

MINUTES

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

September 6-7, 2007
Room 313-S—Statehouse

Members Present

Representative Arlen Siegfroid, Chairman
Senator Pete Brungardt, Vice-Chairman
Senator Anthony Hensley, Ranking Minority Member
Senator Roger Reitz
Representative Owen Donohoe
Representative Oletha Faust-Goudeau
Representative Annie Kuether
Representative Mike O'Neal
Representative Jene Vickrey

Staff Present

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Jason Long, Revisor of Statutes Office
Ken Wilke, Revisor of Statutes Office
Mike Heim, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Conferees

Tim Carmody, Attorney
Dr. Doug Mould, Psychologist
Dr. Paul McHugh, testimony given by DVD
Dr. Brian Russell, Psychologist and Attorney
Jennifer Girox
Mary Balch, Legislative Director, National Right to Life
Dr. John F. Evans, Perinatologist
Troy Newman, President, Operation Rescue
Wendy Wright, Concerned Women for America
Dr. Ted Williams, Physician
Michelle Arnesto Berg
Jo Ann Van Meter, Attorney, Pro Kan Do
Julie Burkhart, Pro Kan Do
Kathy Ostrowski, Kansans for Life

**September 6, 2007
Morning Session**

Chairman Siegfried called the meeting to order at 9:15 a.m. in Room 313-S of the Statehouse. The Chairman explained the Committee rules and noted the emotional nature of the topic to be discussed. He stated that this was a fact-finding hearing, and no signs or demonstrations would be tolerated.

Tim Carmody was welcomed to the Committee. He stated that he had talked to several members of the Committee who asked that he appear today and he agreed to do so to offer his insights as to the background of the legislation concerning late-term abortion restrictions. He explained that he was Chairman of the Conference Committee that adopted the abortion statute in 1998. There were basically three parts:

- Assisting suicide prohibition;
- Restricting late-term abortion; and
- Banning on partial birth abortion.

Mr. Carmody stated that members of the Conference Committee addressed the late-term abortion in this way. The members of the Conference Committee and, by extension, leaders of the Senate and House and Governor's Office, came to consensus on the following points:

- The law that we would pass would not be seen or developed as a test case merely for the purpose of testing the limits through the courts. The law would not be limited, if it was limited at all, to simply a ban on partial birth abortion. They recognized that was only one type of procedure and was not the sole basis of this law. The law would set viability as the dividing line between what could not be regulated and what might be regulated. So viability and not late term became the phrase used in statute.
- The only exceptions to an outright ban on post viable abortions would be those constitutionally required as exceptions as the Conference Committee defined by court decision.

He observed that enforcement of the laws depends on the good faith efforts of the prosecutor, whether that be a district attorney, county attorney, or attorney general. He stated that it depends on the good faith of the physicians acting within the scope of their practice, and on the courts applying a reasonable interpretation consistent with legislative intent.

Mr. Carmody discussed with the Committee the definitions of permanent impairment of a bodily function. After answering several questions by Committee members, Mr. Carmody was thanked by the Chairman.

The Chairman called attention to a DVD of an interview with Dr. Paul McHugh and said, "There has been a request that I bring to the attention of the Committee a letter from the Attorney General's Office that was sent to Dr. McHugh in reference to his public comments on this case. Also, there is an affidavit from Dr. McHugh stating his information about whether or not he was contacted by the Attorney General's Office (Attachment 1). Also presented to the Committee was the resume of Dr. McHugh (Attachment 2). I think that Dr. McHugh's background is extremely impressive. I think

that he is a highly qualified practicing psychiatrist and is associated with several prestigious colleges and universities. It is my understanding that Dr. McHugh was contacted by Attorney General Kline to view some of the files which he had obtained and to give expert opinion. That is why we are going to view this. The concerns that have been expressed about this information coming out would be concerning to me if it was not on YouTube and available for anyone in the United States to view if they wanted to. A lot of people have [viewed this]. Dr. McHugh appeared in Johnson County in person and talked about this, so we are going to go ahead and view this DVD. I am not going to attest to the quality of this DVD but we will do the best that we can.”

Senator Hensley asked staff to distribute the letter written to Dr. McHugh by the Attorney General (Attachment 3). Senator Hensley said, “ I think it is very important that for the record, we point out the legal questions that the Attorney General had with regard to Dr. McHugh’s public statements. There were a number of newspaper articles that came out regarding this particular letter and I would like to basically, Mr. Chairman, read from the second to last paragraph in the Attorney General’s letter because I think that it very well summarizes the Attorney General’s position with regard to Dr. McHugh’s public statements. I will read in part where he says ‘actions are a gross breach of trust and demonstrate the dangers in allowing prosecutors to randomly invade the medical privacy rights of American citizens. As a physician you, especially, should know and respect those rights and obligations. Rather than complying with those obligations, you have chosen to engage in a politically driven media campaign. Your actions do a disservice to you, Johns Hopkins, and your profession.’ I read those comments from the Attorney General because I believe that is exactly the intent and motive behind the showing of this DVD, that, in fact, we are engaging in a politically driven media campaign with the showing of this DVD in this Committee today. You are absolutely correct. It is on YouTube. I have reviewed it and I think any member of the Committee could in the privacy of their own home or office, do the same thing. I do not think that it adds anything to the proceedings that we have here, which, I am beginning to question the objectivity of these proceedings. I think the Attorney General for some very important legal issues was very correct in sending this letter to Dr. McHugh and quite frankly, Mr. Chairman, I think that what is implicit with this showing of the DVD to the Committee is, it passes approval of Dr. McHugh’s past behavior and past public statements. Therefore, I object to the showing of this DVD in view this is nothing more than basically a dog and pony show and making politics out of his public statements previously. Not to mention the fact that the Attorney General correctly points out that this undermines the integrity of whatever investigation or criminal case is pending in district court at the current time. I, for one, refuse to be a party to any process that would impugn the integrity of any criminal proceeding in the future.”

Chairman Siegfried said, “Thank you for your input. I would say that I have never for one minute hid my intentions. My intentions of this Committee are to demonstrate what appears to be no effort on the part of the regulating body of this state to look out for or take any notice of the care of a viable unborn child. We clearly have a law that has been in existence for nine years. There has been no rules or regulations created to support that law whatsoever. What this DVD demonstrates is that a highly qualified medical professional, highly respected, who I don’t even know if he is pro life, gave us a very clear opinion about the files that he viewed and I do not believe that it compromises anything legally or I would not be doing this, since it is available on YouTube to everyone in the world that has a computer and an Internet connection. We are going to go ahead and view it. I appreciate your comments and your concern.”

The Chairman recognized Representative O’Neal, who said, “I think we need to put the facts out on the table and clarify any misconceptions about Dr. McHugh’s testimony or his input. Keep in mind that at the time he made those comments, the case against Dr. Tiller had been dismissed and there was no case pending. The issue that Dr. McHugh addresses is the very issue that this Committee is taxed with looking at and is one of the concerns that is raised by Senator Reitz. That is, what does it mean that we have a requirement that before you have a late term abortion that there

be a finding of irreversible impairment of a major bodily function? That is exactly what Dr. McHugh was asked to do, and appropriately so, by the previous Attorney General. The new Attorney General's letter to Dr. McHugh on June 12, 2007, was after a time when the decision had been made to not prosecute for violation of the abortion law with respect to the finding of irreversible impairment. At the June 28, 2007, press conference that Attorney General Morrison convened, he made it clear that he had no intent of prosecuting Dr. Tiller for that aspect of the law that requires a finding of irreversible impairment of a major bodily function. In fact, somewhat remarkable, he said he was powerless to bring a criminal action for that because in his opinion all you needed was two doctors saying that it was necessary and he was powerless to look behind that decision to find that the criminal statute had been violated. He did, as everyone knows, elect to file 19 counts against Dr. Tiller on the basis of one of the three prongs of that test, and that is that there be no financial connection between the two. But the current pending criminal action is based solely upon the financial connection, which has nothing to do with what Dr. McHugh was asked to look at, and so the testimony of Dr. McHugh has really nothing to do and would have no bearing on the criminal case. Frankly, I think it should. There is nothing ethically that prevents Dr. McHugh from making statements that he has made in the past or is making today on that subject. In fact, the very thing that we need to look at is what does it take or what should it take to determine whether there has been an irreversible impairment of a major bodily function if it is mental. I think that requires psychiatric testimony and that is precisely what Dr. McHugh has the credentials to comment on and I think it is highly appropriate for us to receive that information."

Senator Hensley said, "Mr. Chairman, the other objection that I have to the showing of the DVD is that the fact that this Committee has no opportunity to ask questions of this conferee. We are looking at a DVD and in the legislative process, it was very important that we have testimony that is presented to the Committee, wherein, we can question the conferee and in this case we would not have that opportunity. It is impossible to ask any questions. This is another reason to my objection to this process; when we have a conferee that is on a screen and we do not have the ability or opportunity to ask questions. That it is not true of the other conferees that we have here today. It is my understanding that they are all here in person and we will have the opportunity to ask questions. Quite frankly, in the 31 years that I have been in the Legislature, this is unprecedented. I have been in committees where video tapes have been shown but typically, it presents both sides of a particular issue and the person that is being presented in the videotape is on hand to respond to questions, but we don't have that situation here today, Mr. Chairman."

Chairman Siegfroid responded by saying, "An attempt was made to get Dr. McHugh to the hearing, but it was impossible to arrange. However, the Chairman will receive any questions that the Committee has in writing and we will submit those and ask Dr. McHugh to respond. We also have two other psychologists that will be here today to give their opinions about this and they might be able to help you in formulating questions. I will cooperate with you in any way that I can, Senator, to get your questions answered."

Senator Hensley asked, "Does the Chairman believe that this is an appropriate process where we have a conferee that will appear by electronic device and we are unable to ask questions of that individual in person? Do you feel that is an appropriate process for the Legislature?"

The Chairman answered, "I wouldn't be doing it if I thought that it was an inappropriate process. This is unique information and I think it is important to get it out here. We are made up of a body of nine people and I think that every one of the members of this Committee are perfectly capable to evaluate this testimony. As I have said, I would be happy to entertain any questions you have in writing and petition Dr. McHugh to respond in writing and provide the answers publicly to anyone who wants them."

Senator Hensley said , “Mr. Chairman, I am not satisfied with that particular process and again, I would like to note for the record, my objection to how this is coming down and I would yield to Representative Kuether because I believe she has a question.”

Chairman Siegfried asked staff to note Senator Hensley’s objection for the record.

The Chairman recognized Representative Kuether. Representative Kuether said, “ I would also like to be recorded as being opposed to this process. I have a question. Is this DVD that we are viewing, the full thirty-four minutes that is on YouTube, is it the entire interview?”

The Chairman said that he thought that it was forty-four minutes.

Representative Kuether asked, “Did you get the DVD from Dr. McHugh?”

The Chairman said, “I received this particular DVD from Mr. Welton, who had a better copy of it.”

Representative Kuether asked, “Who was Mr. Welton?”

The Chairman replied, “He is a gentleman I know in Johnson County.”

Representative Kuether said, “I would agree with Senator Hensley that this is very irregular. We don’t have the opportunity to talk to him. I understand that we do get written testimony on several occasions as well, but I have looked at the agenda and we all generally know our positions on this issue. That is one of the reasons that we were chosen to be on this Committee, but I look at this agenda, and again, it is so clearly one sided I can hardly call it a fair hearing in terms of the people coming before us. It is pretty lopsided and I am here to do my job and I will do that but I would also like to be recorded.”

Chairman Siegfried stated that her objection was so noted.

The Chairman recognized Representative Donohoe. Representative Donohoe stated that we receive written testimony all the time and we accept that. He said that we do not have the ability to question them and he did not feel that this was any different.

The Chairman recognized Senator Hensley. Senator Hensley said, “I submit that it is different because this is verbal testimony being presented to us by way of electronic device. Is this an interview? Is this the crux of what we are going to see? Is he responding to questions being asked by an interviewer?”

The Chairman said, “That is pretty much the format, yes.”

Senator Hensley asked, “Who is the interviewer?”

The Chairman said, “I do not know but I think the interviewer will introduce herself.”

Senator Hensley asked if staff knew who the interviewer was.

Staff replied that they did not know and had not seen the DVD.

Senator Hensley said, “It is my understanding that the interviewer is a radio talk show individual who works for a local radio show that works here in Topeka. A person who is not an

attorney and who does not have any sort of interrogation background other than to ask people questions on a radio talk show; that is my understanding.”

The Chairman said, “I am not an attorney either but I try to ask intelligent questions. The point here is that this is unique information from a uniquely qualified individual that cannot be here today and, again, we will take any questions in writing and have them submitted to him and, if it makes you more comfortable, we will have the entire DVD transcribed and presented to you in writing so that you study it.”

Senator Hensley said, “I don’t want to put anyone to that trouble. I do not think that is necessary. My point is that inasmuch as we are seeing a DVD that the interviewer is a radio talk show host, again I think it goes back to the point that the Attorney General aptly made and that is that this is basically a politically driven media stunt that we are looking at here today.”

Chairman Siegfried said, “I disagree strongly with your evaluation but you have every right to your evaluation.”

The DVD was shown to the Committee.

The Chairman stated that he thought the interview was done on June 11, 2007, before the charges that were filed by Attorney General Morrison.

Chairman Siegfried recessed the Committee and asked that they return by 11:00 a.m.

Dr. Mould, psychologist, was welcomed to the Committee. Dr. Mould stated that although he had great respect for Dr. McHugh, he would not consider him an “unbiased expert.” He stated that Dr. McHugh has written for the most conservative publications in the country (*e.g.*, *The Weekly Standard*, among many others). He noted that he has been pro-choice for many years. He said that he was the only psychologist of which he was aware in Kansas who has been willing to speak publicly on behalf of abortion rights.

He stated that to trivialize depression and the potential for depression and/or psychosis, as Dr. McHugh does in relation to abortion, in his opinion as a clinician, is wrong-headed thinking “which does not reflect the general view of the psychological/psychiatric community nor of the body of scientific research” ([Attachment 4](#)).

Senator Hensley said, “I would like to have disclosure on the film. I want to know how the video was funded and the sponsoring organization if there was one, and where the interview took place” ([Attachment 5](#)).

The Chairman said the he would try to find out and provide the information.

A Committee member asked Dr. Mould questions regarding postpartum depression as it relates to “irreversible bodily function.”

A Committee member asked Dr. Mould in his opinion, if is there a diagnosis that would indicate a permanent and irreversible impairment of a bodily function.

After answering all questions by the Committee, Chairman Siegfried thanked Dr. Mould for his testimony.

The Chairman recessed the Committee until 1:30 p.m.

Afternoon Session

The Chairman reconvened the meeting at 1:30 p.m. Chairman Siegfried stated the time limit for submitting questions to Dr. McHugh would be noon, September 13, 2007.

The Chairman recognized Dr. Brian Russell, psychologist and attorney, to the Committee. Dr. Russell stated, having been present during an in-depth interview of Dr. McHugh, he had no doubt that viable pregnancies are being terminated in Kansas for convenience or birth control reasons, based on mental health diagnoses, which appear to be unfounded and which, even if founded, would not satisfy the statutory requirements of an exception to Kansas' late-term abortion ban.

Dr. Russell said that he was concerned that mental diagnoses are being made without the proper skill and care to establish that the conditions diagnosed exist. He further stated that it was his concern that practitioners who are performing these procedures are doing so without exercising the proper skill and care to provide the follow-up mental health treatment that women who present in profoundly debilitating mental conditions are certain to need.

He concluded by saying that where the Kansas Board of Healing Arts has reason to suspect that a licensee has practiced in violation of state law, the Board must act to protect the public by exercising its power to investigate and to sanction, suspend or revoke licenses where violations are confirmed (Attachment 6).

A Committee member commented that he was concerned that Dr. Russell reported on 44 cases reviewed by Dr. McHugh and in Dr. McHugh's testimony, he refers to 15. The Committee member asked for clarification.

Dr. Russell said that Dr. McHugh discussed the cases that he reviewed and it was his understanding that the number was 44.

A Committee member voiced concern that the people that were supposed to be seeing the records were only the Attorney General and the Board of Healing Arts.

Dr. Russell said that he had not seen the records.

In response to a question from a Committee member, Dr. Russell said that he would like to clarify that he has not seen anything contained in the records beyond what was told to the entire public in the interview. He stated the conversations that he had with Dr. McHugh, individually, were about technical issues.

The Chairman asked questions of Dr. Russell regarding the medical terms: anxiety disorder, adjustment disorder, and single episodic depression; and asked if any of those terms ever reach the level of substantial and irreversible harm to a bodily function.

Dr. Russell said that he did not believe so. These are some of the most treatable conditions in psychology and psychiatry and people recover from these conditions all the time.

The Chairman asked if one would typically find the plan of treatment in the same file as the diagnosis and reason for diagnosis.

Dr. Russell stated that in his experience, the only reason that one would not include a treatment plan is if they were doing a diagnostic work-up for a forensic reason.

Chairman Siegfroid asked, for clarification, if Dr. Russell said: if a woman were so psychologically distressed that she did reach the level of substantial and irreversible harm, she would be, in his opinion, in such a state of mind that she should not be allowed to make that decision.

Dr. Russell said yes, she might not possess the mental capacity to be able to receive and evaluate the information and consider treatment options, as has been required elsewhere in the statutes, to be able to make an elective surgery decision at that time.

The Chairman asked if suicidal ideation is a separate diagnosis or is it an extension of another mental condition?

Dr. Russell said that suicidal ideation is a symptom that a person can experience. Usually, they would be psychotic, depressed, or both. There are some people who are neither of those things like someone who is in the last stages of life may consider killing themselves and they are neither psychotic nor depressed.

When asked by Chairman Siegfroid if the term suicidal ideation fit in terms of this statute, Dr. Russell replied that it did not and gave an explanation for his answer.

After answering all questions asked from the Committee, Chairman Siegfroid thanked Dr. Russell for his testimony.

Chairman Siegfroid requested staff supply the Committee with information on how many records Dr. McHugh received from former Attorney General Kline. He also asked Dr. Russell to check his records for verification of the number of records given to Dr. McHugh (Attachment 7).

The Chairman recognized Jennifer Girox. Ms. Girox answered the questions relating to the origin of the DVD of the Dr. McHugh interview and where it took place, for Senator Hensley.

Ms. Girox stated that there has been a complete breakdown in the rule of law in Kansas. She continued by drawing attention to a book of names from people across the United States begging Kansas to enforce its laws. (Information is on file in the Kansas Legislative Research Department.) She challenged Kansas to start erring of the side of life. Ms. Girox submitted a letter from the grandmother of two aborted fetuses urging Kansas to enforce the law (Attachment 8).

A Committee member asked questions of a general nature of Ms. Girox.

The Chairman welcomed Mary Balch, Legislative Director, National Right to Life, to the Committee. Ms. Balch stated that her testimony presents a basic summary of the relevant U.S. Supreme Court holdings and to suggest to the Committee a specific set of amendments to sections of KSA 65-6703 that she believes can constitutionally and efficiently achieve effective enforcement of the existing substantive provisions of Kansas law on post-viability abortions.

Ms. Balch discussed two cases: *Planned Parenthood v. Casey* and *Gonzales v. Carhart*, and recommended two key concepts:

- To apply an objective, malpractice-type standard to the determination of whether a post-viability abortion is “necessary to preserve the life of the pregnant woman” or whether “continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman,” and to require that the abortion practitioner not knowingly or recklessly violate that standard; and

- Add civil remedies as an enforcement mechanism.

Ms. Balch recommended the use of civil remedies for enforcement. Women upon whom an unlawful abortion was performed or attempted would be given standing to seek an injunction against future unlawful abortions by the same defendant, as well as parents of minors upon whom an unlawful abortion was performed or attempted.

Ms. Balch testified that if the law provided that women may bring suit for civil damages even if they consented to the unlawful abortion, those who might otherwise be inclined to perform an abortion would be deterred because the performance of an abortion could still result in a lawsuit.

Ms. Balch explained the proposed statutory changes and said that providing an objective, malpractice-type standard and enforcing it with civil remedies offer the best way of accomplishing enforcement of Kansas statutes ([Attachment 9](#)).

Dr. John F. Evans, Perinatologist, was welcomed to the Committee. He stated that there were two conditions when the College of Obstetrics and Gynecology allows termination beyond a 21- or 22-week cutoff, and they are if the baby's brain is not developing or if kidneys are absent. He stated that he was very nervous about the 21-week cutoff. Dr. Evans was concerned about the conditions that are not detected or are detected later on in the pregnancy. He stated that he has seen families devastated by a special needs child. He discussed the burden placed on parents and siblings of these children. He said that he would like to have consideration not so much as to the gestational age, but the conditions that might necessitate medical intervention.

After answering questions of a general nature, Chairman Siegfried thanked Dr. Evans for his testimony.

Written testimony was submitted by the following: Eve Espey, M.D., Physicians for Reproductive Choice ([Attachment 10](#)); Herbert C. Hodes, M.D., FACOG ([Attachment 11](#)); Kathy Morris, MSSW, CGC ([Attachment 12](#)); Stephanie Kramer, M.S., Certified Genetic Counselor, St. Luke's Perinatal Center ([Attachment 13](#)); Leslie Aptekar, M.S., CGC ([Attachment 14](#)); and Robin Troxell, M.S., CGC ([Attachment 15](#)).

The meeting was adjourned until 9:00 a.m., September 7, 2007.

September 7 Morning Session

The meeting was reconvened by the Chairman at 9:15 a.m. in Room 313-S of the Statehouse.

The Chairman invited Troy Newman, President of Operation Rescue, to speak to the Committee. Mr. Newman said that he would present testimony and documents showing a pattern of non-enforcement of KSA 65-6703, the Kansas ban on post-viability abortions.

Mr. Newman stated that the law is adequate to protect women and their viable babies. He said that the law is not being enforced and the consequences of non-enforcement have been manifested in the life-threatening physical complications.

Mr. Newman urged the Committee to strengthen the ability of law enforcement to enforce the laws and create stiff punishments for those who will not do their duty in order to root out corruption and establish justice. (Reference material on file in the Kansas Research Department.)

After questions of a general nature, the Chairman thanked Mr. Newman for his testimony.

A Committee member noted that in Mr. Newman's notebook there is an actual transcript of the interview of Dr. McHugh, which was a suggestion from the Chairman yesterday to be submitted to the Committee.

The Chairman welcomed Wendy Wright, Concerned Women for America. Ms. Wright noted that 98 percent of the third trimester abortions committed in Kansas are on out-of-state women. She said that George Tiller markets his late-term abortion business nationally and internationally.

Ms. Wright stated that laws and regulations shield people from decisions that can have long-term detrimental consequences. She asserted that having a law on the books regarding abortion but not enforcing it gives false assurance to patients that abortionists are meeting state qualifications and regulations (Attachment 16).

A Committee member asked Ms. Wright if she has had a chance to see the proposed legislation from Mary Balch.

Ms. Wright responded that she had not. She said that her proposal would be that the law be enforced. She stated that there is a good law in place in Kansas. She suggested that instead of adding another law, we make sure that laws are being enforced. She said she was especially grateful for this hearing because it seemed that too often we pass laws, but then do not take a second look to see if the law worked or if the law is being enforced.

The Chairman thanked Ms. Wright for her testimony.

The Chairman then called a recess of the Committee for 15 minutes.

The Chairman reconvened the Committee and welcomed Dr. Ted Williams. Dr. Williams gave testimony regarding the late term abortion law. He stated that the doctor performing the late term abortion must "report the determinations, the reason for such determinations, and the basis for the determinations that an abortion is necessary to preserve the life of the pregnant woman or that the continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman." It is his understanding that a specific diagnosis justifying the need for the abortion is not given on the form provided by the KDHE.

He stated that in his experience maternal mental illness rarely, if ever, would cause substantial and irreversible impairment of a major bodily function that would justify a late term abortion.

He further stated that he believes the practice of late term abortions in this state is being justified by a generalized determination that lacks the necessary documentation of supporting objective criteria and represents a deviation from the standard of care that should be closely scrutinized (Attachment 17).

Dr. Williams read the written testimony of Dr. Mark Gillett to the Committee (Attachment 18).

A Committee member asked Dr. Williams if he has seen a death certificate of a viable fetus.

The Chairman asked staff to research the question for the Committee.

A Committee member asked Dr. Williams if he had ever diagnosed a woman with substantial and irreversible mental damage in his nine years of practice. He responded: not in a second half pregnancy condition.

A Committee member asked if he would find it somewhat incredible that one doctor would find 233 of those patients in one year. He responded that he did find it incredible.

After answering all questions from the Committee, Chairman Siegfried thanked Dr. Williams for appearing before the Committee.

Chairman Siegfried introduced Michelle Arnesto Berg and her attorney. Chairman Siegfried explained the legislative procedure to her and asked if she wanted to continue. She stated that she was ready to give her testimony. Her testimony included the history of what caused her to seek an abortion, her experience at the abortion clinic and the aftermath of that decision (Attachment 19).

A Committee member asked if she would make her medical records available to the Committee, to which she replied yes.

The Chairman asked Ms. Berg if she was positive that she has the total medical record. Ms. Berg replied that it appeared to be the ultrasounds and the notes, which are approximately 25 pages and which she initialed, signed, and dated. She noted that the front page has every procedure listed.

The Chairman asked the date of the abortion. Ms. Berg responded that it was May of 2003.

After answering all questions asked by the Committee, Chairman Siegfried thanked Ms. Berg for her testimony.

Representative Kinzer was recognized by the Chairman. He stated his concern that while we have a comprehensive statute intended to govern the performance of abortions on viable unborn babies, that statute's effectiveness is being undermined by the refusal of executive branch agencies to properly implement and enforce its provisions. He noted that while the legislative branch can pass laws, it is powerless to implement them.

He concluded by saying it is his hope that these hearings will act as an encouragement to the executive branch to act with both reason and energy in the implementation and enforcement of KSA 65-6703 (Attachment 20).

A Committee member asked Representative Kinzer what change he would enact concerning the Department of Health and Environment.

Representative Kinzer replied that instead of restating the statute as is currently done on these forms, what should be on the forms is a requirement for the reason and basis for the abortion and the actual underlying diagnosis that leads the doctors to conclude that there is a substantial and irreversible impairment.

The Chairman asked Representative Kinzer if the Legislature should make an addition to this law by propagating rules and regulations.

He responded by saying he thought that the Legislature should either amend KSA 65-445 to more clearly indicate and list a diagnosis or give physicians more rules and regulations so they have

more authority to adjust the form. He stated that he had a hard time understanding how if they had sufficient authority under rules and regulations to create the form in the first place, they do not have sufficient regulatory authority to alter the form.

After answering all questions asked by the Committee, Chairman Siegfried thanked Representative Kinzer for his testimony.

The Chairman recessed the meeting until 1:30 p.m.

Afternoon Session

Chairman Siegfried reconvened the meeting and brought to the Committee's attention some information from Indiana and other states (Attachments 21-31). He noted that we are still waiting on other state forms .

The Chairman welcomed Jo Ann Van Meter. She stated her concerns about conversations and actions which focus on continued diminution of the right of women to make decisions about their reproductive health in consultation with their physicians. She stated that whatever the reasons for an abortion, it will never satisfy those who oppose abortion as such persons value the life of an unborn fetus more than the life of the pregnant woman.

Ms. Van Meter concluded by saying that women have a constitutional right to make decisions involving their reproductive health. She noted that women have the right to late term abortions if life or health is threatened and that, as of now, health includes mental health (Attachment 32).

A Committee member asked Ms. Van Meter to expand on the statement that fetuses are given rights, as rights are taken away from the pregnant women.

She replied that to her, the fetus is being protected to be born, but once this child is born she has no guarantee of health insurance. She is not guaranteed sufficient schooling. She is not guaranteed a home or adequate nutrition, or what should be minimal for a childhood.

After responding to all questions asked by the Committee, Chairman Siegfried thanked Ms. Van Meter for her testimony.

Julie Burkhart, Chief Executive Officer of Pro Kan Do, was welcomed to the Committee. She noted they are a pro-choice organization. She said that she came to the Committee knowing she would not possess the most popular opinion in the room. She noted that some people would already have their minds made up on this issue. She asked that the Committee keep an open mind.

Ms. Burkhart stated that the decision should be left to a woman and her doctor. She reminded the Committee that privacy is not a "trump card," but is a constitutional right (Attachment 33) and (Attachments 34 - 47). Ms. Burkhart asked the Committee to watch and listen to testimony that she would present on a DVD.

Senator Hensley objected to the viewing of the DVD because the Committee cannot ask questions of the individual giving testimony.

Representative Kuether also wanted her objection noted.

Chairman Siegfroid asked staff to note the objections and allowed the viewing of the DVD to be shown. (Written testimony submitted by Miriam and Jason Steinbaum, Attachment 48).

Chairman Siegfroid asked Ms. Burkhart if it was required that the second physician to be a board certified psychiatrist and provided a diagnosis, would that impede the function of Dr. Tiller's operation at Women's Health Clinic? Ms. Burkhart stated that she could not answer at this time.

Chairman Siegfroid asked Ms. Burkhart if we required an affidavit of referral from a doctor, even from out of state, to start this process, would that impede the function? Ms. Burkhart said again, she could not speak for the doctor.

Chairman Siegfroid asked if it would be possible for her to speak to the doctor and respond to the Committee in writing before October 17, 2007. Ms. Burkhart said that was possible.

Senator Hensley asked Ms. Burkhart if she was in the room when Mr. Newman was showing his videotapes and photographs of ambulances that came to the clinic and took patients to the hospital.

Senator Hensley asked Ms. Burkhart to comment on those incidents.

Ms. Burkhart said that this was something that came up a couple years ago. She called the Board of Emergency Management Services and the State Board Director, and she wanted to know if it was common for physicians that work in clinics to call for ambulances. The answer was it was not uncommon that if something were going on outside the scope of their range, to transport a patient to a hospital. She stated that Dr. Tiller was very concerned about the well being of his patients.

After answering all questions from the Committee, Chairman Siegfroid thanked Ms. Burkhart for her testimony.

Kathy Ostrowski, Legislative Director for Kansans for Life, was welcomed to the Committee by the Chairman. Ms. Ostrowski testified regarding the late term abortion law, the Supreme Court's decisions, and recent attempts to prod enforcement of the late term ban. She stated that Attorney General Morrison denied that KSA 65-6703 requires a defensible reason and basis to be reported.

Ms. Ostrowski concluded by saying that legislation, including provisos, can cause KDHE to obtain valid information. She said that if valid, legal, medical reasons were reported, and practitioners truly faced loss of licenses, the number of viable baby abortions would be minimal, which was the original intent in 1998 (Attachment 49).

The Chairman asked Ms. Ostrowski if the prudent position standard was codified in law. Ms. Ostrowski said yes, it is an understood part of the standard.

After answering all questions asked by the Committee, the Chairman thanked Ms. Ostrowski for her testimony.

Chairman Siegfroid extended his appreciation to the Committee for their participation and attendance during this hearing. The Chairman stated that there would not be any discussion or action taken at this time. He stated that if any action or discussion takes place, it will be on October 17, 2007.

The meeting was adjourned until October 17, 2007, at 10:00 a.m.

Written testimony submitted by Shelly Wakeman, Disciplinary Council, Kansas Board of Healing Arts, at the request of the Federal and State Affairs Committee on August 31, 2007 (Attachment 50).

A copy of KSA 65-703 was given to the Committee as a follow-up from the Kansas Legislative Research Department on material requested on September 6, 2007 (Attachment 51).

Prepared by Jeannie Dillon
Edited by Kathie Sparks

Approved by Committee on:

October 17, 2007

(date)