

Approved: Feb. 23, 1993
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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on February 17, 1993 in Room 423-S of the Capitol.

All members were present except: Rep. Tom Bishop, excused.

Committee staff present: Emalene Correll, Legislative Research Department

Norman Furse, Revisor of Statutes
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Larry Buening, Executive Director, Board of Healing Arts
Chip Wheelen, Director of Public Affairs, Kansas Medical Society
Harold Riehm, Kansas Association of Osteopathic Medicine
Candy Bahner, Legislative Chair, Kansas Physical Therapy Association
Dr. James Edwards, Kansas Chiropractic Association
Jackie Rawlings, physical therapist, St. Mary's Hospital, Manhattan, Kansas
David Hanzlick, Assistant Director of Kansas Dental Association

Others attending: See attached list

Chairperson Flower called the meeting to order, noting the minutes for February 11, 1993 are available for approval. If the office of the Chair does not hear of any suggested changes by 5:00 p.m. tomorrow, (February 18), these minutes will be recorded as approved.

Chair invited conferees to begin.

HEARINGS BEGAN ON HB 2438.

Larry Buening, Executive Director of Kansas Board of Healing Arts offered hand out (Attachment No.1.) He gave a comprehensive detail of the history of the composition of the Board membership and those groups of licensees that are regulated by the Board. He detailed the composition of the Board as the number of members increased over the years up to the current number of 15. Currently there are 5 physicians licensed to practice medicine and surgery, 3 are osteopaths, 3 are chiropractors, 1 a podiatrist, and 3 members from the general public. Mr. Buening stated, although the Board is listed as a proponent to HB2438, he envisions in this case, the Board should offer information to the Committee, rather than lobbying support or opposition for this legislation. He noted he was approached by several members of this Committee to draft a bill that might serve to resolve the polarization created by HB2113 and HB2278. He noted the Board of Healing Arts met on February 13, received comments from Carolyn Bloom, a Registered physical therapist, and James Edwards, Doctor of Chiropractic, on both HB2113 and HB2278. At that time the Board felt it inappropriate to take a position on either of those bills. The Board did however express support for the language proposed in HB2438 and has indicated a willingness to devote the time necessary to implement those provisions in that bill. Should this Committee on Public Health and Welfare choose to pass HB2438, neither HB2113 or HB2278 would be necessary. Should the Legislature desire to instruct the Board to adopt rules and regulations which would both protect the public and provide appropriate access of that public, to physical therapy services, the Board is willing to undertake that obligation. He drew attention to his hand out that contained the Kansas Healing Arts Act; Physical Therapy Act; Physicians' Assistant Act; Occupational Therapy Act; Respiratory Therapy Act; and the Podiatry Act.

Chip Wheelen, Director of Public Affairs, Kansas Medical Society offered hand out (Attachment No. 2.) He detailed the rationale for credentialing, i.e., a law created in 1980. He noted, the legislation proposed in hearings of the past two days appears to the Kansas Medical Society to be a credentialing issue. The credentialing and scope of practice issues should be subjected to rigorous fact finding and scrutiny. It is not

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something that can be discussed and decided upon in two or so short Committee meeting hearings. Because the direct access to physical therapy issue is not considered an appropriate matter for the Kansas Department of Health and Environment credentialing process, another method of resolving the issue can be accomplished with the language indicated in HB2438. He supports this vehicle.

Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine, offered hand out (Attachment No.3). He stated, that a change as major as permitting a health care delivery group to treat patients without a physician referral, is as major a change as are some of those requested by provider groups are presenting to be credentialed for the first time. He spoke in support of the language in HB2438 that relates to providing the Board the authority to determine, by rules and regulations, the conditions under which physical therapists shall treat without physician referral.

Dr. James Edwards, representing the Kansas Chiropractic Association, stated his official remarks are:-If this Committee feels that HB2438 is a better way to handle the issues of direct access and spinal manipulation to licensees, the Kansas Chiropractic Association will support that legislation. He then offered unofficial remarks from a personal view, i.e., he asked the Committee to consider three things. It would not be fair to the physical therapists for the Board to adopt rules and regulations for direct access for physical therapy, (in his opinion, because the members of the Committee on Public health and Welfare have a better chance of issuing an unbiased decision relative to this issue.) Another point, i.e., is regarding the spinal manipulation issue. If the Board of Healing Arts is directed to adopt rules and regulations regarding manipulation, they will restrict this performance to licensees. (He feels the Board is not the most qualified to make that decision.) A final concern, i.e., is whether HB2438 as it is presently written, can become law if it is opposed by the physical therapists. (In his view, the bill would face an up-hill battle in the Senate). He suggests the Committee insist the interested parties combine the issues in HB2113 and HB2278 into one bill. If that can be accomplished, both those proposals will have a chance, i.e., direct access, and spinal manipulation/mobilization.

Candy Bahner, Legislative Chair, Kansas Physical Therapy Association (KPTA), offered hand out (Attachment No. 4), and spoke in opposition to HB2438. She detailed their concerns, i.e., the Board of Healing Arts would change the Physical Therapy Practice Act to allow the Board to determine physical therapy referral sources and scope of practice, and what will be considered ethical and unethical conduct, all without the KPTA having any representation on the Board. She drew attention to HB2438, page 4, line 16, noting this statute gives the Board the authority to prohibit a physical therapist and physical therapist assistants from practicing because of unprofessional conduct. It seems redundant to again define unprofessional conduct by rules and regulations. She drew attention to line 31 on page 4, expressing the concern, where is "lawful order" defined in the statutes; page 3, lines 28-31, which would take away the livelihood of 699 physical therapists and a similar number of physical therapist assistants; lines 39-42 would severely impinge upon the current Practice Act of physical therapists. She concluded by asking if the Board has the right, or the qualifications to write rules and regulations to determine what physical therapists and physical therapist assistant' are trained to do and not have to answer to anyone? She urged for unfavorable consideration of HB2438.

Jackie Rawlings, a practicing physical therapist, and Director of Physical Therapy program St. Mary Hospital in Manhattan offered hand out (Attachment No. 5) She stated, to vote for HB2438 giving it to the Board where that professional has no voice. She noted when the Board meets, the KPTA attend strictly as resource people, are not allowed to take part in discussion or vote. A Resolution passed by the Board regarding the use of spinal manipulation was never passed onto the PT Examining Committee even though it could have had adverse affects on the practice of physical therapy. This information was never communicated to the individuals that the Board regulates. She stated, this proposed legislation may not be in the State's best interest. She opposes the passage of HB2438.

David Hanzlick, Assistant Director of the Kansas Dental Association, offered hand out (Attachment No. 6), expressed concern that language in HB2438 removes any mention of specific providers who may refer patients to physical therapists. The bill would grant rulemaking authority in this matter to the State Board of Healing Arts. Dentistry, however, is not represented on the Board of Healing Arts, but is regulated by the Kansas Dental Board. The concern expressed, is that dentistry would prefer that the law specify the professions that are able to access physical therapy services for their patients. He drew attention to a conceptual amendment, i.e., page 2 of his hand out.

Chair opened the meeting for questions by Committee members.

A lengthy question and answer period, plus discussion followed. It was stated the KPTA did request a change in the scope of practice, and to go through the credentialing process, and were rejected by the Department of Health and Environment. They were told it wasn't appropriate for a profession that was

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already credentialed. It was the view of some members, that if the Department of Health and Environment has not followed through with a credentialing process when a group requests same, since it is in the purview of the Department to do this, perhaps it would be good to check and see why this has occurred. There was lengthy discussion on this matter.

A question was asked of the Kansas Medical Society and Kansas Association of Osteopathic Medicine representatives, if they would support amending the Credentialing Act to include a procedure for review of changes of special practices. The reply was yes. It was noted the Joint Committee on Health Care Decisions was asked to investigate this possibility. Mr. Wheelen stated that Ms. Correll and Ms. Walters had done an excellent job in respect to this issue and there was abundant research done on the subject. Rep. Sader who served as Chair of the Joint Committee, stated that the Joint Committee on Health Care Decisions did hear considerable testimony and there was considerable discussion on the issue of expanding the scope of practice for special practices. The issue did not fall between the cracks, as The Joint Committee made a definite decision not to pursue this issue further.

A lengthy discussion continued in respect to the current rules and regulations that are set out for physical therapists, some view the proposed legislation as restrictive for procedures that are currently being allowed under rules and regulations. It was determined that the concerns could be addressed in language of the bill, in respect to providers losing their livelihood so this would no longer be an issue of concern.

Ms. Bahner was asked, if HB2113, HB2278, HB2438, were not acted upon by this Committee, would the KPTA consider going after credentialing to open up your scope of practice? Ms. Bahner replied, she could take it to their Board and see what the response would be.

There was discussion on how members from the public sector are appointed to the Board of Healing Arts. It was noted appointments made by the Governor are not always necessarily taken from a suggested list provided to the Governor. Mr. Ronald Zoeller, a member of the Board of Healing Arts replied the current number of 15 on the Board seems sufficient, however, that decision would be left up to the Legislature. It was suggested, Staff might be requested to inquire if an application from the Physical Therapist Association for a change in credentialing status to licensure, would be appropriate or inappropriate. It was the view of some, this data would be necessary before proceeding on this issue.

Ms. Correll stated, an inquiry could be made, however, it might not be a quick response.

Chair adjourned the meeting at 2:58 p.m.

The next meeting is scheduled for February 18, 1993.

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE _____

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KANSAS BOARD OF HEALING ARTS

JOAN FINNEY
Governor

LAWRENCE T. BUENING, JR.
Executive Director



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M E M O R A N D U M

TO: House Committee on Public Health & Welfare

FROM: Lawrence T. Buening, Jr.
Executive Director

RE: House Bill 2438

DATE: February 17, 1993

Madam Chairperson and members of the Committee, thank you for the opportunity to appear before you and provide information to this Committee regarding House Bill 2438. While the State Board of Healing Arts is listed as a proponent to this bill, I envision in this particular case that the Board should serve in the capacity of providing information to the Committee rather than being a lobbyist to support or oppose this bill.

By way of background, I was approached by several members of this Committee to draft a bill that might serve to resolve the obvious polarization created by the bills you have heard the two previous days, HB 2113 and HB 2278. Last Thursday, when I asked for introduction of this bill, I had had the opportunity to discuss the bill proposal with several Board members but the Board as a whole had not met and taken a position. On Saturday, February 13, the State Board of Healing Arts did meet. The Board received comments from James Edwards, D.C. and Carolyn Bloom, RPT on HB 2113 and HB 2278. However, the Board did not feel it would be appropriate to take a position on either of these bills. On the other hand, the Board did express support for the language contained in HB 2438 and further indicated a willingness to devote the time necessary to implement its provisions.

Put simply, if this Committee chooses to recommend HB 2438 for passage, then the Board would be placed in the position of mediator on the issues raised by HB 2113 and HB 2278 and adoption of either of those bills would be unnecessary and, in fact, contradictory to the provisions of this bill.

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Attn #1.

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Section 1 amends K.S.A. 65-2872(g). This subsection sets forth the precept commonly known and referred to as "Captain of the Ship". In its current form, persons who perform professional services under the supervision or by order of or referral from a practitioner licensed under the Healing Arts Act are not construed to be engaged in the practice of the healing arts. The amendments set forth in page one, lines 39-42 would authorize but not require the Board to adopt rules and regulations which would specify those health care services which could only be performed by a licensed M.D.; D.O. or D.C. K.S.A. 65-2865 presently gives to the Board the authority to adopt rules and regulations. This statute provides as follows:

"65-2865. The board shall promulgate all necessary rules and regulations, not inconsistent herewith, for carrying out the provisions of this act, which rules and regulations shall include standards for the dispensing of drugs by persons licensed to practice medicine and surgery. It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent with this act. All rules and regulations promulgated and adopted by the board shall be filed with the secretary of state as required by law."

While the provisions of K.S.A. 65-2865 may already authorize the Board to adopt rules and regulations to restrict certain services only to individuals licensed under the Healing Arts Act, the Board has been reluctant to exercise such authority because of its concern not to usurp the authority of the Legislature not specifically delegated. By making the amendments on page one, the Legislature would be specifically authorizing and delegating to the Board the authority to make rules and regulations which would restrict the delegation of certain health care services to persons not licensed under the Healing Arts Act.

Section 2 of the bill would amend the definition of "physical therapist". Presently, as you have heard in the testimony to HB 2113, physical therapists may evaluate patients without a physician referral but may initiate treatment only after consultation with and approval by one of four licensed doctors. The amendment set forth on page 3 at lines 28-32 would require the Board to establish rules and regulations which would dictate under what circumstances physical therapists may initiate treatment. Yesterday during the testimony of HB 2278, the statement was made that "physical therapists don't know what they don't know". It is anticipated that should HB 2438 be enacted by this Legislature, the Board would immediately adopt rules and regulations which would

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allow treatment in accordance with the existing statutory language so that physical therapists could initiate treatment to the extent such has been initiated in the past without interruption. However, it is anticipated that the Board would then conduct extensive investigation and hearings into the current curriculum for physical therapists and physical therapist assistants and determine what, if any, treatment should be allowed to be initiated by physical therapists without referral from a licensed doctor in a manner in which the citizens of this state could be adequately protected but also received proper access to services provided by physical therapists.

The Board is cognizant that due to the composition of the Board, professions regulated by the Board who do not have a member sitting on the Board itself have concerns as to the bias it might have. Quite frankly, I personally believe that it is healthy and indeed appropriate that there be a certain wariness of the Board by the Association whose members are regulated by the Board. The sole interest of the Board should be the protection of the public health, safety and welfare of the citizens of this state. On the other hand, while professional associations may also have this as a goal, the professional associations are also required to represent and protect its profession and the individual members thereof. While the interests of the Board and the Associations comprised of individuals regulated by the Board have a high degree of commonality in their interests, there are certain cases in which positions of the state licensing agency and the professional associations of those regulated must, of necessity, differ.

The Board submits that the amendments made on page 3 of HB 2438 would enable the Board to conduct indepth study and research into the curriculum and training of physical therapists and to adopt rules and regulations which would both protect the citizens of the state of Kansas as well as provide to those citizens appropriate access to physical therapy services. I wish to remind this Committee that any rules and regulations so adopted must be reviewed by the Legislature. If the Legislature in reviewing such rules and regulations is not satisfied that the Board had appropriate rationale and justification for the adoption of such, then this Legislature can at any time adopt statutory language which would supersede and nullify those regulations.

In summation, the Board is willing to serve as a mediator and to conduct indepth study and analysis to reach a proper conclusion as to when physical therapists should initiate treatment and, hopefully, resolve an issue that has been before this Legislature the last three sessions.

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On page four of the bill, an amendment is made on lines 16 and 17 to specifically authorize the Board to adopt rules and regulations defining unprofessional conduct by physical therapists. Under K.S.A. 65-2911(a) the State Board of Healing Arts "may adopt such rules and regulations as necessary to carry out the purposes of this act". Again, similar to the discussion for the amendment to K.S.A. 65-2872 made by section 1 of the bill, the Board may already have the authority to define unprofessional conduct by virtue of K.S.A. 65-2911. However, without specific legislative delegation and authority, the Board has been reluctant to exercise such authority. At present, K.A.R. 100-37-1 which was originally adopted by the Board in 1966 provides a "code of ethics" for physical therapists and indicates that violation of any portion of such code would be "evidence of conduct unbecoming a person registered as a physical therapist and shall constitute grounds for revocation or suspension of registration". In my opinion, this clearly does not comply with statutory language and does not properly provide the Board with the authority to revoke a registration of a physical therapist due to violation of the "code of ethics".

The Board does have a self interest in having the issues raised by House Bills 2113 and 2278 resolved. Last year the Board asked that various statutory provisions contained in the Physical Therapy Act be amended with the introduction of Senate Bill 691. The provisions of SB 691 were intended to update various physical therapy statutes many of which contained the language as they were adopted originally in 1963. However, the issue of direct access arose during the hearings on 1992 SB 691 and as a result it failed to pass the Legislature. It is anticipated that unless the issues proposed by HB 2113 can be resolved, any future attempts to clarify and update the physical therapy law will meet with a similar fate.

In conclusion, by seeking the introduction and supporting HB 2438, the Board does not wish to usurp the power and authority of the Legislature. However, if it is the Legislature's desire that the Board comprised of 12 licensed doctors conduct a study and analysis of physical therapy practice and adopt rules and regulations which would both protect the public and provide appropriate access of that public to physical therapy services, the Board is willing to undertake that obligation.

Thank you very much for the opportunity to appear before you. I would be happy to respond to any questions you might have.

LTB:cat

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KANSAS HEALING ARTS ACT

65-2802. DEFINITIONS. For the purpose of this act the following definitions shall apply:

(a) The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic.

65-2869. PERSONS DEEMED ENGAGED IN PRACTICE OF MEDICINE AND SURGERY. For the purposes of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine and surgery or any of their branches.

(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings.

(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings.

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65-2870. PERSONS DEEMED ENGAGED IN PRACTICE OF OSTEOPATHY. For the purpose of this act the following persons shall be deemed to be engaged in the practice of osteopathy or to be osteopathic physicians and surgeons:

(a) Persons who publicly profess to be osteopathic physicians, or publicly profess to assume the duties incident to the practice of osteopathy, as heretofore interpreted by the supreme court of this state, shall be deemed to be engaged in the practice of osteopathy.

(b) Osteopathic physicians and surgeons shall mean and include those persons who receive a license to practice medicine and surgery pursuant to the provisions of this 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.

65-2872. PERSONS NOT ENGAGED IN THE PRACTICE OF THE HEALING ARTS.

- (a) Persons rendering gratuitous services in the case of an emergency.
- (b) Persons gratuitously administering ordinary household remedies.
- (c) The members of any church practicing their religious tenets provided they shall not be exempt from complying with all public health regulations of the state.
- (d) Students while in actual classroom attendance in an accredited healing arts school who after completing one (1) year's study treat diseases under the supervision of a licensed instructor.
- (e) Students upon the completion of at least three (3) years study in an accredited healing arts school and who, as a part of their academic requirements for a degree, serve a preceptorship not to exceed ninety (90) days under the supervision of a licensed practitioner.
- (f) 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.
- (g) Persons whose professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under this act.
- (h) Persons in the general fields of psychology, education and social work, dealing with the social, psychological and moral well-being of individuals and/or groups provided they do not use drugs and do not hold themselves out to be the physicians, surgeons, osteopathic physicians or chiropractors.

(i) Practitioners of the healing arts in the United States army, navy, air force, public health service, and coast guard or other military service when acting in the line of duty in this state.

(j) Practitioners of the healing arts licensed in another state when and while incidentally called into this state in consultation with practitioners licensed in this state, or residing on the border of a neighboring state, duly licensed under the laws thereof to practice a branch of the healing arts, but who do not open an office or maintain or appoint a place to regularly meet patients or to receive calls within this state.

(k) Dentists practicing their professions, when licensed and practicing in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(l) Optometrists practicing their professions, when licensed and practicing under and in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(m) Nurses practicing their profession when licensed and practicing under and in accordance with the provisions of article 11 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(n) Podiatrists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(o) Every act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof.

(p) Pharmacists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 16 of chapter 65 of the Kansas Statutes Annotated, or amendments thereto, and any interpretation thereof by the supreme court of this state.

(q) A dentist licensed in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated who administers general and local anesthetics to facilitate medical procedures conducted by a person licensed to practice medicine and surgery if such dentist is certified by the board of healing arts under K.S.A. 65-2899 to administer such general and local anesthetics.

KANSAS PHYSICAL THERAPY ACT

65-2901. DEFINITIONS. (a) As used in this act, the term "physical therapy" means a health specialty concerned with the evaluation, treatment or instruction of human beings to assess, prevent and alleviate physical disability and pain. This includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of treatment; the planning, administration, evaluation and modifications of treatment and instruction, including the use of physical measures, activities and devices for prevention and therapeutic purposes; and the provision of consultative, educational and advisory services for the purpose of reducing the incidence and severity of physical disability and pain. 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 are not authorized or included under the term "physical therapy" as used in this act.

(b) "Physical therapist" means a person who practices physical therapy as defined in this act and delegates selective forms of treatment to supportive personnel under the supervision of such person. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist and may designate or describe oneself as a physical therapist, physiotherapist, registered physical therapist, P.T., Ph.T. or R.P.T. Physical therapists may evaluate patients without physician referral but may initiate treatment only after consultation with and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist or a licensed dentist in appropriately related cases.

(c) "Physical therapist assistant" means a person who works under the direction of a physical therapist, and who assists in the application of physical therapy, and whose activities require an understanding of physical therapy, but do not require professional or advanced training in the anatomical, biological and physical sciences involved in the practice of physical therapy. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist assistant, and may designate or describe oneself as a physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst.

PHYSICIANS' ASSISTANT ACT

65-2897a. SAME; DEFINITIONS. The following words and phrases when used in this act shall have the meanings respectively ascribed to them in this section:

(a) "Direction and supervision" means the guidance, direction and coordination of activities of a physician's assistant by such person's responsible physician, whether written or verbal, whether immediate or by prior arrangement, in accordance with standards established by the board by rules and regulations, which standards shall be designed to ensure adequate direction and supervision by the responsible physician of the physician's assistant. The term "direction and supervision" shall not be construed to mean that the immediate or physical presence of the responsible physician is required during the performance of the physician's assistant.

(b) "Physician" means any person licensed by the state board of healing arts to practice medicine and surgery.

(c) "Physician's assistant" means a skilled person who is registered in accordance with the provisions of K.S.A. 65-2896a and amendments thereto and who is qualified by academic training to provide patient services under the direction and supervision of a physician who is responsible for the performance of that assistant.

(d) "Responsible physician" means a physician who has accepted continuous and ultimate responsibility for the actions of the physician's assistant while performing under the direction and supervision of the responsible physician.

OCCUPATIONAL THERAPY ACT

65-5402. DEFINITIONS. As used in K.S.A. 65-5401 to 65-5417, inclusive:

(a) "Board" means the state board of healing arts.

(b) "Occupational therapy" is a health care profession whose practitioners, other than occupational therapy practitioners working with the educationally handicapped in a school system, are employed under the supervision of a physician and whose practitioners provide therapy, rehabilitation, diagnostic evaluation, care and education of individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities or the aging process in order to maximize independence, prevent disability and maintain health. Specific occupational therapy services include:

- (1) Administering and interpreting tests necessary for effective treatment planning;
- (2) developing self-care and daily living skills such as feeding, dressing, hygiene and homemaking;
- (3) designing, fabricating, applying or training, or any combination thereof, in the use of selected orthotics, upper extremity prosthetics or adaptive equipment;
- (4) developing sensory integrative skills and functioning;
- (5) using therapeutic activity and exercise to enhance functional or motor performance, or both;
- (6) developing prevocational/vocational work capacities and play/leisure skills; and
- (7) adapting environment for the disabled.

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(c) "Occupational therapy" means a person registered to practice occupational therapy as defined in this act.

(d) "Occupational therapy assistant" means a person registered to assist in the practice of occupational therapy under the supervision or with the consultation of an occupational therapist.

(e) "Person" means any individual, partnership, unincorporated organization or corporation.

(f) "Physician" means a person licensed to practice medicine and surgery.

RESPIRATORY THERAPY ACT

K.S.A. 65-5502. DEFINITIONS. As used in K.S.A. 65-5501 to 65-5517, inclusive:

- (a) "Board" means the state board of healing arts.
- (b) "Respiratory therapy" is a health care profession whose practitioners are employed under the supervision of a physician in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, and includes all of the following:
 - (1) Direct and indirect pulmonary care services that are safe, aseptic, preventative and restorative to the patient.
 - (2) Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician.
 - (3) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics and implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician on the initiation of emergency procedures.
 - (4) The diagnostic and therapeutic use of any of the following, in accordance with the prescription of a physician: Administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic

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agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens of blood; collection of specimens from the respiratory tract; analysis of blood gases and respiratory secretions.

(5) The transcription and implementation of the written and verbal orders of a physician pertaining to the practice of respiratory therapy.

(c) "Respiratory therapist" means a person who is registered to practice respiratory therapy as defined in this act.

(d) "Person" means any individual, partnership, unincorporated organization or corporation.

(e) "Physician" means a person licensed to practice medicine and surgery.

PODIATRY ACT

K.S.A. 65-2001. DEFINITIONS. As used in the podiatry act, unless the context otherwise requires:

- (a) "Board" means the state board of healing arts.
- (b) "Podiatrist" means one practicing podiatry.
- (c) "Podiatry" means the diagnosis and treatment of all illnesses of the human foot.

K.S.A. 65-2002. SCOPE OF PRACTICE.

(a) It shall be unlawful for any person to profess to be a podiatrist, to practice or assume the duties incidental to podiatry, to advertise or hold oneself out to the public as a podiatrist, or to use any sign or advertisement with the word or words podiatrist, foot specialist, foot correctionist, foot expert, practapedist or chiropodist, or any other term or terms indicating that such person is a podiatrist or that such person practices or holds oneself out as practicing podiatry or foot correction in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except as hereinafter provided.

(b) A licensed podiatrist shall be authorized to prescribe such drugs or medicine, and to perform such surgery on the human foot or toes, as may be necessary to the proper practice of podiatry, but no podiatrist shall amputate the human foot or toes or administer any anesthetic other than local.

(c) This act shall not prohibit the recommendation, advertising, fitting or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by manufacturers, wholesalers or retail dealers.

LICENSEES

M.D.

D.O.

D.C.

D.P.M.

REGISTRANTS

P.T.

P.T.A.

O.T.

R.T.

P.A.

O.T.A.

RHW
2-17-93
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KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

February 17, 1993

TO: House Public Health and Welfare Committee

FROM: Chip Wheelen
KMS Director of Public Affairs

SUBJECT: House Bill 2438 as Introduced

For the past two days your Committee has patiently listened to and observed what is commonly referred to as a "turf battle". Unfortunately, these confrontations between or among health care professions tend to distract the participants, and sometimes legislators as well, from the most important question of all; whether the outcome of the proposed legislation will affect the quality of services rendered to those who obtain health care in this State.

The process of making scope of practice and credentialing decisions is tedious and time consuming. Such issues can impair the efficiency of the legislative session and perhaps should not be decided in a forum that allows only a few hours for fact finding and investigation. Perhaps it was for such reasons that the 1980 Legislature passed the Kansas Act on Credentialing. That law creates a statutory process whereby an organization of health care professionals may submit an application to become either a registered or licensed profession.

When we were first informed by the Physical Therapists Association that they would request "direct access" legislation, my initial suggestion was that the PT Association should submit a credentialing application for licensure and if successful, become independent practitioners like other licensed health care professions. My suggestion was rejected by the PT Association. Coincidentally, the former Chair of the Senate Public Health and Welfare Committee reacted similarly to the direct access bill that was introduced in 1991 and inquired if the PT Association should submit an application for credentialing to the Department of Health and Environment. The Secretary of Health and Environment responded negatively because 1991 SB 64 did not call for licensure of PTs; it instead expanded the scope of practice. A copy of that letter is attached for your information.

In any event, we believe that credentialing and scope of practice issues should be subjected to rigorous fact finding and scrutiny followed by conclusions and recommendations prior to introduction of legislation. Because the direct access to physical therapy question is not considered an appropriate matter for the KDHE credentialing process, we need another acceptable method of resolving the issues outside of the legislative process. House Bill 2438 serves that purpose by delegating the decision-making responsibility to the Board of Healing Arts. For those reasons, we endorse HB 2438.

Thank you for considering our comments.

CW:cb

Attachment

PHW
2-17-93
AHM#2



Department of Health and Environment
Azzie Young, Ph.D., Secretary

Reply to:

February 18, 1992

The Honorable Roy Ehrlich
Chairman/Senate Public Health & Welfare Committee
Statehouse, Room 138-N
Topeka, Kansas 66612

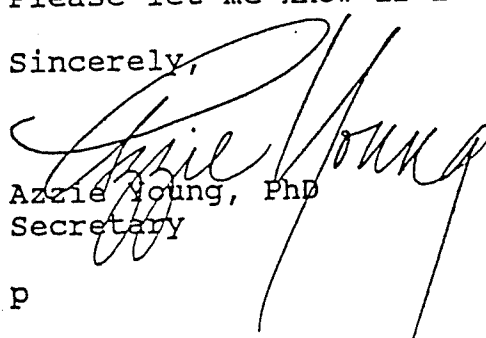
Dear Senator Ehrlich:

This letter is in response to your request regarding Senate Bill 64. KSA 65-5008 states the Secretary of Health and Environment has the authority to review the credentialing status of health care personnel who are credentialed. The procedures for the review and the criteria to be applied must follow KSA 65-5002. KSA 65-5002 requires submission of an application and the applicant must demonstrate that the statutory criteria established in KSA 65-5006 and 65-5007 are met. The application questions and the statutory criteria are not designed to warrant a review and recommendations about a scope of practice change for a currently credentialed occupation, as in the case with Senate Bill 64.

The application questions and statutory criteria are designed to provide the Secretary of Health and Environment a mechanism to review: (1) occupations that are not credentialed and desire a state registration or licensure law, or (2) currently credentialed occupations that desire a change in their level of credentialing (e.g., registration to licensure).

Therefore, it appears that the credentialing review program is not the appropriate mechanism to review scope of practice issues as required in the legislature's analysis of Senate Bill 64. However, the Board of Healing Arts regulates physical therapists pursuant to KSA 65-2901 et. seq. Perhaps they can assist you in this matter. Please let me know if I can provide further assistance.

Sincerely,


Azzie Young, PhD
Secretary

P


PHW
2-17-93
Aim #2
Pg. 2 of 2

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563
(913) 234-5564 Fax

February 17, 1993

To: Chairperson Flower and Members, House Public Health Committee
From:  Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Subject: Testimony on H. B. 2438


As I indicated in my testimony on Monday of this week, we are in support of that part of H.B. 2438 that provides the Board of Healing Arts shall determine, by rules and regulations, the conditions under which physical therapists shall treat without physician referral. Permit me to explain our position.

We have consistently held that, in differences such as the ones you have heard the past two days, it is often desirable to have a group external to the legislature serve as the "referee" of first instance. Hopefully, based upon testimony from interested parties and independent inquiries of its own, such a body can make an informed decision to serve either as advice to you, or to implement through its own rules and regulations.

As a group of physicians, we have consistently urged that the credentialing process already in place in the Department of Health and Environment serve in this capacity. Certainly a change as major as permitting a health care delivery group to treat patients without physician referral, is as major a change as are some of the requests provider groups present to be credentialed for the first time. Yet it has been determined that the Health and Environment process applies only to the latter--not to questions raised when a provider group seeks a significant change in its respective scope of practice.

We are not sure the Board of Healing Arts is the preferred arbiter in the issues now before you. I am sure others will address that issue. And, we are aware that even a decision made at that level can be appealed back to this legislature at any time. At this juncture, though, we think it a reasonable alternative.

I will be pleased to respond to any questions of Committee members.


2-17-93
Attn #3,

Kansas



Physical

Therapy

Association

15761 Dearborn • Overland Park, Kansas 66223-3415
(913) 897-7252 • Fax (913) 897-6207

February 17, 1993
Testimony on House Bill 2438
Candy Bahner, PT
Legislative Chair
Kansas Physical Therapy Association

Representative Flower and Members of the House Public Health and Welfare Committee,

I am Candy Bahner, a physical therapist and legislative chair for the Kansas Physical Therapy Association (KPTA). I thank you for allowing me to testify in opposition of HB 2438 on their behalf.

The KPTA is against HB 2438 and questioned why it was introduced by the Board of Healing Arts. I was told by Larry Buening that it was drafted at the request of a few members of the House Public Health and Welfare Committee, so as to allow the Board of Healing Arts to be able to settle the Direct Access and Manipulation issues.

One concern we have with the bill is that it would change our current Practice Act to allow the Board of Healing Arts to determine physical therapy referral sources and scope of practice, as well as what will be considered ethical and unethical conduct. All without physical therapy professionals having representation on the board!

The Board of Healing Arts consists of 15 members, 5 of which

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attm #4*

are physicians licensed to practice medicine and surgery, 3 are osteopaths, 3 are chiropractors, 1 is a podiatrist and the 3 remaining members are from the general public. K.S.A. 65-2813 further states: "no member representing the general public shall be the spouse of a licensee of the healing arts or a person or the spouse of a person who has a financial interest in any person's practice of the healing arts". Thus the physical therapy profession has no representation, nor can we be one of the "general public" persons.

We find it hard to understand how the Board of Healing Arts could ever establish rules and regulations permitting us direct access, since as we understand the function of writing rules and regulations is to provide a broad interpretation of a narrowly defined statute. Where in this bill is the narrowly defined statute pertaining to direct access?

Please refer to page 4, line 16. This statute gives the Board the authority to prohibit physical therapist and physical therapist assistants from practicing because of unprofessional conduct. We have had a code of ethics under K.A.R. 100, article 37-1 since 1966. It seems redundant to again define unprofessional conduct by rules and regulations.

On that same page on line 31, it says "violating any lawful order ...". Where is "lawful order" defined in the statutes? Would that be interpreted as a "resolution" adopted by the board, ie. the 1986 Board of Healing Arts resolution Dr. Edward referred to during testimony on HB 2278 relating that manipulation can only be done by licensees of the Board of Healing Arts?

PNW
2-17-3
attn #4
Pg 274

With the three year lag time between our Practice Act of 1963 and the adoption of rules and regulations in 1966, this bill if passed, could conceivably keep physical therapist from practicing until rules and regulations could be written. Since we directly supervise the physical therapist assistant, they also would not be able to practice.

I ask that you now refer to ^{Page 3} lines 28-31 which strikes: "after consultation with and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist or a licensed dentist in appropriately related case" and replaces it with: "Physical therapists may evaluate patients without referral but may initiate treatment only in accordance with rules and regulations which shall be established by the state board of healing arts". In essence passage of HB 2438 would take away the lively hood of 699 physical therapists and a similar number of physical therapist assistants.

We also have concerns with the new language on page one, lines 39-42. Our interpretation is that this would allow the Board of Healing Arts through rules and regulations to severely impinge upon our current Practice Act.

The first step we presume would be to prohibit us from doing manipulations. We can only guess at what other restrictions could be thrust upon us by rules and regulations established by individuals who are not educated in physical therapy techniques.

Again, we would like to reiterate that the Board of Healing Arts is made up of 15 members who have no constituents to answer to in the voting booth. The members are selected by the Governor, from a list submitted by the respective groups represented on the

PNHCU
2-17-3
Attn #4
Pg 3 of 4

board. I remind you, physical therapists are not represented, nor
do they have input on who is!

Since the members of the Board of Healing Arts have their own
respective Practice Acts, and have input on the rules and
regulations regarding that act, why should the physical therapists
not have the same input for rules and regulations relating to the
Physical Therapy Practice Act?

Do the members of the Board have
the right, or the qualifications to write rules and regulations to
determine what physical therapist and physical therapist assistants
are trained to do, and not have to answer to anyone?

The KPTA further questions the constitutionality of this bill
in reference to it specifically referring to the Board of Healing
Arts determining through rules and regulations what professional
services can be performed by persons licensed under the Healing
Arts Act.

I respectfully request that you NOT pass HB 2438 because of
all the before mentioned concerns. I would be happy to answer any
questions.

P. H. W.
2-17-3
Attn #4
ag 424

February 17, 1993

Madame Chairman and Members of the House Public Health and Welfare Committee,

My name is Jackie Rawlings. I am a practicing physical therapist, Director of Physical Therapy at the Saint Mary Hospital in Manhattan and a member of the Physical Therapy Examining Committee.

I am here to speak against house bill 2438. Physical therapy has had a practice act since 1963. This was adopted by the Kansas Legislature after going through the normal legislative process. We were successful at revising our practice act in 1983 by going through much the same legislative process. We came back to the legislature to again revise our practice act to allow direct access to physical therapy. The legislators should be willing to listen to the testimony as they have in the past and make sound judgements based on that testimony.

To vote for HB 2438 takes the regulation of a profession out of the hands of the law makers and gives it to a board where that profession has no voice or no constituency. That board was established not to makes laws but to see that the statutes are followed. The rules and regulations are written only to interpret the statutes, not to establish the scope of practice of a profession.

I was appointed to the Physical Therapy Examining Committee in July of 1992. I am very familiar with the way the Board of Healing Arts works and how it relates to the Physical Therapy Examining Committee. The PT Examining Committee can not really be considered a sub committee of the Board because no physical therapist

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2-17-93
Attn: #5

sits on the Board. We do have a liaison from the Board on our Committee who at this time happens to be a chiropractor. Incidentally, he has not attended the PT Examining Committee meetings since I have been on the Committee.

As Committee members, we are not obligated to attend the Board of Healing Arts meetings. We have elected to attend in order to be there to add background information for those cases that involve physical therapists if they allow us to speak. We are there strictly as resource people. We are not allowed to take part in the discussion or vote. The Board often will utilize its prerogative to go into executive session in which case we are not even privy to their discussion. At last Saturday's Board meeting, they went into executive session to discuss the subjects of direct access for physical therapy, spinal manipulation and HB 2438.

In 1986 the Board passed a resolution regarding the use of spinal manipulation which said that the Board felt that spinal manipulation should only be used by licensees of the Board. This resolution was never passed onto the PT Examining Committee even though it could have had adverse affects on the practice of physical therapy and the information was never communicated to the individuals that the Board regulates. We learned of this resolution only last year during discussions with the chiropractors on our direct access legislation. This resolution of the Board was a shock to the physical therapists and is a good example of the kind of thing that does happen and would continue to happen if the legislature would give the Board the power to govern a profession which is not represented on that Board.

Please do not give up your right and privilege as legislators to regulate the

PNW
2-17-3
attn #5
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health professions. I understand that it would seem the expedient thing to do
but may not be in the State's best interest to do this.

Thank you for your consideration of this very important matter.

Jackie Rawlings

Manhattan, Kansas

PH/relU
2-17-93
Attn #5
Pg 3 of 3.



David Hanzlick
House Public Health and Welfare Committee
H.B. 2438
February 17, 1993

Chairman Flower and members of the Committee, my name is David Hanzlick. I am the Assistant Director of the Kansas Dental Association. I appreciate the opportunity to appear today to discuss a concern that the Kansas Dental Association has with H.B. 2438 as it is currently written.

Under current law, dentists have the ability to refer patients to physical therapists just as physicians and podiatrists may refer. The ability for dentists to refer patients for physical therapy is of particular importance to dentists who are specialists in oral surgery.

H.B. 2438 removes any mention of specific providers who may refer patients to physical therapists. The bill would grant rulemaking authority in this matter to the State Board of Healing Arts.

Dentistry, however, is not represented on the Board of Healing Arts. Dentistry is regulated instead by the Kansas Dental Board.

The concern, simply stated, is that dentistry would prefer that the law specify the professions that are able to access physical therapy services for their patients.

With that in mind, I have attached to my testimony an amendment in conceptual form that addresses this concern.

I appreciate the Committee's consideration of this matter and would be glad to answer any questions the Committee might have.

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39272.

1 dentist is certified by the board of healing arts under K.S.A. 65-
2 2899 and amendments thereto to administer such general and local
3 anesthetics.

4 Sec. 2. K.S.A. 65-2901 is hereby amended to read as follows:
5 65-2901. (a) As used in this act, the term "physical therapy" means
6 a health specialty concerned with the evaluation, treatment or in-
7 struction of human beings to assess, prevent and alleviate physical
8 disability and pain. This includes the administration and evaluation
9 of tests and measurements of bodily functions and structures in aid
10 of treatment; the planning, administration, evaluation and modifica-
11 tions of treatment and instruction, including the use of physical
12 measures, activities and devices for prevention and therapeutic pur-
13 poses; and the provision of consultative, educational and advisory
14 services for the purpose of reducing the incidence and severity of
15 physical disability and pain. The use of roentgen rays and radium
16 for diagnostic and therapeutic purposes, the use of electricity for
17 surgical purposes, including cauterization, and the practice of med-
18 icine and surgery are not authorized or included under the term
19 "physical therapy" as used in this act.

20 (b) "Physical therapist" means a person who practices physical
21 therapy as defined in this act and delegates selective forms of treat-
22 ment to supportive personnel under the supervision of such person.
23 Any person who successfully meets the requirements of K.S.A. 65-
24 2906 and amendments thereto shall be known and designated as a
25 physical therapist and may designate or describe oneself as a physical
26 therapist, physiotherapist, registered physical therapist, P.T., Ph. T.
27 or R.P.T. Physical therapists may evaluate patients without physi-
28 cian referral but may initiate treatment only after consultation with
29 and approval by a physician licensed to practice medicine and
30 surgery, a licensed podiatrist or a licensed dentist in appro-
31 priately related cases in accordance with rules and regulations
32 which shall be established by the state board of healing arts.

33 (c) "Physical therapist assistant" means a person who works under
34 the direction of a physical therapist, and who assists in the application
35 of physical therapy, and whose activities require an understanding
36 of physical therapy, but do not require professional or advanced
37 training in the anatomical, biological and physical sciences involved
38 in the practice of physical therapy. Any person who successfully
39 meets the requirements of K.S.A. 65-2906 and amendments thereto
40 shall be known and designated as a physical therapist assistant, and
41 may designate or describe oneself as a physical therapist assistant,
42 certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst.

43 Sec. 3. K.S.A. 65-2912 is hereby amended to read as follows:

from a physician licensed to practice medicine and
surgery, a licensed podiatrist, a licensed dentist
in appropriately related cases, and other health
care providers approved by the state board of healing
arts