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Testimony Re: SB 46
Senate Public Health and Welfare Committee
Presented by Ronald R. Hein on behalf of
Kansas Physical Therapy Association
January 28, 2013

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 SB 46, which would permit the citizens of Kansas to access the services of a Licensed Physical Therapist for treatment of muscular/skeletal issues 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 20 states. In all 37 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. I would note that two more states have passed such legislation since we testified last year.

Compromise

After HB 2159 passed out of the House Health and Human Services Committee last year on an overwhelming voice vote, with only two "Nay" votes, then House Health and Human Services Committee Chairman Brenda Landwehr requested that we attempt to reach a compromise to the bill running on the House floor with other health care providers. The Kansas Medical Society, on behalf of themselves, the Kansas Orthopaedic Society, the Kansas Association for Osteopathic Medicine, the Kansas Academy of Family Physicians, and the KPTA engaged in serious negotiations, under the auspices of Representative Landwehr.

During these negotiations, communications between Jerry Slaughter and I 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 we reached last year is reflected in SB 46. The compromise was to amend on the House floor the provisions now set out in SB 46, 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 appearing in what is now SB 46 were vetted by Jerry Slaughter and me, and copies were made available to all of the parties involved prior to the bill being run last year 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.

The bill was heard in the Senate Public Health and Welfare Committee last year on the last day for hearings, but no committee vote was taken.

As of the hearing last year in the Senate, I had confirmed with the Kansas Medical Society, the Kansas Association of Osteopathic Medicine, and the Kansas Academy of Family Physicians that they all still agreed to the compromise on HB 2159, despite the opposition expressed at the hearing by the Orthopaedic surgeons.

Efforts to determine what happened to the KOS agreement to the compromise has never been answered to my satisfaction. This is my 40th year around this legislature, and in those 40 years I have never before seen a situation where there is a compromise agreement reached on legislation, and then that compromise was NOT honored during the entire legislative process by one of the participants to the compromise.

SB 46 Substantive Arguments

NONE of the groups questioning this legislation have refuted our evidence or offered studies to challenge our studies. Those that have opposed the bill, have offered no refutation to our evidence or studies. We presented evidence of the 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 groups opposing the bill prior to the compromise to contact their colleagues in other states which permit patient self-referral and identify for their own knowledge that there have been NO problems in those states for the scores of years that patient self-referral for PTs has worked, and worked admirably.

And in the end, **NONE of our opponents have provided ANY refutation to the EVIDENCE or STUDIES that we provided them.**

Past opposition stems from opinion based on speculation, and lacks studies or evidence.

In at least 37 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**

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, and studies to the legislature. Here, the KPTA is presenting the facts, the studies, the healthcare costs savings studies, and 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 opposition will be expressed with regards to SB 46, 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.

Attached to my testimony is a Talking Point and Fact Sheet regarding SB 46, an overview of Physical Therapists, a time-line reflecting the compromise we reached on this legislation last year and the direct involvement of the lobbyist for the Kansas Orthopaedic Society, and a letter of legislative intent which we sent in compliance with the compromise which we reached last year.

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

KANSAS PHYSICAL THERAPY ASSOCIATION

SB 46 HB 2066

The Kansas Physical Therapy Association (KPTA) will bring forth legislation this year which would change how Kansas healthcare consumers access physical therapy services. Currently, healthcare consumers must obtain a referral from a physician prior to receiving physical therapy services. Even if the consumer is paying with cash, they cannot be treated in physical therapy without having a referral from a physician (or a limited number of other healthcare practitioners). The majority of states recognize that consumers have a right to choose physical therapy services without having to take the time and financial burden of consulting another healthcare provider first.

Last year, HB 2159 was introduced. A compromise to that bill was negotiated by the Kansas Medical Society, the Kansas Orthopedic Society, the Kansas Association of Osteopathic Medicine, and the Kansas Academy of Family Physicians. That agreed to bill passed the House of Representatives 124-0 in 2012. During the Senate hearing, all parties to the compromise supported the compromise language with one exception; the Kansas Orthopedic Society changed their position on the bill and testified in opposition, and the bill was not worked in the Senate Committee.

We urge you to support your constituent's ability to access physical therapy services without the need of a referral. The bill provides for the Physical Therapist to communicate with the patient's physician regarding evaluation and services provided. The following are facts about the bill:

- 17 States allow **unrestricted** patient self-referral for physical therapy
 - Nebraska has had unrestricted patient self-referral since 1957
 - Arizona since 1983
 - Colorado since 1988
- An additional 20 states permit patient self-referral with limited restrictions
- **In 37 states, there have been NO findings of harm to the public**
- In 37 states there have been **NO** increases in physical therapist malpractice claims
- In 37 states, there have been **NO** increases in lawsuits of physical therapists
- **In 37 states, there have been no repeals of patient self-referral laws nor have there been any attempts to repeal these statutes**
- This bill does **NOT** provide unrestricted patient self-referral
- The bill requires notification to the physician within 5 days of the physical therapy evaluation and requires a physician referral for treatment if the patient is not showing improvement within 15 days
- The current educational requirement is the Doctorate of Physical Therapy degree
- Patient self-referral has been proven in the research literature to provide health care cost savings

Pam Palmer, PT

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Physical therapists are health care professionals who restore and improve movement and to enable individuals of all ages to have optimal functioning and quality of life. Physical therapists promote health, wellness, and fitness through risk factor identification and implementation of services to reduce risk and slow the progression of or prevent disability.¹

Physical Therapists Provide High Value Services for Patients

There is strong evidence to indicate that physical therapists are a cost effective alternative to medication and surgery for many conditions.

- **Low Back Pain:** Recent studies indicate that physical therapists who combine manual mobilization techniques with appropriate therapeutic exercises can effectively alleviate low back pain with long-lasting effects.^{2,5}
- **Knee Arthritis:** There is scientific evidence that physical therapy, combined with comprehensive medical management, is just as effective as surgery for relieving pain and stiffness of moderate to severe osteoarthritis of the knee.^{3,4}
- **Tendonitis, Bursitis, and Arthritis:** Research shows that individuals who receive active physical therapy experience greater improvement in function and decreased pain intensity.⁵ In fact, for patients at risk of heart disease, the American Heart Association encourages individuals to see a physical therapist for initial treatment of musculoskeletal pain rather than taking prescription pain medication.⁶
- **Vertigo:** Benign paroxysmal positional vertigo (BPPV) is the most common cause of vertigo due to a peripheral vestibular disorder. Research indicates that most patients improve rapidly when treated by physical therapists.⁷⁻⁹
- **Breast Cancer-Related Lymphedema:** Secondary prevention of lymphedema through prospective physical therapy surveillance aids in early identification and treatment of breast cancer-related lymphedema. Recent studies indicate that early intervention may reduce the need for intensive rehabilitation and may be cost saving.¹⁰
- **Wound and Ulcer Management:** Physical therapists effectively provide treatment for skin repair and protection and educate the patient and caregiver on the prevention of pressure ulcers associated with certain conditions such as spinal cord injury and diabetes.¹¹⁻¹²
- **Incontinence and Pelvic Floor Disorders:** Research on the conservative management of pelvic floor disorders supports physical therapist practice for these conditions, even over medical and surgical options for some patients.¹³⁻¹⁵
- **Type II Diabetes:** Exercise, along with dietary intervention, represents first-line therapy for diabetes mellitus. Physical therapists play an important role in reducing disease risk indicators for these individuals.¹⁶⁻¹⁸

The Right Care for the Right Patient at the Right Time

- In a 2011 study of 63,000 episodes of physical therapy care, researchers found that self-referred patients had fewer PT visits and lower physical therapy costs and lower use of related health care services such as diagnostic testing and injections.¹⁹
- Recent studies demonstrate that physical therapists have higher levels of knowledge about managing musculoskeletal conditions than most physician specialists except for orthopedists.²
- Early treatment of musculoskeletal injuries results in improved outcomes and reduced costs.^{TBA}

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Time-Line/History of 2012 Sub HB 2159 negotiations

After HB 2159 passed the House Health and Human Services Committee with 2 “Nay” votes, Rep. Brenda Landwehr requested that all parties should attempt a compromise.

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-speak 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.

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.



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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 black ink that reads "Stacia Troshynski Brown, PT, DPT". The signature is written in a cursive, flowing style.

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