committee the decision as to whether I should have relied upon the actions which occurred regarding HB 2159.

If the committee decides to take action on Sub HB 2159, I would urge the committee to support the bill in fulfillment of the compromise that was reached, and to permit the citizens of Kansas to assist the state in reducing healthcare costs, in reducing wait time to seek treatment, and in eliminating needless duplication in our healthcare system.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

History of Sub HB 2159 negotiations

After HB 2159 passed the House Health and Human Services Committee with 2 “Nay” votes, Brenda Landwehr indicated that all parties should attempt negotiations on HB 2159

2/10/12–KPTA met with Jerry Slaughter, KMS, with Rep. Landwehr present to serve as “referee”. There were no negotiations at the time, but Jerry indicated he would send their suggested amendments by email. We were at that time under the impression that Jerry would be doing the negotiation for all of the groups who had opposed HB 2159 during the committee hearings; Kansas Association of Osteopathic Medicine, Kansas Academy of Family Physicians, Kansas Orthopaedic Society, and the Kansas Chiropractic Society.

2/13/12–Jerry submitted a document with proposed amendments, while still expressing that his members had concerns about the bill in general, and Jerry copied Bob Williams, Kansas Association of Osteopathic Medicine, Carolyn Gaughan (later Dodie Wellshear), Kansas Academy of Family Physicians, and Steve Kearney, Kansas Orthopaedic Society. It was at that time that we became aware that Jerry was NOT negotiating on behalf of the Kansas Chiropractic Society.

2/22/12–I met with Jerry Slaughter at his office, and we finalized the final details of the compromise, including not only the wording of the House floor amendment, but the decision regarding our submitting a letter of legislative intent reference the insurance issue. During that meeting, we also tied Pam Palmer, KPTA in on the meeting by conference call on the phone. Also, during that meeting, Jerry indicated that his orthopaedic members were still not totally happy with the provisions of the compromise, but that he had obtained approval for the compromise. He also spoke of a contentious phone call with the orthopaedic surgeons, but still agreed to the compromise.

2/22/12–With Jerry’s permission and knowledge, I met with Norm Furse and gave him the agreed to language for the House floor amendment to HB 2159

2/22/12–I emailed Steve Kearney and Marlee Carpenter a copy of the proposed House amendment as it was drafted by Norm Furse. The email contained the following language (bolded emphasis added):

We had agreed to send you a copy of the proposed floor amendment on HB 2159 which **reflects, or should reflect, the agreement reached this morning following a meeting by Jerry Slaughter and me.** Neither of us have yet had a chance to fly-speck the language, but I am sure that Norm Furse will have it right.

Norm, thank you very much for your quick turn-around on this issue and draft.

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Jerry and I will confirm that everything look as we discussed it this morning, and, assuming that it is all correct, this will be the version offered tomorrow on the House floor by Rep. Landwehr.

Thank you all for your interest and efforts on helping us reach this compromise.

2/28/12—I sent an email to Sen. Vicki Schmidt, explaining that HB 2159 had been compromised and agreed to by numerous parties, had passed the House 124-0, and requesting that Sub SB 2159 be scheduled for hearing. The email contained the following language (bolded emphasis added):

“We represent the Kansas Physical Therapy Association (KPTA) and I would respectfully request that you schedule for hearing Sub HB 2159, regarding patient self-referral for physical therapists. **Sub HB 2159, as amended by the House Committee of the Whole represents a compromise reached after extensive negotiations between the KPTA and the KMS, and also involving the KAOM, the KAFP, and the KOS.**

“After the **compromise** was reached, the bill passed the House 124-0.

“**I have cc'ed the lobbyists for the KMS, KAOM, KAFP, and KOS on this email.**

“Given the **compromise** reached, I would think the testimony would be very brief by all concerned.”

At no time after either my 2/22/12 or my 2/28/12 emails have I received an email a phone call, or a communication in the legislative halls from Steve Kearney reflecting any disapproval of the proposed compromise, nor indicating that the Kansas Orthopaedic Society was not a party to the compromise, or that the KOS disagreed with the compromise.

3/1/12—Sub HB 2159 was referred to Senate Public Health and Welfare Committee

3/7/12—Sub HB 2159 was double referred to Senate Public Health and Welfare Committee and Senate Financial Institutions and Insurance Committee, separately.

3/7/12 I spoke with Sen. Vicki Schmidt, and she informed me that apparently a compromise was not reached with regards to orthopaedic surgeons, whether the KOS members or otherwise. I was also advised on 3/7/12 that there were concerns by more than one insurance companies.



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March 12, 2012

The Honorable Vicki Schmidt
State Senator
Chairman, Senate Public Health and Welfare Committee
300 SW 10th Street
Topeka, KS 66612

RE: HB 2159

Dear Senator Schmidt:

This letter is to express legislative intent regarding HB 2159, both as it was originally introduced, and in its current form as amended by the House Committee of the Whole, regarding insurance issues. It is not the intent of HB 2159 to impact insurance issues or insurance statutes of the State in any way, shape or form, and it was the intent simply to amend the scope of practice of physical therapists. Specifically, it is not the legislative intent of HB 2159, and nothing in this legislation should be construed to prohibit any insurance policies, or any provisions of any such insurance policies, from requiring a physician's order for physical therapy services.

The Kansas Physical Therapy Association would specifically request that this statement of legislative intent of HB 2159 be placed in the legislative record, by being acknowledged and incorporated into the minutes of the Senate Public Health and Welfare Committee in conjunction with the hearing held on HB 2159.

We very much appreciate your consideration regarding our views on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stacia Troshynski Brown, PT, DPT".

Stacia Troshynski Brown, PT, DPT
President, Kansas Physical Therapy Association