

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

[LB710 LB790 LB803]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, January 21, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB710, LB803, and LB790. Senators present: Tim Gay, Chairperson; Dave Pankonin, Vice Chairperson; Kathy Campbell; Mike Gloor; Gwen Howard; Arnie Stuthman; and Norman Wallman. Senators absent: None. []

SENATOR GAY: All right. We'll get started. We've got a lot to cover today, and obviously, there's a lot of interest in these bills; second day of public hearings on bills, so we're getting used to this ourselves too. But anyway, just going to go over a few rules here about the committee. We have committee testifier sheets in the corners, and if you fill those out before you come up it's helpful because we do have a time limit here. The introducers get as long as they want to introduce their bill and to close. But we do have a time limit. The reason we do that is because many times we'll do...today we only have three bills, but most of the time we'll have five, six bills a day. And if you're at 4 or 5:30 in the afternoon they deserve the same respect as the person starting at 1:30, so days get kind of long and that's kind of, I think, the fairest way. How that works is there's a light on the desk there on the testifier table and up to...it'll be green up till four minutes. At four minutes it'll turn yellow so you kind of need to wrap it up. When the red light comes on, your five minutes is up. If there are any questions for you, though, you know, take as long as you need on the questions. If any senator asks you a question, we don't count that towards your time. If you're a group or represented by a group, many times, you know, they will do a good job--not to be repetitive is really a good thing, quite honestly. To hear the same thing six times...we understand, but we get it. If you got something to hand out as well or written testimony, that's fine. If you can read it in five minutes, that's great, but if it's three or four pages long, we do read those. They get into our files, and then we read them, you know, when we're not sitting here, but in our offices. So cell phones, as a courtesy, if you could silence your cell phones we appreciate that. We will...like I say, everything is being recorded on the web, by the way too, so this is being broadcast on the web but also audio. And when you come up, if you can state your name and spell it out, it sure helps the clerk because she has to go through all the transcripts and down the road several weeks and even into the spring and summer transcribing these, so she needs to get that right, and also that goes into the record when we're on the floor. So all those things being said, I appreciate it. We're going to introduce ourselves. I'm Senator Tim Gay from Papillion-La Vista, Chairman of the committee. And we'll start at my right. []

MICHELLE CHAFFEE: Michelle Chaffee. []

SENATOR GLOOR: I'm Senator Mike Gloor, District 35 which is Grand Island. []

SENATOR CAMPBELL: I'm Senator Kathy Campbell, District 25 here in Lincoln. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR PANKONIN: Senator Dave Pankonin, District 2. I live in Louisville. []

SENATOR STUTHMAN: Senator Arnie Stuthman from Platte Center from District 22, and I'm the senior member of this committee (laughter). []

SENATOR HOWARD: Well, I got here just in the nick of time. I'm Senator Gwen Howard from District 9 in Omaha. []

SENATOR WALLMAN: Senator Norm Wallman, District 30 which is south of Lincoln, Beatrice area. []

DENISE LEONARD: I'm Denise Leonard, and I'm committee clerk. []

SENATOR GAY: All right. Thank you. We do have pages here today too that can help if you've got handouts, and they will come and get those for you and distribute those to the members. Another thing too, I should bring this up. It's early in the legislative process, and many of our senators...I don't know who has what going on today, but they may be introducing bills in other committees, so if they get up and go, no disrespect, but they're probably testifying in another committee much like Senator Dierks is here today. He misses out on his committee while we're testifying, so if people are coming and going, don't take any offense to that, but that's what's going on. So I think I covered everything. Senator Dierks is here to introduce LB710. Welcome, Cap. Go ahead, Cap. []

SENATOR DIERKS: (Exhibit 1) Good afternoon, Chairman Gay, members of the Health and Human Services Committee. My name is Cap Dierks spelled C-a-p D-i-e-r-k-s, and I represent the 40th Legislative District. LB710 is a bill that I introduced at the request of the Nebraska Chiropractic Physicians Association. The purpose of LB710 is to provide a statutory clarification of the term, chiropractic adjustment as it appears in the Chiropractic Practice Act. And to clarify it, the performance of chiropractic adjustments on a patient other than by a person authorized to make a diagnosis of the patient including the use of diagnostic x-rays and physical and clinical examinations is prohibited. The bill is intended to promote the health and safety of patients receiving high velocity thrust to their necks, backs, and other joints beyond the normal physiological range of motion by making sure such procedures are performed by persons with the ability to properly diagnose the patient. The bill does this by providing clear definitions that help to enforce the scope of practice statutes already adopted by this Legislature. LB710 is not intended to change the authorized scope of practice of any profession nor does it restrict any person or profession that is currently exempt from the Chiropractic Practice Act including licensed physicians and surgeons, licensed osteopathic physicians and all of whom have extensive educations and diagnostic authority. The definition of chiropractic adjustment in the bill is intended to reflect the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

commonly understood meaning of this term. The definition states that a chiropractic adjustment involves a high velocity thrust which carries a joint beyond the normal physiological range of motion and is accompanied by a joint cavitation. You will be hearing from chiropractors, physical therapists, and possibly others this afternoon regarding LB710. I do want you to know that I have the utmost respect for all of these professions. In fact, I had the pleasure of working very closely with these professions last year when working on my priority bill, LB463, which created the position of licensed animal therapists, and I remain grateful for all the help I received from them. One of the advantages of LB710 is that the bill allows testifiers on all sides to tell the committee members some of the history that has brought us to this point today regarding the chiropractic scope of practice. I do have an amendment for the committee regarding LB710. It simply removes the word "medical" from the language on page 3, line 1. The current statute allows chiropractors to make a diagnosis and analysis of the living human body, but the meaning of diagnosis may be changed with the word "medical" before it, and I am trying not to expand anyone's scope of practice. Thank you for your attention this afternoon. I will try to answer any questions from the committee. [LB710]

SENATOR GAY: Thank you, Senator Dierks. Are there any questions for Senator Dierks at this time? I don't see any right now. You're going to stay around, aren't you? [LB710]

SENATOR DIERKS: I will, yes. [LB710]

SENATOR GAY: Yeah, okay. Thank you. [LB710]

SENATOR DIERKS: Thank you. [LB710]

SENATOR GAY: You bet. We're going to hear from proponents, opponents, and then anyone neutral. How many proponents are going to speak today on this issue? About five or six. Okay. How many opponents are going to speak today on this issue? Okay, about the same; there's about five or six on each side. Anyone neutral here? Okay, I didn't think so but (laughter). All right, so we're looking at a couple hours' worth just on this, as you can see by the people that want to talk and questions, and so we'll go from there. So that's why I brought up don't be repetitive if you can. But anyway, we'll start out with proponents. [LB710]

STEVE GRASZ: (Exhibits 2, 3) Chairman Gay and members of the committee, my name is Steve Grasz, S-t-e-v-e G-r-a-s-z, and I will be testifying today in my capacity as legal counsel to the Nebraska Chiropractic Physicians Association. And just to begin with, I would note that we do agree with the amendment that Senator Dierks presented. It's not the intent to change anyone's scope of practice, and so if removal of that word is helpful then we certainly agree with that. There's an old adage in the legal profession...if the law is against you, argue the facts. If the facts are against you, argue the law. And if

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

both the law and the facts are against you, pound the table. Well, I've been hearing a certain amount of table pounding from critics of this bill, attacking the opinion of the Attorney General, accusing supporters of this bill of trying to alter the scope of practice of other professions and even attacking me for providing information to the Attorney General's Office for its research. I formerly served as the Deputy Attorney General for over 11 years, and drafted over 80 official opinions. I can assure this committee that the Attorney General's opinion, which I will discuss in more detail, is legally sound. LB710 provides clarification of the term "chiropractic adjustment" in the Chiropractic Practice Act. It also protects the safety of patients receiving high velocity thrusts to their neck, back, or other joints by making sure such procedures are performed by persons who are able to properly diagnose the patient. If I'm able to communicate only one point to the committee today, it is that LB710 does not change the authorized scope of practice of any profession including physical therapy, and I would like to explain why. The bill states that chiropractic adjustment involves a high velocity thrust which carries a joint "beyond the normal physiological range of motion and is accompanied by a joint cavitation." So by the plain terms of the bill, it applies only to procedures that carry a joint beyond the normal physiological range of motion. Consequently, LB710 does not alter the scope of practice of physical therapy. The reason for this is that a thrust which carries a joint beyond the normal physiological range of motion is already excluded from the scope of practice of physical therapy. In Section 38-2914, which I will hand out after my remarks, the term "physical therapy" is defined as including therapeutic interventions which may include mobilization or manual therapy. While mobilization and manual therapy are defined in Section 38-2910 as being limited to "the normal physiological range of motion." So mobilization and manual therapy by a physical therapist in Nebraska cannot include procedures which carry joints beyond the normal physiological range of motion by law. It was just four years ago that this definition of physical therapy was adopted by the Legislature in LB994. Prior to 2006, statute defined physical therapy as treatment of any bodily condition by use of heat, light, water, electricity, massage, and active or passive exercise. LB994 initially proposed to alter the definition of physical therapy to include the terms mobilization and manipulation. However, the Legislature removed the term "manipulation" from the bill. In addition, to avoid any question about the term "mobilization" LB994 contained a provision stating, "Nothing in the act shall be construed to expand the scope of practice of physical therapy as it existed prior to July 14, 2006. Well, you'd think that would have settled the matter. However, advertisements for weekend seminars soon began appearing in the state after passage of that bill, promising to teach all the grades of manipulation to physical therapists. This led to a request for a review of the issue by the Attorney General. Last February, the Attorney General issued Opinion 09005 which I will also hand out. It reviewed Nebraska Statutes governing physical therapy as well as their legislative history and concluded "Physical therapists in Nebraska may not perform any type of manual therapy, mobilization, manipulation, or joint manipulation which carries the joint beyond the normal physiological range of motion." The opinion also reminded healthcare professionals wishing to expand their scope of practice that there is a 407 process that should be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

followed. Since the definition of chiropractic adjustment in LB710 is limited to joint movement beyond the normal physiological range of motion, it's clear that LB710 does not change the authorized scope of practice of physical therapy that is set forth in Nebraska law. And I do have some handouts for the committee, and I'd be happy to answer any of your questions. [LB710]

SENATOR GAY: Thank you. Any questions at this time for Mr. Grasz? Senator Pankonin. [LB710]

SENATOR PANKONIN: Mr. Grasz, just so I'm clear on this then. The reason that your association, and you'd be interested in this is just...you got the Attorney General's position in your favor you think. [LB710]

STEVE GRASZ: Um-hum. Right. [LB710]

SENATOR PANKONIN: That's the way it's defined. [LB710]

STEVE GRASZ: Very clearly, um-hum. [LB710]

SENATOR PANKONIN: So you just want to...the reason you want to put this into law is why then? If you've already got that opinion, why do you need a law? [LB710]

STEVE GRASZ: Um-hum. Well, we would like statutory clarification of the term "chiropractic adjustment" and a clear statement in the law clarifying that only people that have the authority to diagnose a patient can do those procedures. [LB710]

SENATOR PANKONIN: So it further, it... [LB710]

STEVE GRASZ: Quite frankly, the law is the statutes being ignored and the Attorney General's opinion is being ignored. We want to provide clarity in the law, so that enforcement can be certain. [LB710]

SENATOR PANKONIN: And who does the enforcement if there was a situation? [LB710]

STEVE GRASZ: That would be done through the Department of Health and ultimately the Attorney General's Office. [LB710]

SENATOR PANKONIN: And that cannot be done based on the opinion alone. [LB710]

STEVE GRASZ: Well, it could be, but you're certainly better off before you try to enforce the statute, if you have clear statutory definitions. And if you look at the Attorney General's Opinion, basically, we're just trying to follow the recommendations of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

Attorney General's Office in terms of they set out very clearly what the law is. Physical therapists cannot perform procedures beyond the normal physiological range of motion. Our bill clarifies that a chiropractic adjustment is beyond the normal physiological range of motion, but for public safety purposes it needs to be clarified that only those persons that can make a diagnosis using x-rays, and you'll hear from some doctors who will follow me as to why that's necessary. There's some very serious things that can go wrong if someone puts a high velocity thrust into the neck or back of a person without being able to do a diagnosis. [LB710]

SENATOR PANKONIN: Thank you. [LB710]

STEVE GRASZ: Um-hum. [LB710]

SENATOR GAY: Thank you, Senator Pankonin. Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Steve, explain to me the difference between manipulation and mobilization and the parameters of each. [LB710]

STEVE GRASZ: Okay. Well, this bill actually tries to clarify the definition of chiropractic adjustment because sometimes there are more than...there's more than one term. For example, a manipulation can also be called a Grade V manipulation or a chiropractic adjustment. Mobilization as you'll hear testimony on after me, there's basically four grades of mobilization. They take, and they're used by numerous professions including physical therapists clearly within their scope of practice. But at some point, you get to the end range of the normal physiological range of motion. That's where manipulation comes in--joint thrust to a joint beyond that normal range of motion. That's a manipulation. This bill provides some statutory clarification, though, of those terms. [LB710]

SENATOR STUTHMAN: Okay, thank you very much. [LB710]

STEVE GRASZ: Is that helpful? [LB710]

SENATOR STUTHMAN: Yes, yes. [LB710]

STEVE GRASZ: Okay. [LB710]

SENATOR STUTHMAN: Thank you. [LB710]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB710]

STEVE GRASZ: Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

LOUIS ANDERSEN: (Exhibit 4) Chairman Gay, members of the committee, my name is Lou Andersen, L-o-u A-n-d-e-r-s-e-n. I'm testifying in my capacity as CEO of the Nebraska Chiropractic Physicians Association. You've just heard testimony regarding the legal analysis of LB710, and the fact that the bill does not change the authorized scope of practice of physical therapists or any other profession. I'd like to set the stage for testimony of several doctors of chiropractic who will testify as to safety issues. LB710 provides the necessary safeguard for patients receiving high velocity thrust, making sure such procedures are performed by professionals with the ability to properly diagnose the patient including the use of x-ray imaging. In terms of public safety, it needs to be kept in mind that Nebraska law expressly prohibits physical therapists from making a medical diagnosis. As the committee will soon hear, a chiropractic adjustment must be done by one capable of making a diagnosis to determine if the patient is a proper subject for such manipulation. The state regulations which govern the chiropractic profession provide that a chiropractic practitioner "has the duty and responsibility to perform an appropriate clinical evaluation; to identify if the patient is a proper subject for chiropractic care; to identify and to use diagnostic procedures if necessary. And these diagnostic procedures could include the use of x-ray imaging and other clinical examinations. In terms of public safety, it should be noted that Nebraska law prohibits chiropractors from assigning treatments or tasks requiring independent chiropractic judgment such as joint manipulation to persons not holding a license to practice medicine, chiropractic medicine, or osteopathic medicine. In fact, the chiropractor's license can be revoked for allowing untrained or unqualified persons to perform such services as joint manipulation requiring expertise of a doctor. Consequently, any interpretation of existing statutes governing physical therapy that would allow or include high velocity joint manipulation beyond the normal physiological range of motion by a person prohibited from making a diagnosis would produce an absurd result. You may hear comments claiming that accreditation of teaching programs will be jeopardized if the bill passes. Don't be misled. The current statute restricting joint movement by physical therapists has been in place for many years. Furthermore, accrediting organizations cannot dictate to the 50 states what the scope of practice in each jurisdiction will be. That's up to elected legislators in each state. They cannot circumvent the 407 process or this committee. Finally, there is a distinction between teaching and treating patients. The bottom line, however, is LB710 does not change the scope of practice of physical therapy so it could not jeopardize the accreditation of any teaching program. Today you will likely hear "assertations" about the supposed safety of high velocity joint manipulation performed by those without the years of training and education required of chiropractors. However, these "assertations" in and of themselves reveal what's really going on here. A group that lacks the legal authority to perform these procedures is attempting to expand their scope of practice without going through the normal process required to do so, simply by asserting that they can perform the procedure safely or that they may have been getting away with it for some time. As discussed by Mr. Grasz, current Nebraska law prohibits physical therapists from performing joint movement beyond the normal physiological range of motion. This is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

clear language of the state passed by this Legislature. The statute, however, like the Attorney General's Opinion, is being ignored by some. It is being ignored because it does not fit within the agenda or goals of their national trade association to expand their scope of practice which would allow physical therapists to become direct access providers across the nation. I would venture to say that there are few things this committee likes less than turf battles. To give in to the opponents of LB710 in this instance would not only reward a group that ignores your statute and the 407 process, as well as the Attorney General's Opinion, but it would guarantee more battles in legislative sessions ahead. That is because if this group is rewarded for going around the established process, there is no reason to follow it. In closing, the committee does not need to take sides in turf battles. The Legislature has already spoken on this issue. Thank you very much for your time. I'd be happy to address any questions you might have. [LB710]

SENATOR GAY: Thank you. Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Mr. Andersen, is making a diagnosis of the situation clearly defined in the scope of practice of chiropractors? [LB710]

LOUIS ANDERSEN: The scope of practice of chiropractors specifically allows them to make a diagnosis. If the term "diagnosis" is actually defined in the statute--I don't believe it's specifically identified, but we can research that further and get back to you. [LB710]

SENATOR STUTHMAN: But it is...the diagnosis part of it is part of the scope of practice of a chiropractor. [LB710]

LOUIS ANDERSEN: Absolutely. [LB710]

SENATOR STUTHMAN: Okay, thank you. [LB710]

LOUIS ANDERSEN: Absolutely. And I would just follow it up by saying that the corollary to that is that that ability to diagnose is not in the scope of practice of physical therapy in the state of Nebraska. And therein lies a very important distinction in terms of patient safety. [LB710]

SENATOR STUTHMAN: Thank you. [LB710]

LOUIS ANDERSEN: You're welcome. [LB710]

SENATOR GAY: Any other questions? Lou, I've got one for you. [LB710]

LOUIS ANDERSEN: Yes, Senator. [LB710]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Can you just say...what are the educational requirements of a chiropractor to be fully licensed? [LB710]

LOUIS ANDERSEN: We have a gentleman that's going to... [LB710]

SENATOR GAY: If somebody is going to cover that...okay. [LB710]

LOUIS ANDERSEN: Yeah, in the interest of your...not repeating, we have someone that's going to cover all that. [LB710]

SENATOR GAY: No, great. No, you got the drift. Okay. [LB710]

LOUIS ANDERSEN: We have a whole binder for you (laughter). [LB710]

SENATOR GAY: Okay, good, good. (Laughter) I'm going to ask the other guys the same thing. Thank you. [LB710]

LOUIS ANDERSEN: You're welcome. [LB710]

SENATOR GAY: Other proponents. [LB710]

JEREMIAH RETHWISCH: (Exhibits 5, 6, 7, 8, 9) Senator Gay and senators of the committee, my name is Dr. Jeremiah Rethwisch. I practice in Omaha, Nebraska, and I testify today on behalf of the Nebraska Chiropractic Physicians Association in favor of LB710. My testimony is going to revolve around some of the technical medical terminology associated with this definition. LB710 includes the definition for chiropractic adjustment or joint manipulation. This definition helps to clearly distinguish manipulation from other procedures such as massage, exercise, or mobilization. I'd like to start by recognizing or pointing out that there are five grades of joint movement. Grades I through IV are mobilization, and Grade V is a manipulation or chiropractic adjustment. I've included a handout with pictures and diagrams and references which supports this. For simplicity and for the remainder of my testimony, when I refer to mobilization, what I mean is Grades I through IV. When I refer to manipulation, I mean Grade V or the chiropractic adjustment, so just to clarify, there are a few different terms that mean the exact same thing--manipulation, adjustment, and Grade V, all terms that mean chiropractic adjustment. So how can we tell the difference between a manipulation and a mobilization? Let's talk about mobilization first. Mobilization is a nonthrust technique which occurs within the physiological range of motion and is not accompanied by joint cavitation. Mobilizations are within the scope of practice for many individuals including massage therapists, athletic trainers, chiropractors, physicians, physical therapists, just to name a few. Mobilizations are simple procedures with essentially very little risk, very little contraindications, and no specialized training required to master it. I could teach

Health and Human Services Committee  
January 21, 2010

---

each of you in this room to do a mobilization on the person next to you in minutes, and you could do that without putting anyone at risk. Now, if you hear the term "passive exercise," that's also another term for mobilization. Now joint manipulation on the other hand, the chiropractic adjustment, involves high velocity thrust which carries the joint beyond the physiological range of motion and is accompanied by joint cavitations. Joint cavitations are the popping and cracking noises that you hear when someone gets adjusted. The reason joint cavitation is so important to this definition is because joint cavitation along with the high velocity thrust are two of the characteristics which help clearly distinguish the manipulation from the mobilization. Now manipulation carries with it a much higher level of clinical responsibility in that manipulation has a lot more potential risks, contraindications, which can only be ruled out by having a full diagnostic scope of practice including the use of x-rays, MRI, CT, lab. And I'd like to...if you've ever seen the...if you've ever seen both procedures performed or had them done to you, the difference is unmistakable. I'd like to close by just sharing a brief story, a personal story, that reaffirms the necessity to have diagnostic scope of practice to perform a manipulation. A short time ago, a patient presented to my office with a referral script from their M.D., and it said, diagnosis 724.2, and that's just the diagnosis code for a simple, uncomplicated case of low back pain. And it said, treatment, manipulation, and acupuncture. Well, it took the patient three days to present to my office, and in the three days her condition deteriorated from a simple case of low back pain to a more complicated case called cauda equina syndrome. Now because I was able to diagnose the patient, we did a re-exam on that patient that day immediately prior to doing any kind of manipulative procedures, got an MRI on her, referred her straight to the ER, and she had decompressive surgery the next morning. Now if I had lacked the scope of practice to do the diagnosis and order the MRI, and I just simply read that script that said, low back pain, do the manipulation, serious consequences could have happened to this patient. She could have had permanent nerve damage including permanent loss of bowel and bladder function. And I'd like to point out that the M.D. didn't misdiagnose this patient, but that the patient's condition changed in the time that she presented from one doctor to the next. There are two professions excluded from the Chiropractic Practice Act--M.D.s, medical doctors, and D.O.s or osteopaths. Both of those professions have full diagnostic scope of practice just like chiropractors do. They can order MRIs, x-rays, make a diagnosis. Those not excluded from our practice act such as athletic trainers, physical therapists, massage therapists not only lack the diagnostic training, but expressly are forbidden legally from doing a diagnosis. You're going to hear more about the importance of training and public safety concerns from Dr. Wills and Dr. Vander Broek. Any questions from any of the committee members? [LB710]

SENATOR GAY: Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. I apologize for having questions, but Doctor... [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

JEREMIAH RETHWISCH: Yeah. [LB710]

SENATOR STUTHMAN: ...explain to me if the normal movement of the body, and then you're going to manipulate it and go past that, like you said, that Grade V, the snapping. What value is that or why do you do that? [LB710]

JEREMIAH RETHWISCH: Well, it's just another way to increase the joint range of motion, increase joint mobility. [LB710]

SENATOR STUTHMAN: And the reason for that is that you, hopefully, solve the problem of not being able to mobilize it in the normal path? [LB710]

JEREMIAH RETHWISCH: Yeah, exactly. It's used for a lot of different things, if you have pain or spasm, and you have decreased range of motion. You manipulate it, it increases it. [LB710]

SENATOR STUTHMAN: So there is a value to that manipulation part of it. [LB710]

JEREMIAH RETHWISCH: Absolutely, yeah. [LB710]

SENATOR STUTHMAN: And it does...in a lot of cases does that solve the problem quicker or...or not? [LB710]

JEREMIAH RETHWISCH: It can. Yeah, sure. [LB710]

SENATOR STUTHMAN: Well, that was...you know, and I just...when you were giving your presentation, I just thought of that, you know. [LB710]

JEREMIAH RETHWISCH: Yeah. [LB710]

SENATOR STUTHMAN: For what reason would a person have to go beyond that normal motion? [LB710]

JEREMIAH RETHWISCH: Yeah, it could be faster relief. [LB710]

SENATOR STUTHMAN: But to probably relieve the pressure on the normal mobilization. [LB710]

JEREMIAH RETHWISCH: Yep, yep, yep. [LB710]

SENATOR STUTHMAN: Thank you. [LB710]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

DOUGLAS VANDER BROEK: My name is Douglas Vander Broek, V-a-n-d-e-r B-r-o-e-k. I'm a practicing chiropractic physician in Lincoln for the past 26 years, and I'm speaking in support of LB710. I'm also a member of the Board of Chiropractic, although my testimony is my personal opinion and does not represent the Board of Chiropractic. LB710 provides a definition for chiropractic adjustment which is a primary method of chiropractic and has been taught in chiropractic schools since 1897. In fact, Nebraska was the third state in the union to have a chiropractic statute in 1915. So we are approaching in Nebraska almost 100 years of chiropractic education and licensure and manipulation. LB710 is in response to a concern for public safety, and that members of the public tell us that high speed manipulation is being performed by massage therapists, acupuncturists, physical therapists, physical therapy assistants, athletic trainers, barbers, taekwondo instructors, and other individuals who have no training or authority to properly examine or diagnose a patient. I'll just give you one quick example. You know, this winter we've had lots of falls on the ice, and two weeks ago, I had a patient of mine...he's been a patient for a long time, came in, had fallen on the ice. He had pain in his left lower thoracic area which is kind of always his problem anyway. I've adjusted him there hundreds of times before. This was a little different, so I walked him down the hall, brought him to my x-ray room, took some x-rays, and he had broken his eleventh rib. And his rib wasn't displaced. It was in place, but broken clear through, so we put a rib belt on him, and I advised if he wanted to see his family physician for prescriptive pain meds, he may need to get that to get him through the situation. He did follow up with his M.D. I sent my x-rays over to the physician's office, and no other treatment was prescribed other than the pain medication. So in that case, if I were just to go ahead and thrust a manipulation in that thoracic, spinal, and rib area like I had before, most likely I would have displaced that rib with the possibility of puncturing a lung which can have severe repercussions for that patient. So the ability to diagnose and have the tools for diagnosis is important for the public safety. Now again, speaking for myself, I am not anti-PT. To the best of my knowledge, the practice in which I am currently was the first chiropractic practice in the state to have licensed PT work directly along with the chiropractors in the early 1980s. I have employed licensed PTAs. I refer patients and my own family members to physical therapists. If I were to have a hip or knee surgery, I would be in my PT's office for rehab. Physical therapy is an excellent profession in which PTs are well trained and well educated to perform a variety of beneficial treatments. However, Grade V manipulation is not one of those treatments. We have a clear interpretation of the Nebraska Statutes by the Attorney General, and should any profession wish to expand or change their scope of practice, they can do so through the 407 review process and the Department of Health and Human Services. I appreciate your time today and would be happy to answer any questions to the best that I can. [LB710]

SENATOR TIM GAY: Thank you. Senator Wallman. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR WALLMAN: Thank you, Chairman Gay. [LB710]

DOUGLAS VANDER BROEK: Yes, sir. [LB710]

SENATOR WALLMAN: Yeah, thanks for coming. I know something interesting when you say transfer of records. Did that person give the authority to do that or did you make him sign something? [LB710]

DOUGLAS VANDER BROEK: He signed a release, but it was my suggestion. I'd say take these to your medical physician. He waited about four or five days, and then he said, you're right. The pain is bad enough; I need something prescriptive. [LB710]

SENATOR WALLMAN: Okay, thank you. [LB710]

DOUGLAS VANDER BROEK: Um-hum. He signed a release of records, yes. [LB710]

SENATOR GAY: Any other questions? I've got a question for you. In your testimony, you said others are doing this as well, not just...I mean, we have chiropractors and physical therapists here today. But you had mentioned a long list of people? [LB710]

DOUGLAS VANDER BROEK: Right. [LB710]

SENATOR GAY: That you have reports that are doing these...? [LB710]

DOUGLAS VANDER BROEK: People like massage therapists, acupuncturists, reflexologists. We have athletic trainers and a number of people who are doing these procedures and kind of minimizing the importance and putting people at risk. [LB710]

SENATOR GAY: But when you say that statement, are they then reporting it to your...like your director, like Lou or somebody, or how are you getting...are these personal to you? Just somebody told you this. [LB710]

DOUGLAS VANDER BROEK: Well, these are stories and accounts we have been relayed to as... [LB710]

SENATOR GAY: Documented. [LB710]

DOUGLAS VANDER BROEK: ...and formally, if anybody wants to take an action against any particular professional, they do that through the Department of Health. A complaint is filed, and then that complaint is reviewed and referred to the appropriate board within the Department of Health. [LB710]

SENATOR GAY: Thank you. Senator Pankonin. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

DOUGLAS VANDER BROEK: Yes, sir. [LB710]

SENATOR PANKONIN: Just a follow-up on Senator Gay's question. I think what he was possibly trying to...I mean, anecdotal evidence is...the stories mainly...I mean, has there been a lot of filings and complaints to the department on these things? [LB710]

DOUGLAS VANDER BROEK: I really can't speak for the Department of Health as a whole because I don't see those. Those are actually the procedures that they are investigated initially by Department of Health investigative personnel before they are ever referred to the individual boards. I have been on the Board of Chiropractic and, again, I don't speak for them at all, but I've been on that board just since December 1, 2009, so I have not seen anything in that short period of time personally. [LB710]

SENATOR PANKONIN: Thank you. [LB710]

SENATOR GAY: Well, so, I guess following up on that then. You had said that...I'm more concerned as you went further down that list--an athletic trainer. An athletic trainer could be a physical therapist working on the sideline of a game... [LB710]

DOUGLAS VANDER BROEK: Sure. [LB710]

SENATOR GAY: But then you had mentioned massage and a few other people, and nothing against those industries, by any means, either. But what I'm saying, are there reports coming in to the chiropractors association then? [LB710]

DOUGLAS VANDER BROEK: These are things that have been relayed to me on a personal basis. [LB710]

SENATOR GAY: Oh, okay. [LB710]

DOUGLAS VANDER BROEK: And, as I say, I've not seen formal complaints... [LB710]

SENATOR GAY: But maybe...yeah, and maybe we can follow up on that then too. [LB710]

DOUGLAS VANDER BROEK: I think people hesitate to file a formal complaint against somebody that they know and work with. [LB710]

SENATOR GAY: Absolutely. Okay, thank you. Any other questions? I don't see any. Thank you. [LB710]

DOUGLAS VANDER BROEK: Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Other proponents who would like to speak. [LB710]

DARYL D. WILLIS: Thank you, Mr. Chairman and members of the committee. My name is Daryl D. Willis, D-a-r-y-l D. Willis, W-i-l-l-i-s. I live and practice in Gering, Nebraska. I've been practicing for 36 plus years and have licenses in Iowa, Nebraska, and Wyoming. I'm a native Nebraskan, and I speak in favor today of LB710. I've served as president of the Wyoming Chiropractic Association, the Nebraska Chiropractic Physicians Association. I'm also a past president for two years of the American Chiropractic Association. I've served on the Board of Chiropractic Examiners for ten years, many years as chairman, and I currently am Governor Heineman's appointment to the Board of Health as the chiropractic representative. I'm here today representing the patients that we serve in the profession, but I'm not representing the Board of Health on which I sit. I've followed for over the 36 years of my practice the chiropractic profession including licensure, credentialing, and reimbursement issues. Chiropractic which was once looked down upon as an orphan stepchild has now become in vogue. Evidence-based research has now shown that spinal manipulation to be effective in treating a number of conditions especially low back pain and headaches. So why is it important to vote in favor of LB710? Well, for years the standard of care for providing spinal manipulation for the chiropractic adjustment has been statutorily defined in the law as the practice of chiropractic in the state of Nebraska. It was mentioned, we were licensed in 1915, and the standard for minimal clinical competency has been maintained all of those years. LB710 does not change that statute. It does not change the scope. It simply clarifies what the terms mean that are within the scope. It defines, clarifies the protection of the public, what manipulation is, and what manipulation is not. This simple bill will provide accountability and appropriate enforcement of the current statutory standard enacted by the Legislature in view of public safety. I believe LB710 is very similar to what LB463 was last year as the animal therapist bill which basically clarified the treatment of animals by nonveterinarians and public protection through the process. That was a public protection issue; so is LB710. LB710 does not preclude any profession from performing spinal manipulation provided it is within their scope. It simply clarifies what minimal standards are. Spinal adjustments in manipulation enjoys a very low risk, especially when performed by adequately trained providers; 94 percent of all spinal manipulation is performed by doctors of chiropractic; 6 percent performed by non-DCs. And of that other discipline or disciplines that perform that, 20 to 34 percent of the complications arise from those individuals. So approximately one-third of the complications come from 6 percent of the providers who are inadequately trained to provide that service. If, in fact, this is not corrected, that percentage will probably increase as more spinal manipulation is allowed to be performed by individuals improperly trained and do not meet the standard of care. Therefore, the training skill and knowledge necessary to diagnose and treat cannot be taken lightly. To protect the public, professionals who hold a full first professional degree, D.C., D.O., and M.D. programs run the lowest risk of complication compared to those whose training and high

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

velocity thrust is included in a weekend or limited to a weekend seminar. When you can go on the Internet and change a second level degree to a doctorate degree with 12 hours of continuing education online, I have concerns about the safety of the public. The criteria which takes a joint beyond the physiological range of motion accompanied by joint cavitation which you've heard about requires high levels of sensory motor coordination. But before an adjustment must be given or it is given, a differential diagnosis must be made. The Federation of Chiropractic Licensing Boards which evaluates training and diversified high velocity procedures found heavy emphasis and practical training in laboratory settings. Evidence suggests that these learning programs without prerequisite training is perhaps inappropriate and dangerous. I believe it's dangerous. Therefore, I would ask that you look at other states who provide this same type of care, 400 hours of didactic and 800 hours of clinical work is what's required in a facility where spinal manipulation is the primary focus of the teaching. So in summary, I think if it's your mother or your father that climbs on a chiropractic or an adjusting table and is going to be treated, you want to know that the individual providing that Grade V manipulation or adjustment is well trained and qualified. To not do so puts them at risk. LB710 will clarify what this means and allow this procedure to be a safe thing for the people in Nebraska. I will entertain questions now, Mr. Chairman. [LB710]

SENATOR GAY: Thank you. Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Wills, I don't recall what you did in, like, Wyoming. Was you on the board there or was...did you practice in Wyoming? Tell me... [LB710]

DARYL D. WILLIS: I practiced in Wyoming, and I served as president of that association, and during my term as president we passed the continuing education law which allowed doctors of chiropractic or required them to have continuing education hours to renew their license. [LB710]

SENATOR STUTHMAN: The question I was going to ask is, you know, what they have in their statute is a lot different than what we have in Nebraska or are they similar, or are we behind or are they ahead? [LB710]

DARYL D. WILLIS: I think there's some similarity, but I practiced there 31 years ago, and it's probably changed a lot, and I'm not familiar with what the statute calls for now. [LB710]

SENATOR STUTHMAN: Okay, thank you. [LB710]

DARYL D. WILLIS: Yes, sir. [LB710]

SENATOR GAY: Senator Gloor. [LB710]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GLOOR: Thank you, Chairman Gay, and thank you for coming a long distance, Dr. Wills. [LB710]

DARYL D. WILLIS: Thank you. [LB710]

SENATOR GLOOR: I have a question, not that I'm...have any less concern than anybody else about the quality of care and patient safety. But I'd like to talk to you about dollars and cents. Can you bill differently to Medicare and Medicaid, insurance companies for mobilization...or for manipulations versus mobilization? [LB710]

DARYL D. WILLIS: There are specific CPT codes set down by the AMA which allows for billing of manipulation, CMT--chiropractic manipulative therapy, osteopathic manipulative therapy. When a physical therapist bills for that particular service, if they're performing it, they bill a 97140 which is a general term that encompasses a number of things that they do. Reimbursement is different, unfortunately, in a lot of professions, and what one profession gets for a certain code may be different for another one. Under Medicare we are considered physicians in the chiropractic profession; physical therapists are not. [LB710]

SENATOR GLOOR: How about Medicaid in the state of Nebraska? [LB710]

DARYL D. WILLIS: Medicaid is the same structure as Medicare. It follows that. Medicaid has a limit in the state of Nebraska for adults. It's 12 visits per year which we feel is probably inappropriate for those people's care. Children are unlimited for whatever care they need. [LB710]

SENATOR GLOOR: How does Wyoming treat the same issue as relates to PTs and Doctors of Chiropractic Medicine? [LB710]

DARYL D. WILLIS: As I told Senator Stuthman, I'm not sure what their law is now. I know physical therapists in Wyoming have tried to gain direct access and reimbursement issues. Last I knew, they were not successful at that. [LB710]

SENATOR GLOOR: Okay. Thank you. [LB710]

DARYL D. WILLIS: Yes, sir. [LB710]

SENATOR GAY: Any other questions? Thank you. [LB710]

DARYL D. WILLIS: Thank you, Mr. Chairman. [LB710]

SENATOR GAY: Any more proponents who would like to speak? All right, we'll hear

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

from opponents. How many opponents again? If you can kind of...well, it's kind of packed. Never mind. [LB710]

JAMES CAVANAUGH: (Exhibit 10) Senator Gay, members of the Health and Human Services Committee, my name is James Cavanaugh. I represent Creighton University, and I have a handout for you. We appear here today in opposition to LB710. What the page is distributing is a letter from the dean of our School of Pharmacy and Health Professions, Dr. Chris Bradberry, outlining some of the problems and concerns that we have with LB710. As you may be aware, Creighton University has a thriving physical therapy program, and we produce more than half of the physical therapists graduated in the state of Nebraska. And of the 200 accredited physical therapy programs in the United States, we rank in the top 20. And we're proud of that record, and we're proud of the fact that we're able to assist Nebraska by providing high quality physical therapists on a large scale. Our concerns, and you'll see kind of, I'm sure from following testimony, a mirror image of what you just heard from the proponents, had to do with the restrictions in LB17 which, if imposed, would jeopardize our ability to be an accredited physical therapy school. Dr. Bradberry outlines here in very specific detail, the language that would be impacted by the imposition of the restrictions contained in LB17. There may be some middle ground here between the two sides. I think the bill following this is something that certainly...would solve the problem from our point of view, and you'll be hearing from us again there. But as they say in the Hippocratic Oath, first, do no harm. We've got a system now that operates pretty effectively. We're recognized around the nation and around the world as producing some of the best physical therapists there are, and we've done it under the current system. And to change that system to jeopardize our accreditation, I think would be something that this committee would not be in a hurry to do. So we appreciate your consideration of the concerns raised by Dr. Bradberry, and I'm sure that you'll hear in more detail from healthcare professionals to follow me. And we'd also urge you to take into consideration the provisions contained in the bill that you'll hear following this sponsored by Senator Nordquist. Be happy to answer any questions you might have. [LB710]

SENATOR GAY: Thank you. Senator Wallman. [LB710]

SENATOR WALLMAN: Thank you, Chairman Gay. Welcome to our committee, Jim. [LB710]

JAMES CAVANAUGH: Thank you, Senator. [LB710]

SENATOR WALLMAN: In regards to this here, you know, accreditation and things, do a lot of physical therapists use Grade V? [LB710]

JAMES CAVANAUGH: I'm sorry? [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR WALLMAN: Do a lot of physical therapists use this Grade V now? [LB710]

JAMES CAVANAUGH: Well, I believe so. I mean, you know, I think that what you've got is certainly taught at Creighton and practiced in the practice. And my guess would be that that's of some concern as the previous witness said, to chiropractic doctors. However, you know, I don't know that the restrictive standard imposed in LB17 exists widely around the country. Because if it did, it would fly in the face of the accreditation which is nationwide, and so I think that Nebraska might be going into an area that no other state has ventured into here because clearly, if you read Dr. Bradberry's analysis, you can't have the restriction in LB710 and compliance with the national accreditation standard. It's an either/or. Thank you. [LB710]

SENATOR WALLMAN: Okay. Thank you. [LB710]

SENATOR GAY: Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Mr. Cavanaugh, can physical therapists do a medical diagnosis? Is that in their scope of practice? [LB710]

JAMES CAVANAUGH: Well, I believe that the interpretation of that is now, Senator Dierks was up here just in the introduction and said that there was an amendment to eliminate that word on page 3, line 1 of medical diagnosis. And I haven't had a chance to talk to our people about what, if any, impact that would have on the scope of this bill, but it may. I mean, that may be one of the reasons that that word is being eliminated under the proponent's amendment. [LB710]

SENATOR STUTHMAN: Okay, thank you. [LB710]

SENATOR GAY: Senator Gloor. [LB710]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you. Is it Dr. Cavanaugh? [LB710]

JAMES CAVANAUGH: No, I'm just a lawyer. [LB710]

SENATOR GLOOR: Okay. (Laughter) Well, in that case, I don't have any questions for you (laughter). [LB710]

SENATOR CAMPBELL: A doctor of jurisprudence. [LB710]

SENATOR GLOOR: Doctor of jurisprudence. That works. [LB710]

SENATOR PANKONIN: Senator Gloor, it even gets better. He's actually a paid lobbyist.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

(Laughter) [LB710]

JAMES CAVANAUGH: And it was going so well. (Laughter) [LB710]

SENATOR GAY: In Judiciary, it'd go over great. [LB710]

JAMES CAVANAUGH: Yeah. [LB710]

SENATOR GAY: I do have a question. So I'm reading this, glancing through this, and I just got it. So this says, significantly jeopardize the accreditation. Earlier they said the accreditation process can't tell a state what to do. So on the accreditation, can the National Accreditation Board tell a state exactly what to do if we explicitly said it can't be done? How could that work? [LB710]

JAMES CAVANAUGH: My experience in postsecondary education which, you know, I went to college for a long time, and I've represented Creighton University for a long time, is that the national accreditation standards are generally complied to by the states. In a similar fashion, that state law generally complies and does not contradict the federal law. So you have a national standard, and the entities affected in this case, you know, postsecondary educational institutions that are engaged in teaching physical therapy are agreed to by all the colleges and universities who were engaged in that activity. And this...you know, this isn't limited to this same discipline. I mean, your medical schools have criteria; your law schools have criteria; your undergrad schools have criteria. And, you know, what I'd be interested in, and I don't know, maybe the proponents do, is if this won't fly in the face of accreditation, does it exist in other states? Because if it doesn't exist in any other state, then there's probably a reason for that, and the reason very well may be that no other state wants to jeopardize the accreditation of their school or, you know, it may exist in states that don't have accredited schools. But, you know, what our concerns are is careful reading of the statute, careful reading of the accreditation bylaws shows that you can't have LB710 without jeopardizing the accreditation. And Nebraska complies with this, not just in this discipline, but in almost all the postsecondary education disciplines I can think of. [LB710]

SENATOR GAY: Complies with this accreditation. [LB710]

JAMES CAVANAUGH: With national accreditation things. From the NCAA to medical school. I mean, those are all national groups that states and state entities comply with. [LB710]

SENATOR GAY: Yeah, I guess, and I'm no expert, but I know there's different accreditations. We had a bill last year to make everybody accredited in every state agency. And there were several you could have chose from to be an accredited provider

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

of this or that, so I just wondered. I don't...I'll check into it. [LB710]

JAMES CAVANAUGH: Right, and I'd be happy to get you some follow-up information on that. [LB710]

SENATOR GAY: Thanks. You bet. Any other questions? I don't see any. Thank you. [LB710]

JAMES CAVANAUGH: Thank you. [LB710]

KIRK PECK: (Exhibit 11) Good afternoon, Senators and members of the Health and Human Service Committee, appreciate being here. My name is Kirk Peck. That is P-e-c-k, and I am a practicing physical therapist, also a professor in the Department of Physical Therapy at Creighton University. But I'm actually here representing the Nebraska Physical Therapy Association, and on behalf of the association...I'm really speaking on behalf of about 674 members out of about 1,200 who practice in the state of Nebraska. And I'm actually here in opposition to LB710 because our association does believe that it actually would have an impact on practice and physical therapy, and, in fact, the language in LB710 is a clear attempt to codify wording. It's already been somewhat mentioned in earlier testimony of the Nebraska Attorney General Opinion on physical therapist and manipulation. And that actual Attorney General Opinion has been used to intimidate physical therapists in clinical practice in western Nebraska already. Our opposition to LB710 really centers around a few key issues. First of all, in Section 3, it states, to try and attempt to equate chiropractic adjustment to mean the same as manipulation in Grade V mobilization and high velocity low amplitude thrust techniques. And the problem with that is that's in direct conflict currently with Nebraska statutes for the Physical Therapy Practice Act which states, mobilization may be performed at varying speeds and amplitudes, without limitation. Without limitation enables us to currently practice all five grades of mobilization which we do. And I know you've already heard some testimony on the Grade V and Grade IV indifference, but we practice in a continuum of care with range of motion with our mobilization techniques and always have been. The terms are not synonymous. I could read directly from here. I'm going to save a little bit of time, but I brought these couple of books up here to show you. Even in the chiropractic literature that the chiropractors themselves and various literature say...chiropractic adjustment is not synonymous with manipulation. Chiropractic adjustment is very specific to...if you read the current Chiropractic Practice Act. They use it to treat and locate and remove any interference with the transmission and expression of nerve energy in the human body. We don't do that as physical therapists. We don't treat diseases. We don't do medical diagnosis. We even excluded that out of our practice act. There is nowhere in the medical literature that says a practitioner practicing manipulation technique or a Grade V mobilization is required to make a medical diagnosis. We work in the medical model. We work with physicians all the time, and if there's been a concern with that, particularly a concern I hear is this health issue,

Health and Human Services Committee  
January 21, 2010

---

the public safety. One of the concerns that the public safety issue is, there's been no to date, at least in our association...we've been dealing with this for five years now, and we present just a real brief history of that. In over five years, we've never had a case, at least to my knowledge in the association as president, where there's been a public safety concern with this. And I guarantee you, if there was an injury with a patient or public safety concern, the first group that would be coming after us would be the medical doctors because we work directly with them and in collaboration with them all across the state. It may be the chiropractors, but it would be the medical doctors we would be hearing from about public safety concerns. That's who we work with. Section 5, I understand there's been an amendment to remove the word medical and leave the word diagnosis. The problem with that section is that that creates a monopoly of trade on Grade V mobilization and manipulation which, as I said, are not really even synonymous in the literature. And it's very inconsistent with hundreds of published articles including many by physical therapists. Several physical therapists even publish on manipulation and publish in chiropractic journals. We can acquire those easily at Creighton University where I can pull those and share those, if you want to see them. It's a deliberate attempt, LB710 is, to restrict other health professions from performing this. More importantly, and one thing I really want to point out, and I've given you a copy of the entire testimony in here with this, so I'm not going to run through all the history of everything we've had with legislation. But we've been dealing with this for five years now, and this goes all the way back to 2003 and 2004 when we first applied for a 407. I've heard that we didn't go through 407. We applied twice, and Dick Nelson in the Department of Health and Human Services actually denied that 407 process, saying we're not advancing scope of practice even back then. We were updating in 1957 the practice act. We actually, in lieu of 407, we didn't have to do this, but we went and actually went to all the...many of the health professions. You can see them on your list including the Nebraska Chiropractic Physicians to try and negotiate any controversy in language. We had the word manipulation in our proposed statutes at that time, and the statutory change for our practice act. And we really never could dialogue with the chiropractic association. They refused to come to us and do that, so we went to a public hearing June of 2005. It was LB445 at that time; went to a public hearing. Senator Jim Jensen was the sponsor of that bill, and it was unanimously voted out of committee. We had a couple other concerns with the Lincoln public school systems and Nebraska Medical Associations. But one of the concerns I'm hearing, and it's a little bit interesting that I'm hearing here is that if this is such an important issue to the chiropractic profession, why did they not come to us an entire year that we were spending negotiating language with manipulation still in our bill, to come back a year later during that entire year's time? We didn't hear anything from them and neither did Senator Jensen and yet during the floor, and Senator Stuthman and Senator Howard, you were there that night when that happened, I know for sure. Some of you others may have been. I know the two of you were... [LB710]

SENATOR GAY: I'm going to need you to wrap it up. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

KIRK PECK: Okay. That was the time it was...it was hit. I just want to point out a couple of things. We are very concerned about the Attorney General Opinion. The Attorney General Opinion is conflicting; it's got three conflictive statements in there. Steve Grasz testified earlier, and I will say that we have direct evidence. He did have input into that Attorney General Opinion, a six-page document and analysis, a legal analysis on PTs and manipulation. And we were never even notified an opinion statement was coming out or that that was even in process. It took us by surprise in February. [LB710]

SENATOR GAY: All right, thanks. All right. Let's see if there's any questions for you. Any questions from the committee? Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Kirk, earlier in your testimony you talked about the medical diagnosis, and you stated that that's really not a scope of practice of the physical therapies. Is that correct? [LB710]

KIRK PECK: That is correct. Right. [LB710]

SENATOR STUTHMAN: That is correct. [LB710]

KIRK PECK: Right. [LB710]

SENATOR STUTHMAN: Is there a medical diagnosis needed before you do a Grade V or Grade IV or Grade III? [LB710]

KIRK PECK: No, absolutely not, Senator Stuthman. It's... [LB710]

SENATOR STUTHMAN: So you can just do a number V right off the bat and snap the bone. [LB710]

KIRK PECK: We only do a...we only perform these techniques if needed or warranted by a patient. And one of the things I want to get to in LB803 is the fact there's a very big philosophic difference in how we approach practice in chiropractic and physical therapy. And so we often have the advantage of already having medical diagnosis working in the medical system from physicians. But it's not required; there's no scientific evidence to even show that it's required. But to treat with chiropractic adjustment, I can see where they would want a medical diagnosis to treat subluxations and various other things and diseases. We don't treat diseases with manipulation. [LB710]

SENATOR STUTHMAN: So, in other words, your treatment or your mobilization manipulation comes without any diagnosis, right? [LB710]

KIRK PECK: Well, we often know what a diagnosis is. If we get a referral from a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

physician, we already know what that is. If they have rheumatoid arthritis or osteoarthritis, but we're treating the pathology with the use of these skills to really restore normal joint range of motion. [LB710]

SENATOR STUTHMAN: Okay, thank you. [LB710]

KIRK PECK: Um-hum. [LB710]

SENATOR GAY: Senator Gloor. [LB710]

SENATOR GLOOR: Thank you, Chairman Gay. Mr. Peck, does it require a referral from a physician... [LB710]

KIRK PECK: For... [LB710]

SENATOR GLOOR: ...in order for me to see a physical therapist? [LB710]

KIRK PECK: A referral from...a direct referral from a physician? Nebraska has by exclusion since 1957, practiced without referral for physical therapy. However, the majority of all physical therapists receive referrals from physicians because we work so closely with them. [LB710]

SENATOR GLOOR: But not as a requirement of any kind. Probably more as a professional courtesy, would that be safe to say? [LB710]

KIRK PECK: Correct. [LB710]

SENATOR GLOOR: Okay. And it's also safe to say, I would hope, that Creighton does, in fact, train their students in all Grade I through V, Class I through V, mobilizations, manipulations. Is that correct also? [LB710]

KIRK PECK: Yes, that's correct. [LB710]

SENATOR GLOOR: Would that include labs? [LB710]

KIRK PECK: Many labs, and we do it over a continuum over a two-year period while in the school itself, and then they perform...in our school it's almost 1,800 hours of clinical education where they're in institutions, hospitals all across Nebraska and the country in all states. [LB710]

SENATOR GLOOR: Okay. Well, once upon a time, graduates from Creighton who were quality graduates as far as I can tell, worked for me, and always came out seeming to be quite proficient. But what I haven't understood through this whole process is why



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

physical therapists would then go to weekend seminars that seemed (inaudible) to train them in something they've already been trained in. Help me understand why that occurs. [LB710]

KIRK PECK: Sure. First of all, we're required to have continuing education hours, 20 hours every two years in Nebraska, and I hope any practitioner including chiropractic (laugh) who goes to continuing education hours to learn, to further advance those skills because different skills are used for different entity or different pathologies or different ways of going about it much like an orthopedic surgeon is going to go on to different continuing education and learn different surgical techniques. So that's really no different in our profession. We do continuing education every year. I go to many hours every year on various things and certainly not all on manual therapy skills. [LB710]

SENATOR GLOOR: Okay. Thank you. [LB710]

SENATOR GAY: Senator Pankonin. [LB710]

SENATOR PANKONIN: Mr. Peck, in your opinion, if this bill would...just a hypothetical here...but if it would pass with amendment or whatever, what would it do...what would be the landscape? What would happen to your profession, and what would be the result? We already had the Attorney General's position. I understand you think the system got gamed. Right? [LB710]

KIRK PECK: That's correct, sir (laugh). Senator, that is correct. I didn't get a chance to give you all my testimony to hear that, but that's correct. [LB710]

SENATOR PANKONIN: But I'm...so I'm asking, what would happen? What do you think would happen? [LB710]

KIRK PECK: Unfortunately, we've already had two incidents in the state where the Attorney General Opinion came into play. We had a board mediation event that occurred in the spring of 2008, and immediately after that, we had two physical therapists accused immediately who gave testimony during board mediation. During that session, they were actually accused to practicing chiropractic and teaching chiropractic, and you're going to hear from them today in LB803. And that's a concern to us because there's a pattern of history where the chiropractors have come after us legally, and so we're very concerned about continuing legal action being taken against physical therapists. And there's a harassment case in western Nebraska where a chiropractor took...and attached Attorney General Opinion along with a statement from a chiropractor saying, you can't do this; it's illegal based on strictly an opinion only. And that impacted how physical therapists are already practicing and how physicians expect us to work with their patients for that continuum of care. That's our concern; that's a huge concern for us is legalistic repercussions of this bill. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR PANKONIN: Thank you. [LB710]

SENATOR GAY: You got a question? Senator Wallman. [LB710]

SENATOR WALLMAN: Thank you, Chairman Gay. Yes, we heard before about compensation from Medicare and Medicaid. Is there different grades of physical therapists like occupational therapy, that's different than physical therapy? You know, it...yeah. [LB710]

KIRK PECK: Completely different professions, yeah. [LB710]

SENATOR WALLMAN: And that's different compensation level? [LB710]

KIRK PECK: I'm not sure of all what occupational therapy reimbursement is because we use different codes for the types of interventions that we do, and since we're different professions we use different coding. Some are similar. There's overlap like in many of our healthcare professions, UCPT codes. [LB710]

SENATOR WALLMAN: And that would be recommended by a doctor like after a car accident or something? [LB710]

KIRK PECK: Correct. [LB710]

SENATOR WALLMAN: Thank you. [LB710]

KIRK PECK: Um-hum. [LB710]

SENATOR GAY: I got a question for you, and this is at Creighton. You're teaching new PT people coming out. How long have they been teaching the Grade V techniques? [LB710]

KIRK PECK: You know, a couple of things with that kind of a question. We don't spend years or months teaching the Grade V techniques specifically. It's a continuation of care, so in order to really perform the technique, what's most important is your clinical reasoning ability to determine when it is and isn't appropriate. So everything we teach from anatomy to kinesiology to histology to pathology, differential pathologies all play into moving joints, and what this does. Every single semester, every class, our students have has lab-oriented where we move joints. And when we move joints, we are moving through the continuum of joint motion. At any point, that's where we might interplay. If there's a pathologic problem with that joint motion, that's where we would incorporate whether it be Grades I, II, III, IV, or V technique. But it would have to be appropriate, and that's why not every physical therapist is out there using Grade V manipulation on a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

daily basis. We don't...some people aren't in that type of setting where that's even needed. [LB710]

SENATOR GAY: Or want to. [LB710]

KIRK PECK: Or even want to. [LB710]

SENATOR GAY: Would you, if you did use that, do you pay more in liability insurance or anything like this? [LB710]

KIRK PECK: We've been doing this since we've been a profession in the United States in the early 1920s before World War I and in Europe since 1895; it's never been an issue. [LB710]

SENATOR GAY: All right. And then I guess one more...it was stated earlier by the proponents that, you know, this is a national trend that the industry is saying, go start doing this, and I mean, that's the whole thrust of the argument here. I mean, is that the case? Is it national, newer, younger, PT people want to do this or why is? [LB710]

KIRK PECK: You know, it's only a part...it's really one tool in the toolbox that we use as physical therapists. It's not an identifying part of our profession nor would I want to be labeled as someone as the manipulating profession. The chiropractors have been doing chiropractic adjustments for years. That's how they started in 1895 with D.D. Palmer. I mean, it's just what they've done. It's just a tool in our toolbox that we use, and it's because of the issues that keep coming up because the chiropractors want to have a monopoly of trade on that and not want physical therapists to do it, that we keep hearing about this over and over and over. [LB710]

SENATOR GAY: Well, that's any scope of practice issue that we hear... [LB710]

KIRK PECK: Right. (Laugh) [LB710]

SENATOR GAY: ...so that's nothing new here. (Laughter) Somebody has to decide. [LB710]

KIRK PECK: Senator, if you don't mind my saying, in physical therapy we treat everybody from pediatrics to geriatrics, and we have physical therapists that completely focus in pediatric care. Physical therapists in oncology; work in ICUs; work in hospitals. We do have a sector of physical therapists that work a lot in private practice outpatient care, do a lot of manual therapy care. I refer to them when I have patients that may need that care because they're going to be better at it than I am. And so that's kind of...we have very specialty areas in those sectors. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Okay, thank you. Any other questions? I don't see any. Thank you.  
[LB710]

KIRK PECK: Thank you. [LB710]

SENATOR GAY: Other opponents. [LB710]

NATALIE HARMS: (Exhibit 12) Good afternoon, Senator Gay and fellow members of the Health and Human Services Committee. My name is Natalie Harms. It's N-a-t-a-l-i-e H-a-r-m-s, and I am a licensed physical therapist in the state of Nebraska. I have been in practice in Nebraska since 1983. I am past president of the Nebraska Physical Therapy Association, and currently I am serving as a professional member of the Department of Health and Human Services Board of Physical Therapy. I am here today to testify in opposition to LB710. My perspective on LB710 is provided as a physical therapist and not in any official capacity as a board member. I cannot take a position on behalf of the licensure board because of the timing of this legislation. The Physical Therapy Board met on November 23 at which time the draft of chiropractic regulations was discussed and in the minutes, and a motion was approved to send a representative from the Physical Therapy Board to testify at the public hearing in regard to these regulations concerning the definition of chiropractic adjustment. That official position of the board on the regulatory language change was to oppose the language. Now that this language has progressed to LB710, I cannot legally share an official opinion, as there was not enough time for a meeting because of the legislative timing and our compliance with open meeting rules in the state of Nebraska. As a board member, however, I am here to share my concern in regard to the impact that LB710 would have on my ability to support and enforce the physical therapy statutes. I happen to be the representative and have been for the last three years that's identified as the investigative consultant to the investigative division of the Department of Health and Human Services. This bill will challenge statute enforcement as the current physical therapy statute is in direct conflict with this bill. Per the August 28, 2009, minutes of the Board of Physical Therapy, the board determined that all grades from I to V, mobilization or manual therapy techniques by statutory definition means a group of techniques comprising a continuum of skilled passive movements to the joints or related soft tissues or both throughout the normal physiological range of motion that are applied at varying speeds and amplitudes without limitation and are within the scope of physical therapy. This determination is based upon current statutory language. The role of any professional board in Nebraska is to first protect the public. In my role as an advocate for public protection, the current statutory language meets this need. According to the Centers for Disease Control, 30 percent of the public access chiropractic care. There are a majority of individuals that access care through other medical means. To not allow individuals to have the right to choose would not demonstrate being an advocate for public protection on my behalf. There is a difference in terminology as you're hearing today, and science when comparing chiropractic science and medical science. Physical

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

therapists do not perform chiropractic adjustment. They do perform Grades I through V mobilization and have performed this in the state of Nebraska since 1957. For 52 years, physical therapists have been licensed in Nebraska. For 52 years, they have been performing manual therapy including what is today called Grade V mobilization, and to my public awareness as a leader in physical therapy in the state of Nebraska, there have not been any prosecuted or disciplinary actions taken against a physical therapist for performance of manual therapy techniques including Grade V mobilization. I do thank you for your time and efforts and certainly, especially today in regard to this legislative effort. I know turf battles are difficult, and I appreciate the opportunity to speak before you, and I'd be happy to answer any questions. [LB710]

SENATOR GAY: Thanks, Natalie. Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Natalie, according to your testimony, you feel that the chiropractors and the physical therapists can do the Grade V manipulation. What is the value of the Attorney General's Opinion then? [LB710]

NATALIE HARMS: The Attorney General's Opinion. The difficulty in answering that question is that there's a difference in the interpretation of the science. In physical therapy, we do not believe that we can move your joint past the physiological range of motion without dislocating your joint, so when we refer to mobilizing Grades I through V, that is within physiological range of motion, and that is as statute supports. What the interpretation that I have been given as a board member of the Attorney General Opinion is that if I were to get a case brought to me where a complaint was made against a physical therapist, and there was clear evidence of negligence or clear evidence that there was an attempt to provide mobilization that went beyond physiological range of motion, that then we are to open an investigation. But short of that, if there was no negligence, we don't pursue that in investigation. So it's a little bit challenging just based upon the different philosophical basis of the science. [LB710]

SENATOR STUTHMAN: So in other words, Natalie, you feel the Grade V in physical therapy and a Grade V in chiropractor are two different...they're not the same? [LB710]

NATALIE HARMS: I believe that in the sense of the definition within the chiropractic community as has been brought to us and certainly through the mediation process, was that it has to do with what's called, in chiropractic language, paraphysiological space, and that's not a term that we or the physicians we work with use. So I do believe that because of those two definitions, we're not talking about the same thing, and my concern is, in regard to LB710, that there's a mention of cavitation or popping. Well, you can have popping when you pop your knuckles (laugh). You can have joint popping with Grades I through IV, depending on the patient. You can all mobilize yourselves. So if that's the language that's used, my concern is that a patient who was taken through any procedure who feels a popping, that that would be interpreted as a chiropractic

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

adjustment because of the sound associated with it. So that's one of my concerns. Secondly, if a complaint were to come as a board member, we have two conflicting statutes then, and so that would create difficulty for me and for the board. [LB710]

SENATOR STUTHMAN: Thank you, Natalie. [LB710]

NATALIE HARMS: You're welcome. [LB710]

SENATOR GAY: Senator Pankonin. [LB710]

SENATOR PANKONIN: Thank you, Senator Gay. Senator Stuthman, I think you got to the crux of it for me. So PTs and chiropractors have a different definition of this Grade V or whatever we're calling, right? [LB710]

NATALIE HARMS: We call it Grade V mobilization. [LB710]

SENATOR PANKONIN: So why can't we come...do we need a 407 then or something to come with a...so we can distinguish the two? You know, when I hear the deal about the popping, that makes some sense, you know. Harley Davidson tries to...their noise is something they try to trademark the noise of their motorcycles. True story. They're loud...they have a different noise... [LB710]

NATALIE HARMS: Absolutely. As a former Harley rider, I can affirm that (laughter). I did have a Honda once, but then I progressed to a Harley, and there was a big difference. But absolutely, and the challenge has been...and I have been in leadership in Nebraska for numerous years. I know I look young, but numerous years, and the challenge is that we've tried to do this. When we attempted to go through a 407 process, we were told it wasn't needed and certainly when you looked at practice, it wasn't because we weren't changing anything that was happening. When the Attorney General's position came about, the director of the Department of Health and Human Services, Dr. Schaefer, asked the chiropractic board and the physical therapy board to go through mediation. So we did that, but we came out of it no further ahead than we had started, so it is a challenge. Now I would be honest with you that when you look at the bill itself, if you look at Section 3, I absolutely agree that that is a definition of chiropractic adjustment in the chiropractic world. It's Section 4 that challenges me because normal physiological range of motion is by their definition and that's where the challenge begins for me. The other thing within that that's challenging is...and to address a question that came up earlier about diagnosis, Medicare is an example, requires what's called a physical therapy diagnosis. Now by statute in Nebraska, physical therapists can't medically diagnose, but for Medicare we have to provide a physical therapy diagnosis on documentation on paperwork. So, a patient is evaluated. If we see something that's not correct, we refer back to a physician even if we're evaluating the patient through direct access. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Done, Dave? [LB710]

SENATOR PANKONIN: Yes. Thank you. [LB710]

SENATOR GAY: I saw Senator Gloor's hand pop up, and then we have Senator Campbell. [LB710]

SENATOR GLOOR: Thank you, Chairman Gay. And yes, you do look young. I'm sure you started riding a Harley at age 16 when you got your license (laughter). I will also cut to the chase about my level of "uncomfortableness" on physical therapy training for grades, Classes I through V, mobilization, manipulation, adjustment, whatever term we want to use. I have no doubt that there is training that goes along there, but what has me concerned is that there are special programs that focus for a Saturday on labs to do just this. And that doesn't...it's the old looks like a duck, flies like a duck scenario. And if that is true, then why is all of a sudden, and I understand, very well understand continuing education requirements to get your license renewed. But that time is precious for any professional, and you don't necessarily go there to be taught things you already know, and so you got to help me understand why this isn't and shouldn't be one of those things that would be a public safety concern for me. [LB710]

NATALIE HARMS: I think to address that question, the best clarification I can provide is to my awareness, that's the only course in the United States I've heard of that says, you can learn manipulation in a weekend or mobilization. And, again, different states use different terminology. When you look at a course like that, you can't...most, what I would call appropriate physical therapy continuing education, you have to be a licensed physical therapist or a certified physical therapist assistant to get the education credits. So I absolutely agree with the statements of, if there are massage therapists...I think barbers were mentioned and the list. We absolutely need to make sure that those individuals are not performing these types of procedures. It is not the norm that weekend courses are held to teach what physical therapists learn in school. Myself being a graduate of the University of Nebraska Medical Center here in Nebraska went to school there for three years and then progressed to get my doctorate at Creighton which was an additional...in my case, three years of time. So multiple hours of education. I agree with you wholeheartedly that those types of scenarios absolutely cannot be permitted. But that is not the norm in the accepted continuing education of the state of Nebraska. [LB710]

SENATOR GLOOR: How do we not permit them if we don't do that statutorily? [LB710]

NATALIE HARMS: Well, how the board can do that is that we do require continuing education, and we do audit for evidence. And one of the things that we as a board do is we look at the courses that people are going to, and if they go to a course that is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

teaching...even what I would call basic techniques, that may be something that we look at, and we don't approve. And again, the continuum of that is difficult because, for instance, and I'll say if I'm a therapist, and I happen to be board specialized in geriatrics. When I was in orthopedics mainly, I did Grade V mobilization many times. Was it the crux of my business? Absolutely not, but now that I've specialized in geriatrics I should not do it as a physical therapist unless I go to continuing education. So the question would be, is that course enough to bring me up to speed to where I could actually go out and be mentored by somebody and get back into orthopedics? So there is this broad continuum of different circumstances. One of the things that we were advised when the practice act was updated, again, as a board member is that when you look at Grade V mobilization just like if I were to look at a complaint that came from a parent who had a child who was treated by a therapist who always works with older adults. If there is a therapist functioning in a capacity professing to a public person that they can do this type of technique but yet they haven't had any evidence of having done it routinely or it's been years since they were in school, and they haven't gone to any course work, that would be something that we would investigate. [LB710]

SENATOR GLOOR: But I have one last question, if I could. It's an important follow-up one for me. In your years of providing care for geriatric patients and doing a Grade V, say you were taking care of a patient who had been a patient of a doctor of chiropractic medicine for four decades. Would they recognize your Grade V manipulation as a manipulation that they had done by the chiropractor who had cared for them for years and years? [LB710]

NATALIE HARMS: The patient...to be honest with you, I don't know because I don't know what a Grade V chiropractic manipulation looks like. [LB710]

SENATOR GLOOR: Okay. [LB710]

NATALIE HARMS: So that would be challenging. I do know that when I have patients such as that, I work with the chiropractor to make sure we're not replicating what we do, that we're working together as a healthcare team. [LB710]

SENATOR GLOOR: Okay, and that's...that's the only answer I would have expected to be able to give. Sure, thank you. [LB710]

NATALIE HARMS: Okay. [LB710]

SENATOR GAY: Senator Campbell. [LB710]

SENATOR CAMPBELL: Thank you, Senator Gay. I'm still back on the question that says that you said, okay, well if this...if they're offering these weekend classes, and it's not appropriate, we, the board could take action. On what authority...if it hasn't been



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

done to this point, what authority would you use then to say this is not a class that should be offered? [LB710]

NATALIE HARMS: Well, the primary way is that we have the ability to say that a course meets state criteria or it does not, and there's specific standards within the rules and regulations that dictate what a course has to provide and how many hours can be gotten in certain areas. So from a regulatory standpoint, we would look at that and say that does not meet our criteria, so that's how we...that would be processed. [LB710]

SENATOR CAMPBELL: And I would have to say with Senator Gloor, I think that's part of the crux of some of the issue that has been...that we have all had some conversations about here with the chiropractors is that this is going on and yet there doesn't seem to be any point at which we step in. It seems like now we're graying that effort by saying, yes, you can do a V and they can do a V, but the V means different to me than it does to them. I get all that, but in that Section 4, in the latter part of it where the chiropractor talks about a thrust or that you can hear that. In your V, you wouldn't hear that, would you? [LB710]

NATALIE HARMS: But you can hear a joint cavitation in a I, II, III, or IV. Again, a joint cavitation you can hear when you crack your knuckles. And when you look at the sentence right before the one that you read, that says "and the passive range of motion but excludes any motion that requires a high velocity thrust or is accompanied by joint cavitation," that's what concerns me as a board member. Because if you hear a pop...if a patient came and said they heard a pop, I think one board would interpret that as joint cavitation occurred. And I would say that if the motion happened within the normal physiological range of motion whether or not there was an audible noise, that that would be appropriate. Maybe the best way to say that is to give you an essence of if I do a manual therapy technique on the sacroiliac joint, I use a technique that requires your muscles to provide better skeletal alignment. But one of the things I look for is that when I finish that particular technique and somebody with resisted motion adducts or brings their knees together, you very often will hear the pubic symphysis pop. Again, it gets muddy, I agree with you, absolutely. You know, is that cavitation; is it not? Was that outside the physiological range of motion? Well, if a physical therapist was doing it, we don't...medically, to go beyond that is, would not be ethical from our statutes' standpoint. Does that help? [LB710]

SENATOR CAMPBELL: Thank you. I appreciate the attempt at clarification. Absolutely. Absolutely. (Laughter) [LB710]

SENATOR GAY: Any other questions for Ms. Harms? I don't see any. Thank you very much. [LB710]

NATALIE HARMS: Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Still on the opponents. [LB710]

GILBERT WILLETT: (Exhibit 13) My name is Gilbert Willett, G-i-l-b-e-r-t W-i-l-l-e-t-t. I'm here in testimony in opposition of LB710. Chairman Gay, members of the Health and Human Services Committee, my name, as I said, is Gilbert Willett. I'm an associate professor and interim director of the physical therapy education program at the University of Nebraska Medical Center. I also live in Papillion, Nebraska. I'm representing the University of Nebraska in strong opposition to LB710. It seeks to amend the Chiropractic Practice Act in a manner that directly contradicts the current Physical Therapy Practice Act, and I believe...we believe it would have a detrimental effect on education of physical therapists in our state. It would forbid the teaching of Grade V mobilization, also referred to as thrust techniques, in both classroom and clinical settings. Teaching of Grade V is required by national physical therapy accreditation standards and is clearly within the scope of the Nebraska Physical Therapy Practice Act. This change could cause UNMC PT education to lose accreditation status and result in closure of the program and a reduction of the work force supply of PTs for the state. Recently, the U.S. Department of Labor Bureau of Labor Statistics reported that employment of PTs was likely to grow by 30 percent in the next ten years. Last year, UNMC published a health work force study that reported 25 Nebraska counties have no physical therapist and 42 counties have a lower physical therapist-to-population ratio than the 2004 national average ratio. The Nebraska Revised Statutes states that the board may approve programs for physical therapy education and training. Such approval may be based on the program's accreditation by the Commission on Accreditation in Physical Therapy Education, otherwise known as CAPTE. And in order to qualify for board approval, the PT ed program must receive accreditation from CAPTE, and that is the sole accrediting body for physical therapy programs. In addition, students must have graduated from a CAPTE-accredited institution to take their licensure exam. So they can't sit for licensure unless they've graduated from an accredited...a CAPTE-accredited program. It's recognized...CAPTE is recognized by the Council of Higher Education and the U.S. Department of Education. An evaluative criteria for CAPTE include that...or mandate that programs must train students in both thrust and nonthrust techniques for joint mobilization, including, but not limited to, spinal joints. Failure to teach these techniques would violate their standards. For our program specifically, we're a three-year-long graduate level, multidisciplinary medical-based education, culminating in a doctor of physical therapy degree. It includes 34 weeks of full-time supervised clinical practice. Many licensed physical therapists in our state also serve as program clinical instructors. Instruction in mobilization techniques are required by CAPTE. These are used on appropriately identified and diagnosed patients as defined and permitted under Nebraska statutes and licensure rules and regulations. LB710 would prohibit therapists in the state from practicing Grade V mobilization and teaching Grade V mobilization techniques, jeopardizing school accreditation status. Another example which has been referred to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

and talked about before is the cavitation issue--the pop that occurs. If this language were approved, any student, educator, or practitioner of physical therapy would be at risk for litigation if a patient's joint popped during treatment. And I can assure you, I practice...I've had patients' joints pop, turning on the table to change position from laying on their stomach to laying on their back. I've had patients' joints pop--it doesn't happen a lot but it does happen when you're stretching them and trying to get more mobility through the muscles, not even trying to address the joint specifically. Obviously, indirectly, they're being addressed. I've had joints pop myself when I get out of bed in the morning and stretch and bend and move. Is that beyond physiological range of motion? That's the question here. As a physical therapist, I can expand on that further if you have questions. But...have questions about that, that make it difficult. If the state of Nebraska is to continue to support and recognize its accredited PT programs in both thrust and nonthrust mobilization techniques, must be allowed to be taught and practices in all aspects of the curriculum. So, in summary, the proposed changes would result in loss of accreditation status for the University of Nebraska program. It would limit scope of practice as currently defined, and hence, reduce patient access for physical therapy for citizens of the state. Thank you for giving me the opportunity to talk to you. I'd be happy to answer questions. [LB710]

SENATOR GAY: Thank you. Are there any questions? Senator Gloor. [LB710]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you, Dr. Willett. And I join you in hoping that neither UNMC nor Creighton lose their accreditation. Have you ever seen a chiropractor do a Grade V manipulation? [LB710]

GILBERT WILLETT: I have not other than on YouTube, but. [LB710]

SENATOR GLOOR: Okay. We could all watch, in other words. [LB710]

GILBERT WILLETT: Yes. [LB710]

SENATOR GLOOR: Okay. I might, in fact, be doing that tonight. [LB710]

GILBERT WILLETT: Yes. [LB710]

SENATOR GLOOR: Thank you. [LB710]

SENATOR GAY: Any other questions? Senator Wallman. [LB710]

SENATOR WALLMAN: Yes, Chairman Gay. Thanks for being here, Doctor. You know, we go with Grade I, II, III, IV, V, and we had a little muddy waters who's V and V, or not. I can't see why you'd lose accreditation because if your V is different from the chiropractors' V, you know what I mean? [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

GILBERT WILLETT: That's the conflicting thing. I agree, if it is different, which I believe it is and we believe it is. We believe we don't go beyond the normal physiologic range. We do it to restore joint motion only on joints that have limited mobility. That's what we're trying to do and that's what we teach and that's how we practice it. [LB710]

SENATOR WALLMAN: And do you do that with x-rays or something when the patient comes in from a doctor, or how do you...? [LB710]

GILBERT WILLETT: Well, actually, in the education program we teach differential screening and we have pathology courses, and so on, so it's very clear when you do an examination of a patient, number one, you're looking for limited joint mobility. But there are what we call red and yellow flags which would make this patient inappropriate for performing any type of Grade III, IV, or V techniques which work on a joint that even if it's limited that might have enough pressure to cause harm. For example, somebody with osteoporosis we are not going to perform these techniques on. Now if we don't know that from a medical diagnosis, we'll call the referral source and talk to them and say, do we need to have them go back in? We don't want to do this. Can you investigate this further or get a verification that, yes, they do have osteoporosis. [LB710]

SENATOR WALLMAN: Thank you, Doctor. [LB710]

SENATOR GAY: Senator Campbell. [LB710]

SENATOR CAMPBELL: Dr. Willett, real quickly, how many hours per year does a physical therapist have to have to continue their license and their continuing education? [LB710]

GILBERT WILLETT: Well, from what I understand, it's 20 hours in Nebraska per...is it every two years or one year? I can't remember. (inaudible) just spoke about it. [LB710]

SENATOR CAMPBELL: And, generally, who offers those classes? [LB710]

GILBERT WILLETT: Well, you know, our state association puts on those classes, and then continuing ed programs will come into the state from a variety of places. Oftentimes they're offered through hospital systems, like in Omaha, Alegent or Methodist, and so on, so there's a variety of ways that that can be offered. [LB710]

SENATOR CAMPBELL: Thank you. [LB710]

SENATOR GAY: Senator Gloor. [LB710]

SENATOR GLOOR: Thank you, Chairman Gay. We'll go back to YouTube. I should

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

have asked the follow-up question. I'm not trained as a juris doctorate so it takes me a while to catch on to these questionings. Did you recognize what was being done on YouTube by the chiropractor as what you teach? [LB710]

GILBERT WILLETT: There are some similar aspects to the setup. And there's only so many ways you can move joints or stretch them or mobilize them, so the positioning can be similar for different techniques. There is also a variety of ways to get at this same movement. However, what's different is the force involved and moving, whether you're working on a joint that has limited mobility or...and this is where...I'm not educated as a chiropractor, so...but we only teach to perform these techniques on joints with hypo- or limited mobility. And we don't want to take them beyond normal mobility because we're afraid, and trained very carefully, that if you do that, that's going to cause damage to the ligaments and surrounding joint structures. That's absolutely what we do not want to do. [LB710]

SENATOR GLOOR: I think you're saying no (laughter). I think you don't recognize that exactly as what you (inaudible). [LB710]

GILBERT WILLETT: The positioning I recognize, but the force, that's beyond what we do. [LB710]

SENATOR GLOOR: Okay. Thank you. That does help. Thank you. [LB710]

GILBERT WILLETT: Sorry. [LB710]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB710]

GILBERT WILLETT: Thank you for the opportunity. [LB710]

SENATOR GAY: Other opponents? [LB710]

HEATHER JENNY: (Exhibit 14) Thank you, Senators. My name is Heather Jenny and I have been a practicing physical...my paper. [LB710]

SENATOR GAY: Testifier sheet. [LB710]

HEATHER JENNY: Oh. I thought I just filled that out over there. Excuse me. [LB710]

SENATOR GAY: Heather, just spell it out and then you can fill that out. [LB710]

HEATHER JENNY: J-e-n-n-y is my last name. First name is H-e-a-t-h-e-r. Thank you. I have been a practicing physical therapist in Nebraska for 20 years. I graduated from the Medical Center. I'm here actually representing the Methodist Health System, as well as

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

myself as a private practitioner. I'm here representing the Health System because we do believe that passage of LB710 would, in fact, impact the ability of the Methodist Health System to try and maintain the medical home that we've been able to create there. One of the things that's very nice about working at Methodist is that the physicians and I work very closely together. In fact, one of the reasons why I was late coming to the committee today was that one of my doctors had come up, had a patient that was 34 weeks pregnant, was downstairs, couldn't walk because she was in so much pain; asked me to be able to come down to assess the patient, make my physical therapy diagnosis, and after that time I was able to treat her. That treatment did include manual therapy techniques, and during which one of them, a joint did make a sound. I can tell you that it is with trepidation that I actually say that in front of the committee because of the lawsuits that have been already placed against physical therapists in the state. I would tell you that if this law passes, there's going to be a change in how the physicians are actually going to be able to refer their patients. This particular patient that I saw today that couldn't walk, 34 weeks pregnant, would have had to leave that physician's office, would have had to go be referred to a chiropractor for the same technique that I applied in the clinic. And the patient walked out, during that period of time. I also believe that if we look at the financial incentives for this bill to be able to look at Medicaid statutes may, in fact...or Medicaid regulations may, in fact, have to be changed. And one of the chiropractors did mention that, that trying to look at who's going to be able to treat the patients that are on Medicaid in the nursing homes that require mobilization of their joints. Because physical therapists are then going to be in fear if they hear...and the words actually talk about an inaudible cavitation. How do you know whether that happened or didn't happen? Who's going to be able to decide that? Am I going to have to practice in fear, in Nebraska, after 20 years, because of the techniques that I am providing? I ask you really not to be able to do that. I do want you to also know, just historically, I was the physical therapist that sat in Health and Human Services and was told that we didn't have to go through a 407 process. I was the physical therapist that asked the Attorney General's Office for all the documentation that was related to how he came to the ruling. And the ruling states only if a Grade V mobilization is defined as something that's outside the normal physiological range of motion. Well, I don't do anything outside the normal physiological range of motion because I'm not interested in being able to damage the joints of the patients that I see. That's not how I practice. And yet, this bill would look at being able to limit my practice that I've been doing, again for the last 20 years of my life. I understand the safety concerns, but I would still be able to put forth to the committee that there is not a documented safety concern by physical therapists performing these techniques in the lifetime of physical therapy in Nebraska. So to be able to come forward now and to be able to say that this is the reason that we're putting this forward, when really again, we'd have to look at, again, breaking up a medical family, forcing our physicians to be able to refer to practitioners that they don't normally work with, they don't normally work within the health system, because of this bill. Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Ms. Jenny, do you feel that the Grade V, as far as the physical therapist is concerned, even if you have the normal joint manipulation and there is a pop, that would be considered a Grade V? Or should that be a Grade IV or...? [LB710]

HEATHER JENNY: Um-hum. I would consider that that's what I did today before I came here. Yes. [LB710]

SENATOR STUTHMAN: Yes, but...and you feel that that is part of the scope of practice of a physical therapist? [LB710]

HEATHER JENNY: Indeed, because I just performed it. [LB710]

SENATOR STUTHMAN: And the... [LB710]

HEATHER JENNY: I certainly would never do anything that I thought was outside of the scope of my practice and then come to Lincoln and state that I did it. (Laughter) [LB710]

SENATOR STUTHMAN: The situation that troubles me is, you know, what one feels is a Grade V and the other one feels is a Grade V...you know, one passed the normal motion; the other one maybe would have been with the normal motion and it still popped, like with your patient? Or did you think you went... [LB710]

HEATHER JENNY: I would submit that the Nebraska Medical Association has also put forward a piece of paper that says that they've reviewed all of the scientific literature related to that, that says that joints...mobilization of the joints in the scientific literature, that is by physicians and by physical therapists in university settings that's utilized, happens within the physiological range of motion. And that anything that happens beyond normal physiological range of motion, is a subluxation or a dislocation, is damaging to the joint. The joint sustains damage. [LB710]

SENATOR STUTHMAN: So the joint could pop with normal movement. [LB710]

HEATHER JENNY: Sure. I could pop my hip up here right now if you wanted me to. (Laughter) I can, truly. [LB710]

SENATOR STUTHMAN: Okay. Thank you. [LB710]

SENATOR GAY: You had a question, Kathy. [LB710]

SENATOR CAMPBELL: I think we'll pass on that. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

HEATHER JENNY: All right. [LB710]

SENATOR GAY: Any other questions? [LB710]

SENATOR CAMPBELL: Oh, I do have a question. [LB710]

SENATOR GAY: Senator Campbell. [LB710]

SENATOR CAMPBELL: Oh, thank you, Senator Gay. Ms. Jenny, I noticed in the letter that you gave to the committee, that you were the president of the Nebraska chapter. [LB710]

HEATHER JENNY: Yes. [LB710]

SENATOR CAMPBELL: I'm trying to get at it, several of the questions in terms of the training, this training, the weekend. We hear about the weekend training. Are you familiar with any of that? I mean, is the weekend training being billed differently than what you might bill it as? [LB710]

HEATHER JENNY: Um-hum. I guess with that in mind, I would actually say I'm probably one of the perfect people to be able to answer your question because I graduated 20 years ago from the Medical Center. We're trained in moving all kinds of joints all of the time. I've gone to multiple continuing education programs that look at being able to expand my scope of practice. Right now, I specialize in women's health physical therapy, and pelvic floor physical therapy which is a small niche of physical therapy. Having said that, I'm board certified in both geriatrics and women's health physical therapy, and I wouldn't have gotten those board certifications without extra training beyond what I'm looking at. But so what I would say to be able to look at the idea of being able to learn techniques, you continually learn and update your techniques as you go through your professional lifetime. And so if you look at what we're able to learn, again, all kinds of people decide to do or not do, in any one clinical setting, what their professional judgment tells them they should or shouldn't do. That's true of all health professions and that's why we have a board. That's why Health and Human Services exists, is that if a patient is harmed...if a person in Nebraska is harmed because of something that a healthcare provider is doing that's erroneous or that they knew they shouldn't have been doing or they shouldn't have been doing because they didn't have enough training, that's exactly what the board is supposed to be doing. And, in fact, the board has never had a complaint that's come forward for that by a physical therapist. So while I can understand the concern piece of it, I would tell you again, physical therapists are trained in being able to move the joints throughout the physiological range of motion. We continue to hone our skills our entire professional lifetime, and that's to the patient's benefit. [LB710]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR CAMPBELL: Okay. Thank you. [LB710]

SENATOR GAY: Any other questions? I won't let the fact that Heather and I graduated from high school influence me in any way. (Laughter) Just for public disclosure. Thank you very much. [LB710]

HEATHER JENNY: Yes, true. Thank you. [LB710]

SENATOR GAY: Any other opponents? [LB710]

JOEL MAKOVICKA: (Exhibit 15) Good afternoon. My name is Joel Makovicka, J-o-e-l M-a-k-o-v-i-c-k-a. I'm a physical therapist licensed in the state of Nebraska. I am currently the president and owner of Makovicka Sylliaasen Physical Therapy PC, as well as Makovicka Harms Group PC, which owns and operates Makovicka Physical Therapy. I am here to testify in opposition to LB710. My testimony is provided today just from a viewpoint of a small business owner. I am originally...just a little background on me. I'm originally from Brainard, Nebraska. I attended the University of Nebraska here in Lincoln. After a successful football experience here in Lincoln, I went on to play football in the NFL for several years. I retired from the NFL in 2003, at which time I pursued a coaching career at the University of Virginia in Charlottesville. In 2004, I realized my true calling and passion was not in football; it was actually in physical therapy. I followed in my father's footsteps who has been a licensed physical therapist and practicing physical therapy here in Nebraska for over 40 years, so I returned to Nebraska to fulfill this goal. Since my return to Nebraska, I earned a doctor of physical therapy degree from Creighton University and I focused my energy on something very exciting to me, which is developing clinics in urban and underserved rural areas in central and eastern Nebraska. My goal is to combine my professional sports experience, together with my clinical and business background, to develop programs, to develop clinics and clinicians that are at the top of their game for the residents of the great state of Nebraska. In order to develop these clinics and clinicians, we must be able to expand on and not limit our techniques we have obtained through a doctorate level education. It was and still is my intent to be a successful businessman right here in Nebraska. If this bill passes, it will significantly impact my ability to meet that goal. Currently, up to 10-15 percent of my company's physical therapy care involves manual therapy or mobilization. If this bill were to pass, this not only negatively affects me or my success, but also the success of my employees, their families, the communities my clinics are located in, but, most importantly, the patients and clients that we work with on a daily basis. It is essential that we provide excellent patient care. In order to do this, we as physical therapists cannot be bound by the restrictions set forth in this bill. I did not return to Nebraska to have the skills of my employees, that they use daily and that are an integral part of physical therapy and their education and practice, be taken away. So please don't. I want to thank you for your time this afternoon and I hope that I can continue to dedicate

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

my career and expertise to building clinics and practices here in all areas of Nebraska. So thank you, and if you have any questions. [LB710]

SENATOR GAY: Thank you. Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. Thanks, Joel, for coming and testifying. [LB710]

JOEL MAKOVICKA: Absolutely. [LB710]

SENATOR STUTHMAN: In your testimony, you stated that it will...if this bill passes, it will affect your involvement of the manual therapy and mobilization. [LB710]

JOHN MAKOVICKA: Correct. [LB710]

SENATOR STUTHMAN: But if it just involves that one part of the manipulation, will that really affect your business that much? [LB710]

JOEL MAKOVICKA: Well, 10-15 percent, like I said...and the numbers is...that's what our therapists are producing as far as manual therapy goes. I can speak from a business owner, that, you know, 10-15 percent, as a business owner, it affects profit margin. And, you know, I got into this business to provide jobs in Nebraska, and that would affect that. You know, I would...you know, if...it might have to allow me to let go some employees just because if we cannot continue to do this. So I got into it to provide jobs here in Nebraska. [LB710]

SENATOR STUTHMAN: So, in other words, 10-15 percent of your business is that... [LB710]

JOEL MAKOVICKA: Business. Correct. [LB710]

SENATOR STUTHMAN: ...V manipulation. [LB710]

JOEL MAKOVICKA: Well, 10-15 percent is manual therapy as well as mobilization. [LB710]

SENATOR STUTHMAN: Mobilization, so. [LB710]

JOEL MAKOVICKA: Yeah. [LB710]

SENATOR STUTHMAN: Okay. Thank you. [LB710]

JOEL MAKOVICKA: Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB710]

JOEL MAKOVICKA: Thank you. [LB710]

SENATOR GAY: Any other opponents who would like to speak? How many more opponents do we have that are going to be speaking? It looks like you're the last...you're the last one, it looks like. And then is there anybody neutral at all? Then no neutral. [LB710]

A. JOSEPH THRELKELD: Good afternoon. My name is Dr. Joe Threlkeld. I'm a physical therapist for 33 years. I was trained at the University of Kentucky in Lexington, Kentucky. I've been a Ph.D. anatomist for 25 years and have taught in physical therapy programs since that time. I was trained in mobilization, all grades, from 1974-1976. So the concept that this is something new on the planet is completely erroneous. I have been practicing and teaching kinesiology, anatomy, and physical therapy techniques for the past 25 years. We move joints. Physical therapists move joints. This is a variation of a joint movement. There is nothing magic about a Grade V versus a Grade IV. It is what the patient needs at that time to help restore normal range of motion. I'm not sure how many definitions of normal we need to discuss. How much normal do you need to have normal range of motion? Normal physiologic range of motion is the motion produced by normal physiological loads, and that's how we as physical therapists are trained and educated. The language in the current statute was taken from the Pennsylvania physical therapy statute which was negotiated between the physical therapists and chiropractic group, as allowing both to do what they did best, which includes Grade V mobilization for physical therapists in the state of Pennsylvania. As relative to safety, I would like to address that the largest study and safety concern in physical therapy or any Grade V technique is the chance induction of a stroke or some form of a thrombosis to cause low blood flow to the cervical spine and to the head. So the person would suffer a stroke as a result of some form of motion of the upper cervical spine. The largest study done was actually published in 1999 in the physical therapy journal, the official journal of our national association. It was written and compiled by a physical therapist. It reviewed 116 articles, comprising 177 cases over 72 years, 1925-1997. Of those cases, those that were attributable to specific professions, 60 percent of the strokes were attributable to chiropractic manipulation; less than 2 percent to physical therapists. Physical therapists practice in this area. We practice safely and cautiously in this area. I want to speak against LB710, as it would restrict my historical practice and would restrict my ability to teach my students the practice of mobilization across the spectrum and limit my ability to put those students out in competent clinics to be able to learn the skills safely in Nebraska. I cannot imagine what I would have to do to have someone trained. Perhaps send them to Iowa, perhaps send them to Pennsylvania? Is that what we want for our physical therapy students in the state of Nebraska? My answer to that is no. Thank you. [LB710]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Thank you. Senator Stuthman. [LB710]

SENATOR STUTHMAN: Thank you, Senator Gay. You stated that in Pennsylvania, physical therapists and chiropractors can do...both can do the Grade V manipulations, right? [LB710]

A. JOSEPH THRELKELD: Yes. [LB710]

SENATOR STUTHMAN: Okay. Is there a difference between the education requirements of a chiropractor and a physical therapist? [LB710]

A. JOSEPH THRELKELD: We certainly attend different schools. The physical therapy schools--and there are over 200 in the United States--are all associated with major accredited universities and medical centers. [LB710]

SENATOR STUTHMAN: Is there one has three years, one has five years? Is there any difference there? [LB710]

A. JOSEPH THRELKELD: Each school has a variation in time. Physical therapists in the state of Nebraska have eight semesters, the equivalent of four academic years. Approximately 50 percent of that time is spent in clinical rotations with hands-on supervision. [LB710]

SENATOR STUTHMAN: Are you aware of how much it takes to be a chiropractor? [LB710]

A. JOSEPH THRELKELD: I have read through chiropractic curricula. That's all I can say. [LB710]

SENATOR STUTHMAN: You don't know how many years of education? [LB710]

A. JOSEPH THRELKELD: All I know is secondhand reports. [LB710]

SENATOR STUTHMAN: Okay. Thank you. [LB710]

SENATOR GAY: Actually, Senator Stuthman, we can have the legal counsel check into that. Michelle, if you'd get that for us and distribute it, because I had...I'm interested. Any other questions? I don't see any at this time. Thank you. [LB710]

A. JOSEPH THRELKELD: Thank you. [LB710]

SENATOR GAY: All right. There's no more opponents. No neutral. Senator Dierks, do

you want to close? [LB710]

SENATOR DIERKS: Yes, I would, and I want to thank you for your patience. You've been very kind. Two points I only want to make. One is that the Attorney General's Opinion has come under a little bit of fire, and I take some exception to that because I think his opinion is what we...the opinions of the Attorney General are what we live by, and for them to be casting shadows on that is a little bit degrading, I think, of the position of the Attorney General. The other thing is currently the Physical Therapy Practice Act in Statute 38-2910 says that...it defines mobilization or manual therapy. And it defines it as "a group of techniques comprising a continuum of skilled passive movements to the joints or related soft tissue, or both, throughout the normal physiological...motion." I think in Sections 3 and 4 of the bill, one of the things that is emphasized there that may be a difference between Grade V as the therapists see it and Grade V as the chiropractors see it, is that the chiropractors use what they call a thrust. It's a high velocity thrust that I don't think that the therapists use. So, I mean, I think there's some difference there and the definition probably needs some clarification. I...well, I'll quit with that. [LB710]

SENATOR GAY: (See also Exhibits 29-34, and Exhibit 39) All right. Thank you, Senator Dierks. Are there any questions for Senator Dierks? I don't see any. Thank you very much. We would also like to thank everyone--good testimony on both sides--and coming. And we have two more bills to hear, but we've been here two hours. I want to take about a ten-minute break. So 20 till 4:00 we'll all get back here together and then we'll go into LB803 and LB790. I'm sure some of you probably might stick around for that, too, but. (Break) We'll get started with LB803. Senator Nordquist is here to introduce LB803. Welcome. And any time you're ready. [LB710]

SENATOR NORDQUIST: Thank you, Chairman Gay, members of the Health and Human Services Committee. My name is Jeremy Nordquist. I represent District 7 which covers downtown and south Omaha in the Legislature. I come with a solution to your problems today. (Laughter) I introduced LB803 to provide a solution to the ongoing issues related to the professions you just heard about between the chiropractors and physical therapy. LB803 removes licensed physical therapists from the Chiropractic Practice Act. Currently, both osteopathic physicians and licensed physicians and surgeons are exempt. By removing physical therapists, any conflicts the chiropractors have with physical therapists would be remedied by clarifying the distinction between the two professions. Many health professionals have overlap in the type of healthcare they are trained to do, and it makes sense to recognize the qualifications and practice of physical therapists and chiropractors--that they're different with separate accreditation standards. I believe it's important that the public has a choice, though, for both chiropractic care and physical therapy care. Really it comes down to the two different philosophies we're talking about here. Physical therapists, as you heard, are trained at our university medical centers around the country, and chiropractic care, chiropractors,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

are trained at their individual schools. Physical therapists tend to be more in the traditional practice of medicine, and chiropractic care, according to HHS, the U.S. Department of HHS describes chiropractic care as an alternative form of medicine. So the problem is, how do we get...how do we write legislation that addresses, you know, a manipulation versus a Grade V mobilization, and how do we get that precise enough that both can practice their practices independently without this crossing over and having the practice acts affecting each other. And really, I think, taking the physical therapists out, having them limited and restricted by their own so that when, if the chiropractors think their scope is too broad, then they come with legislation affecting just the Physical Therapy Practice Act; not limiting the physical therapists, what they can do, by changes to the Chiropractic Practice Act. And there was some talk about the Attorney General's Opinion. I'm sure you all will read it, which he states that he looked at evidence and it's Grade V mobilizations are outside the...done outside the normal physiological range of motion. Well, this weekend I...I was a graduate of Creighton. I still have access to their on-line research, and within a couple hours punched in a couple key words, found numerous scholarly, scientific articles that would contradict that Attorney General's Opinion. And that includes from the Department of Biomedical Engineering at Stonybrook University, published in The Spine Journal, says that spinal manipulations do not exceed those that occur...just do not exceed the range that occur during normal physiological range of motion. An article published in the Journal of Manipulative and Physiological Therapeutics, written by chiropractors, says that spinal manipulations were within the range that occurred during normal physiological motion. I'd be happy to provide these to the committee. The Archives of Family Medicine, written by an osteopathic physician, says that high velocity, low-amplitude thrusts, that those movements are within the normal physiological range of motion. The Journal of Bone and Joint Surgery, written by several physicians, medical physicians, says the same thing. So there's plenty of scientific evidence. And again, this was within a few hours of punching in a couple key words on a university's site that we found contradictory evidence to the Attorney General's Opinions, and sometimes these bills are difficult to understand. I mean, we're talking about some very precise language, practices that some of us aren't as familiar with. And after the previous bill was introduced on the floor the other day, I spoke to Senator Dierks and one of the cosponsors, and they had the impression that that bill didn't affect physical therapists. Well, it's because it affected the Chiropractic Act. This bill again makes the distinction. I think that's the easiest way for us to go forward as legislators. Thank you, Mr. Chairman. [LB803]

SENATOR GAY: All right. Thank you, Senator Nordquist. Are there any questions from the committee for Senator Nordquist at this time? [LB803]

SENATOR NORDQUIST: Well, I'll be around for closing if there are. [LB803]

SENATOR GAY: Okay. Senator Nordquist, I've got a...we just sat through two and half hours of public hearings on this. I kind of want to keep this then to the merits of your

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

bill,... [LB803]

SENATOR NORDQUIST: Yeah, absolutely, yeah. [LB803]

SENATOR GAY: ...why would we remove the physical therapists from the Chiropractic... [LB803]

SENATOR NORDQUIST: Sure. [LB803]

SENATOR GAY: Just that. And I kind of don't want to go.....just that. [LB803]

SENATOR NORDQUIST: Yeah. We had a light day in Appropriations, so... [LB803]

SENATOR GAY: Yeah. And I'm saying this for every... [LB803]

SENATOR NORDQUIST: ...so I got to listen to all that too. So I was listening. [LB803]

SENATOR GAY: Yeah, for everyone's benefit. The merits of this bill, to remove or to keep in is what I want to keep the conversation to, best we can. And I know this is a broad subject, but if we can kind of do that. So the proponents will be to remove them, and the opponents will be, leave it the way it is and here's why. [LB803]

SENATOR NORDQUIST: I appreciate that. Thank you. [LB803]

SENATOR GAY: Okay. All right, thank you. Okay, so we're going to go with proponents who would like to speak. And how many want to speak on this particular bill? Okay. About three or four on proponents. Five or six, I must have missed some there. And then how many opponents are going to be speaking? So we're kind of going to go through this a little bit again. Please try not to be repetitive, and we'll get started. [LB803]

JAMES CAVANAUGH: (Exhibit 16) Senator Gay, members of the Health and Human Services. My name is James Cavanaugh. I'm an attorney and registered lobbyist for Creighton University, representing Creighton here today in support of LB803. I passed out and you should be receiving a letter from Dr. Chris Bradberry, who's the dean of our School of Pharmacy and Health Professions, outlining the basic reasons why we feel that LB803 is legislation that we could support. And essentially it makes sense to regulate the physical therapists under the Physical Therapist Act, the same way that it makes sense to regulate the lawyers under our laws in the bar association rules relative to lawyers and not under accounting rules. There are rules for CPAs that are different. There are rules for chiropractors that are different, and I think that segregating these professions into their own regulatory scheme will make for better clarity and for probably better regulation. We think that the bill, LB803, would not endanger our accreditation

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

and we also think that it would protect the physical therapy work force and the economic contribution that they make to the state of Nebraska. I'd be happy to answer any questions you might have. [LB803]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. [LB803]

KIRK PECK: (Exhibit 17) Good afternoon, Senator Gay, and members of the Health and Human Services Committee. I'm here again, (laugh) this time speaking in support on LB803. Again, my name is Kirk Peck, the last name P-e-c-k. I'm again a practicing physical therapist here in the state of Nebraska, a professor in the Department of Physical Therapy at Creighton University, but I'm here again on behalf of the Nebraska Physical Therapy Association as current chapter president of that association. As I said, I'm in support of LB803. I think it's a very clear and simple solution to remedy an ongoing problem, and clearly a lot of you have already heard some of the confusion in the terminology between two professions here today--chiropractic and physical therapy--and where some of those concerns come from, and that confusion in terminology, and I think LB803 would be a very simple fix to it. It would just exclude physical therapists from the Chiropractic Practice Act. Certainly, our association, and myself personally as a practicing physical therapist, think it would be a nice clear-cut way to separate distinctly and recognize legislatively that the practice of chiropractic is different than the practice of physical therapy. Our philosophies are different. Our educational systems and how we are trained is very different in how we go about that. And we think the public deserves choice. We don't want to see that choice limited. We would like to continue to work with our continuum of care and all the skills that we are as physical therapists trained to do in LB803 would actually do that very simply without changing anybody's scope of practice because it doesn't dive in to our scope of practice or chiropractic's scope of practice. It's a simple exclusion. So I'd really just simply ask this committee to recognize the fact that we are very distinctly different professions. Embrace the fact that Nebraska has both professions, really, in Nebraska. We do believe the public should have a choice for either chiropractic and physical therapy. I think that's a great thing that we should have that type of choice. So I also want to thank you for your time and I'm open to any questions. [LB803]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. [LB803]

KIRK PECK: Um-hum. Thank you. [LB803]

GILBERT WILLETT: My name is Gilbert Willett, G-i-l-b-e-r-t W-i-l-l-e-t-t. Again, as I spoke to you before, I'm an associate professor and interim director of the University of Nebraska Medical Center PT ed program. I'm here representing the University of Nebraska and I would like to say that the University of Nebraska is in full support of LB803. As I said before, it would prevent continued legislative efforts such as LB710 from negatively affecting Nebraska's physical therapy education programs, and for thus



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

further limiting resident access to healthcare provision. I would like to make one interesting observation I've made. I teach in the medical curriculum for the University of Nebraska Medical Center for medical students. I teach anatomy to them, as well as PT and PA students, and I'm very familiar with their curriculum. They are exempt from the Chiropractic Practice Act, medical doctors are. In the University of Nebraska, they are not trained in any form of joint manipulation in their education; whereas, physical therapists are. So I just make that observation. I appreciate you having that...giving me the opportunity to give you this information and I would be happy to answer any questions. [LB803]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB803]

GILBERT WILLETT: Thank you. [LB803]

ROBERT SANDSTROM: Good afternoon, Senator Gay, members of the committee. My name is Dr. Robert Sandstrom, R-o-b-e-r-t S-a-n-d-s-t-r-o-m. I'm the physical therapist member of the Nebraska State Board of Health and I am here today to support, as an individual member, LB803. And I'm not representing the full board. The board has no one position on this and I'm not representing Creighton University, of which I'm a faculty member. Creighton University has their own representation and I will tell you I've not shared my testimony with the Nebraska Physical Therapy Association. I've not always agreed with the Nebraska Physical Therapy Association in the last year. Okay, I'll tell you that, as a board member. I have been clear with them. I don't always agree with how things have gone. But I think LB803 is a wonderful opportunity and I just think the current situation needs to change. I have served on the Nebraska State Board of Health for ten years. I am done in August. I was here actually before this committee a year ago with the dental assistant issue and representing the board and testifying, the actual board position. Because I'm just (inaudible) myself, an individual member, today. And so I have sat through numerous 407s and I think we just had one the last committee, and I know what's it like. Anyway, I just think that while LB803 inserts physical therapist into the exceptions to language in the Chiropractic Practice Act, it has no effect on the ability of chiropractors to perform their work. LB803 has no effect that I can see on the powers or the ability of the Department of Health and Human Services to regulate the practice of physical therapists and protect the public through existing physical therapy statute, the regulations promulgated by the department, and the Uniform Credentialing Act. However, I believe my experience that LB803 will now implement the decision of the 2006 Legislature and the Governor at that time, so the statutory change that was expressed at that time and the resulting regulations that were developed, reviewed, and approved through regular process in the Department of Health and Human Services can now be fully implemented. I believe this is a wonderful opportunity to move the discussion from a turf issue to a public protection issue. We need to have some more further discussion. There were some great questions from the committee before today

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

about specifics. I think those are great questions for the regulators, for Dr. Schaefer. There needs to be further, you know, questioning about this issue. I think that's probably a pretty fair...I think...just to speak, I'm not speaking for Dr. Schaefer, obviously. She has her own position on issues but having been in the department for ten years I would say that they have spent an enormous amount of time and effort on this issue trying to mediate and get this thing solved. And, boy, they've got more important problems. This is a very small issue facing the Department of Health and Human Services, I know, in her area. And she has worked hard to mediate this issue. It has not worked. I think this is a wonderful opportunity to move it to a new position. It doesn't really affect anything. I think it will (inaudible) before the work done, the department can do that and work with the boards and get the work done that needs to be done if there's something...if that's the decision of the department. The licenses, the statute says that licenses are the jurisdiction of the department. (Inaudible) professions, (inaudible) the professional board. That's the way it is in Nebraska. The department has a lot of discretion I think to deal with this issue, and I do have confidence in the Department of Health and Human Services and in the staff there. I have many years of experience and no questions, okay? Thank you. [LB803]

SENATOR GAY: Thank you. Any questions? Senator Campbell. [LB803]

SENATOR CAMPBELL: Thank you, Senator Gay. Doctor, in the time that you've served on the State Board of Health at any point have there been any complaints about inappropriate weekend training? [LB803]

ROBERT SANDSTROM: No. No. Well, first of all, the State Board of Health does not deal with disciplinary complaints. [LB803]

SENATOR CAMPBELL: Okay. [LB803]

ROBERT SANDSTROM: Okay, we deal with policy issues. We are advisory to the department. Our role is...first of all, we appoint members and Dr. Wills is on the board with me. We have had many discussions about this issue, that basically we appoint members to the professional boards who are advisory to the department, so the professional board members. We have review and approval authority and regulation. So I will tell you, perhaps part of the disagreement here today is the fact I had a vote on the physical therapy regulations as they were coming through, and they were, at times, controversial. But we do have approval authority on that. We also have a little bit of input probably talking to some of you who are going to come over on Monday for the lunch or your staff members to try to influence the Legislature with some needs we think are important from our perspective as a board. And finally, we do 407 reviews for you, in that we're part of the process whereby when someone goes through a scope of practice change, that there's an administrative process administered by the department with clear statutory criteria that we are to apply, but when the state is to regulate a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

healthcare practice. And that...I think we just completed the optometrist-ophthalmology 407 just this fall. I know there was...I think...I don't know what's happened with that, but there was kind of an optometry proposal and that went through a 407 review and there's wonderful work being done over there, both on the technical committees, the Board of Health review, and Dr. Schaefer does her own review. And those are always available to you and help you to decide these kinds of questions. [LB803]

SENATOR GAY: Thank you. Any follow-up questions? Senator Campbell, go ahead. [LB803]

SENATOR CAMPBELL: Yes. In a situation like that where there would be a complaint, would that go directly to Dr. Schaefer? [LB803]

ROBERT SANDSTROM: Okay, as I understand the complaint process is that there is a screening process. Complaints come into the department. They are reviewed by the investigation staff. I think it's fair to say not all complaints are with merit, but that's an administrative decision by the department. The ones they believe have merit will then go to a professional board. You need to recognize that the Nebraska Attorney General has a role as a representative, as the prosecutor, and will review the complaint with the board and looks at the evidence and whether or not to go forward with an investigation and whether or not to perhaps prosecute a healthcare provider. And that this case, okay, will go forward. And it's an administrative process for healthcare professionals for discipline. And it is adjudicated, it is my understanding, by Dr. Schaefer. The chief medical officer is the one who does that and then appeals that...appeals for that decision can go to district court. So, you know, the Attorney General has a role in this process in reviewing complaints and also making prosecution decisions. And I would assume also probably has to decide...is going to have to defend this state in case the provider, the practitioner, is going to appeal at the district court. So they have, I think, a fairly influential role. But I...our board doesn't sit in on that. That's my understanding of it. [LB803]

SENATOR GAY: Thank you. Senator Pankonin. [LB803]

SENATOR PANKONIN: Thank you, Senator Gay. Doctor, just, you know, we're lay people. [LB803]

ROBERT SANDSTROM: Right. [LB803]

SENATOR PANKONIN: Senator Gloor has had the most experience in the medical community as an administrator. But, you know, we get into these issues and they're tough because we don't know, we don't have the personal experience. We try to do the best we can asking questions, as you've stated. So if we don't...you know, obviously, you're testifying in favor of this bill, but short of that, is there any way that you could see

a solution here? There's been talks that...I mean, to me, we've got these two different levels of this Grade V issue and that's your thing. What would you see as another solution here of happening, or...? [LB803]

ROBERT SANDSTROM: Yeah. You know, I think we have to get to a point to understand there's going to be...it's okay to be different, and it's okay to be different at different understandings. The key issue is, is that what is the risk? So when we do 407s, a 407 review, for example, the Legislature has established clear criteria that we're to gather the evidence and review the evidence and that there has to really be a clear risk to the public before we say, yeah, you need to regulate. That's my understanding when I've done 407 reviews. You know, it's like the Legislature has said we kind of want this to be kind of an open access...you know, more public choice, consumer choice. But when there's a clear evidence of public harm or risk of public harm, then we should...you know, we should regulate. So it's been...if there's a balance there. And that's always the balance for us as we sort of look at regulations, as we look at 407 reviews. I will (inaudible) looked at the physical therapy regulations, I probably have the most to lose if I goof it up, right? I mean, it would be my profession, the one I'm involved with, that would be the most to lose. I'm okay with it. I understand. To me, normal physiological range of motion is not a dislocation or a subluxation. And obviously, when you do a procedure and it results in a dislocation or a subluxation, you did something and that's complained to you, that statute regulation says that that's a problem and that this should be, you know, investigated, and perhaps some discipline taken. I am perfectly fine with that. I have no problem with that. I think the...I'm very comfortable with the current language and with the current regulatory posture with this. And I think, you know, there's been a lot of discussion in the department about this. We had a lot of discussion over two years when the regulations went through it. Dr. Schaefer has approved those regulations independent of the Governor approving them. You know, so I think we've...I thought we had come to an understanding on all this, but apparently not. [LB803]

SENATOR PANKONIN: So my follow-up question is, so then you wouldn't be the...it wouldn't, in your opinion, it wouldn't hurt us if we just left things the way they were? [LB803]

ROBERT SANDSTROM: I think it's...that's probably okay too. Except if we're just going to have this happening every year. You know, if it's just going to be every year...if it's just going to come back and it's going to be another version, you know, that it's going to be round two, chapter four of this, and here it comes, you know, then I think that's...it gets...we're not really making decisions based on the public interest. I mean, the balance in a 407--I think Dr. Wills can speak to this if he wants to--is between monopoly power, turf, you know, and what's the reason for that, and safety, you know. And people should have choice. I think my view has always been that people should have choice unless there is a clear interest that we need to kind of step in and say, no, you can't do

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

that. Otherwise, professions tend to want to form this only I can do it. And physical therapists don't control exercise. Lots of people do exercise. Right? We don't...we have to compete, I would say, and we have to prepare...(inaudible) prepare practitioners to meet the need. And so if physicians are going to send them to a physical therapist, right, that's I think...that's been my view. But I'm done in eight months. (Laughter) So it will be somebody else that you'll have to...you can interview next year. [LB803]

SENATOR GAY: (Laugh) Thank you. Yeah. Thank you, both. I know the other doctors on the board, too, we appreciate it. Any other questions? I don't see any. Thank you. Other proponents. [LB803]

NATALIE HARMS: Hello, Senator Gay, and committee members. My name is Dr. Natalie Harms, N-a-t-a-l-i-e H-a-r-m-s. I am here as a licensed physical therapist from the state of Nebraska who also happens to be a member of the Board of Physical Therapy. I am not here as an official representative of the Board of Physical Therapy. I am speaking in favor of LB803. My simple statement would be that if this were put into place, assuming LB710 passes, it would make my job and my responsibility to the citizens of the state of Nebraska and public protection very clear-cut and very straightforward, and I would be able to pursue support of the statute as it is currently. Thank you. I would be happy to answer any questions. [LB803]

SENATOR GAY: Thank you, Natalie. Any questions from the board? I don't see any. Thank you. [LB803]

NATALIE HARMS: Thank you. [LB803]

A. JOSEPH THRELKELD: Hello again. My name is Dr. Joe Threlkeld. That's T-h-r-e-l-k-e-l-d. I'm a professor of physical therapy at Creighton University. I'm also a Ph.D. anatomist and a practicing physical therapist for 33 years. On May 30 of the year of the mediation, I provided testimony to both a group from the Chiropractic Association and board, and the Physical Therapy Association and board, relative to my long history and practice of Grade V mobilization and all forms of manual intervention. On August 15, I received a notice of complaint against my license. The complaint read: testimony admitting to unlicensed practice of the profession of chiropractic and aiding and abetting in same unlicensed practice by teaching outside of Nebraska scope of practice. I was accused of practicing chiropractic for my work as a physical therapist. This had tremendous impact not only on my ability to move forward and teach my students; it cost my university literally thousands of dollars and hundreds of man-hours of time to help me assemble the documents to provide the fact that this accusation, this complaint against my license, which had never in 33 years had a single complaint, was groundless and unfounded. This was sent forward to the Department of Investigations. In November, they agreed. That is a long period of time to hold a sword of Damocles over someone's head, to go home and tell your wife that, dear, our livelihood has been

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

challenged because I practiced as a physical therapist and I stood up for what I believe in. This is an intimidation tactic. LB803 would address that directly. Physical therapy and chiropractic are two distinct professions which share some techniques in common. A technique is like a screwdriver. You can use it for a lot of different things. Physical therapists are well-trained. They do what they do best and we have an excellent record of safety. Thank you. [LB803]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. Any more proponents? We'll hear from opponents. [LB803]

STEVE GRASZ: (Exhibit 18) Chairman Gay and members of the committee, my name is Steve Grasz, S-t-e-v-e G-r-a-s-z, and I'm testifying today in my capacity as legal counsel to the Nebraska Chiropractic Physicians Association. I don't really think this bill can be properly considered without putting it into context, and I know this committee likes to have the context for these things. Clearly, you have to look at the existing statutes in order to put this bill into context. So what...this committee, of course, has heard a lot of testimony earlier today. Mr. Peck read the definition from the Physical Therapy Practice Act to this committee for what they are allowed to do. The only problem is, he only read you half of the statute. He read you the part that said they are allowed to do mobilization without limitation. Well, there's another half to that sentence and it says it has to be within the normal range of physiological motion. There was also some discussion that somehow the Attorney General's Opinion, which if you look at it, goes through this issue very clearly and in a lot of detail, that somehow that is illegitimate, that somehow the system had been scammed. I would suggest to the committee that if anybody has been scammed, perhaps it is the Nebraska Legislature. The reason I say that is that in LB994, in 2006, the physical therapists came before this Legislature and told each one of the senators that they were not expanding their scope of practice. In fact, not only did they promise it, but they put it in the law. It's still there today: Nothing in this act can be construed to expand the scope of practice as it existed prior to July of 2006. Well, what was the statute prior to July of 2006? It allowed physical therapists to engage in passive exercise. So you might ask these people where are they getting their statutory authority to engage in Grade V mobilizations? Clearly, it's not in the statute. Now they cite you to the portion of the statute from 2006 that says they can do mobilizations throughout the normal range of physiological motion, and they define that as having no limits. In fact, they say that if you go beyond that you're dislocating somebody's joints. So they've redefined the terms. I can tell you that the...certainly that bill would have never passed this Legislature had you been told that they were enacting some change into the statute which allowed them to engage in mobilization, clear up to the point where they dislocate someone's arm, when their existing statutes said they could do passive exercise. And they promised you, in writing, that they weren't changing their scope of practice. LB803 would exempt physical therapists from the provisions of the Nebraska Chiropractic Practice Act. By doing so, this bill would place physical therapists on the same level as surgeons and medical doctors, who by virtue of their

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

education, training, and scope of practice are exempt from the act and are able to legally perform any procedure within the scope of practice of chiropractic doctors. This bill would result in an unwarranted expansion of the scope of practice of physical therapists without the benefit of the 407 process and without a valid factual basis. It also represents a dramatic departure from current Nebraska law which provides that such exemptions are based on education, training, and scope of practice that have been determined to be sufficient to protect the public health and safety. Surgeons, medical doctors, and osteopathic physicians are all currently exempt from the Chiropractic Practice Act. Not coincidentally, all of those professions have diagnostic authority. Physical therapists do not. In fact, Nebraska Revised Statute 38-2914(2) expressly prohibits physical therapists from making a medical diagnosis. In contrast, Nebraska Revised Statute 38-805--and this is something that Senator Stuthman asked about earlier--under that statute, chiropractors have authority to use diagnostic procedures, including x-rays and physical and clinical examinations. And you've heard some of the reasons why those are necessary. Nebraska law prohibits chiropractors from assigning treatments or tasks requiring independent chiropractic judgment to persons not holding a license to practice medicine, chiropractic medicine, or osteopathic medicine. In fact, a chiropractor's license can be revoked for allowing an untrained or unqualified person to perform services requiring the expertise of a doctor. This includes physical therapists. So exempting persons from the act who are statutorily prohibited from performing certain procedures within the scope of practice of chiropractors would defy logic and could impact public safety. In fact, a chiropractor could be disciplined and have their license revoked for doing what the physical therapists are asking you to allow them to do. You know, to just finish up very briefly here: In short, this bill is such an obvious power grab that it appears designed to stake out an extreme position, perhaps with an eye toward asking for the moon and hoping to get some kind of concession or expansion of their scope of practice. This bill is bad precedent and bad public policy, both legally and medically, and it should not be advanced by this committee. I'd be happy to answer any questions. [LB803]

SENATOR GAY: Any questions? [LB803]

STEVE GRASZ: I do have a copy of my testimony for the committee. [LB803]

SENATOR GAY: Give it to the page. I don't see any questions. Thank you. [LB803]

DAVID KASSMEIER: (Exhibit 19) Good afternoon, Senators. My name is Dr. David Kassmeier, D-a-v-i-d K-a-s-s-m-e-i-e-r. I'm a chiropractic physician here in the state of Nebraska with offices in Norfolk and West Point, Nebraska. I sit on the board of the Nebraska Chiropractic Physicians Association and I am also the second vice president for the Congress of Chiropractic State Associations. I am opposed to LB803 because of the standards that we have which I'm about to go through. The chiropractic profession has standards in which the teaching institutions must adhere to. The standards are set

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

by the Council on Chiropractic Education. The standards are the minimum educational requirements in which an institution must follow to graduate a doctor of chiropractic. In a minute I'll pass out the entire standards that we have right here. It's about 66 pages long. On page 24, which is marked in the handout, you will receive...it starts a long list of the core clinical training curriculum for the students of chiropractic. As you can see, the students must be able to show competence in the following areas: taking a history; physical and clinical examinations; laboratory interpretations, including urinalysis, hematology, other clinical chemistries and procedures in hematology, immunology, and other bodily fluids. They also must be competent in imaging and taking x-rays, I have here and developing a differential diagnosis, spinal manipulation, and evaluating and managing patient cases. On page 29 of the document that you will receive, you will further see more detailed lists of the above stated areas, such as neuromusculoskeletal examinations, psychosocial assessments, diagnostic studies, emergency care, recordkeeping, doctor-patient relationships, professional issues, wellness, ethics and standards. So you can see that we have a very long list of credentials...standards that the college must go through. So upon graduating from chiropractic school, the new doctor must pass all four parts, also, of the national boards and physiotherapy to practice here in Nebraska. These tests are written by the National Board of Chiropractic Examiners. The tests include basic sciences, pathology, diagnosis, and treatment. Part V (sic--IV), which is direct one-on-one practical tests where you literally have somebody watching you do an examination, under the gun, tests you on diagnosis imaging and interpretation, setting up on a Grade V...so you basically...they tell you, you have this condition. And they want you to say, okay, how are you going to adjust that? And so you have to literally set up on there--you don't put an impulse into it that would push you into the Grade V. You know, lock out the joint...(inaudible) to your joint blade, and then that's the defining thing we've all been talking about. You put the impulse in. That's where the Grade V is, and that's literally watched for everyone. Okay...physical diagnosis, lab diagnosis, and case management. So as you can see, the chiropractic teaching institutions and the chiropractic profession have a quite didactic list of areas they are responsible for when they are educating and testing the chiropractic students. This far outweighs any weekend seminar that could be taken or a quick "here's how you do this" in some, you know, therapy class or manual therapy or whatever you're going to call it class. You know, it's real easy; just do this. The Council on Chiropractic Education, the National Board of Chiropractic Examiners, and the chiropractic profession itself take it quite seriously to educate and test their doctors to get good results and, most importantly, to protect the public. So I'll have these copies handed out to you. If you have any questions, I'm free to answer them. [LB803]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB803]

DAVID KASSMEIER: Okay. I'll have these handed out. [LB803]



SENATOR GAY: Actually just...you know, instead of handing those out, let's just...we'll get them when we leave. We will get them, and otherwise... [LB803]

MICHAEL CHRISTENSEN: (Exhibit 20) Good afternoon, Senators. My name is Dr. Michael Christensen. I'm a practicing chiropractor from the city of Bridgeport, Nebraska, and I'm currently president of the Nebraska Chiropractic Physicians Association. I am here today to testify in opposition of LB803. The Chiropractic Practice Act was adopted for the singular reason of protecting the citizens of the state of Nebraska. It sets forth requirements necessary to practice chiropractic and the definitions utilized for licensure. In Section 38-805 of the chiropractic statute, reference is made to, "The diagnosis and analysis of the living human body for the purpose of detecting ailments, disorders, and disease by the use of diagnostic x-ray, physical examination, and routine procedures including urinalysis." This single line states very clearly that to practice chiropractic, a provider must be able to diagnose the condition for which the patient presents. In Section 38-806 of the same statute, a list of providers exempted from the Chiropractic Act are noted, specifically medical doctors and osteopathic physicians. This exception was clearly meant to seek not to interfere with the practice of individuals who are qualified to render a diagnosis to a presenting patient. The diagnosis is absolutely key in this statute because an individual may be trained in the application of manipulative techniques but not qualified or licensed to deem the diagnosis necessary to perform them. Physical therapy is a very specialized profession and physical therapists are very well trained in the application of certain manual techniques. They are not, however, licensed to render a diagnosis which is the absolute requirement of the Chiropractic Practice Act. Not all pain syndromes for which a patient presents to a chiropractor or physical therapist, are, in fact, musculoskeletal. Low back pain, for instance, may be the results of the musculoskeletal problem or some underlying pathology, such as colon cancer or some other type of prostatic cancer. If the proper diagnosis is not rendered in this type of patient, early on, a radically different outcome, delayed onset of treatment, and perhaps morbidity or death may result. It would seem that by allowing LB803 to pass, what is really being said is that physical therapists are on par with medical doctors and osteopathic physicians when it comes to diagnosis and management of a patient. It is saying that a review of the training and licensure requirements of the physical therapy profession has been performed and that they are absolutely qualified to render diagnosis and treatment, which, to date, has been excluded from their practice. In fact, as you know, such a review was done by Attorney General Jon Bruning in February of 2009. His opinion attached here for your reference, clearly states that the physical therapy profession is not licensed to provide the chiropractic adjustment, and to become licensed to do so would require an expansion of their scope which would require the application of the 407 process hearing. Asking to be excluded from the Chiropractic Practice Act is openly admitting that a profession has no regard or desire to meet the standard of training set forth by the act. It is also admitting an attempt to bypass the legal requirement of the 407 process and to expand the practice scope of physical therapy. This bill would allow the physical therapy profession to bypass the legal

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

requirements to diagnose. It would bypass the 407 process. And in doing so, LB803 jeopardizes the health of the citizenry of the state of Nebraska by allowing nonqualified practitioners to render a diagnosis and provide treatment based on such a diagnosis. It is highly unlikely that the state of Nebraska would allow a surgeon to operate on a body part which he or she is not licensed to diagnose. LB803 clearly sets the precedent that a healthcare provider will be allowed to render treatment to a patient who he or she is not licensed to diagnose. I therefore respectfully request that the committee stop the advancement of this bill in the name of the safety of the citizens of our state. Thank you. I would be happy to entertain any questions if you have them. [LB803]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB803]

MICHAEL CHRISTENSEN: Thank you, Senators. [LB803]

G.H. HANSEN: (Exhibit 23) Senator Gay, members of the committee, thank you so much for allowing me to have the opportunity to speak with you this afternoon. My name is Dr. G.H. Hansen. I've been a practicing chiropractor in Grand Island, Nebraska, for approximately 24 years. I'm a professional member of the Board of Chiropractic; however, I am not (sic) presenting personal testimony in the absence of an official position statement or capacity concerning the board. I do oppose LB803. The first issue at hand I would like to discuss is the circumvention of the 407 process concerning the Physical Therapy Practice Act. Under the auspices of clarification, the 407 process was sidestepped. It was understood that this act would not expand the scope of physical therapy, but rather, clarify. That bill clearly provided a substantive and expansive change in the physical therapy scope of practice and language. And you can take a look at these two pieces of legislation, and it's pretty apparent. LB803 would return the manipulation to the physical therapy scope of practice at this point in time, which now I feel strongly, and so does the Attorney General, preclude them from doing. I have attended many meetings and mediation hearings and done countless hours of research in to the training of physical therapy and high velocity adjusting. During those proceedings, the issues of training and diagnostics were brought up to the table for discussion. Basically, the responses were I really didn't receive any concrete answers. How many hours; how many hours are actually dedicated? Is it a threading process? Is this a one-semester training? You know, who teaches it and what are their qualifications? I mean, those things really need to be answered. And I really haven't heard that yet. And I couldn't get the answer...oh, well, why, you know. That should be forthcoming. Since the onset of these meetings, further investigation produced information on weekend seminars. After analyzing the syllabus content and associated objectives of the seminars, it becomes incredibly obvious why this form of education was not offered as a viable PT argument, for the argument of doing high velocity, low-amplitude procedures. And I'm just going to give one example; there will be another one to follow. I know everybody is tired here and I do appreciate your attention with this.

Health and Human Services Committee  
January 21, 2010

---

One example: the NPTA-sponsored spring manipulation seminar, March 2006, in Kearney, Nebraska. The course brochure offers hands-on learning session in selected spine and extremity manipulation with an emphasis on skill acquisition--skill acquisition--and laboratory instructional methods. It goes on further. The classroom sessions will focus on strategies/recommendations for incorporating these techniques into clinical and curriculum instruction. It also goes on to clinical and curriculum instruction, faculty and clinical instructors student ratio issues. It also goes on: recommendations and models sample instructional material and testing materials and professional practice and regulatory issues. It's almost like it's setting up a foundation. That's what it seems to me, in order...and, you know, is it something where this thing has first been legislated and now we'll worry about the education process later to come up and meet those standards of the legislation? The question now becomes, if high velocity manipulation has been a longstanding practice of physical therapy, then why the necessity for skill acquisition in postgraduate education, teaching methods, and incorporation of these techniques into clinical and curriculum institution (sic: instruction)? As I stated earlier, I've been a practicing chiropractor for over 20 years. You know, the thing that really alarms me is the weekend seminars. And I find this very troubling to release practitioners who feel that they have been well educated, really that probably do not know the difference in the art of manipulation via a weekend seminar format. And I think I'm going to end it at that. You guys look tired, you know it? (Laughter) Questions? Comments? [LB803]

SENATOR GAY: Any questions? Senator Gloor, and then we'll come on in. [LB803]

SENATOR GLOOR: Thank you, Chairman Gay. Dr. Hanssen, this summer when this issue got to be a bigger issue, I had a chance to meet with a number of physical therapists in the Grand Island community who both you and I would know. And to a person (a) knew the issue I was talking about, but didn't see it as a procedure that they performed, which I believed them, except the way they responded had me asking further questions since it seemed to be a...their answer to me said they saw this as a subset as opposed to a continuation of what they did and Grade I through V. Do you know, are there...to your knowledge, are there physical therapists who promote themselves to do these Grade V manipulations in the Grand Island community? [LB803]

G.H. HANSSEN: Well, no, not actually, not in the Grand Island community. I have had discussions with these individuals and I'm not going to mention their names right now. I mean, you know, I just don't want to subject them to a peer pressure, but...and a lot of the things and a lot of the suspicions that I have...you know, was actually concerned about, they actually confirmed for me. You know, I had testified at a committee, you know, not too long ago, when the practice act of physical therapy was going to, you know, go on through...anybody that had any concerns or anything like that was to, you know, just basically state their concerns at that time, so. And it wasn't long after that...I mean, I had a discussion with them. They did not have any training in Grade V

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

manipulation. And they're into orthopedic neurological stuff. I know they are, because we have patients who are of...you know, we share patients. We have mutual patients. [LB803]

SENATOR GLOOR: Okay. Thank you. [LB803]

G.H. HANSSEN: Um-hum. [LB803]

SENATOR GAY: Senator Campbell. [LB803]

SENATOR CAMPBELL: Thank you, Senator Gay. Dr. Hanssen, at any point did you complain or anyone put in a complaint with the department? [LB803]

G.H. HANSSEN: No, not me personally. [LB803]

SENATOR CAMPBELL: Okay. But you don't know whether anybody in the state has complained about the seminars? [LB803]

G.H. HANSSEN: Oh, the seminars itself. No, actually I've brought them up several times in different meetings and things like that, and it was kind of like water off the back of a duck. You know, I mean, it just...it just didn't stick. And that was in mediation. Actually this information did not come until later on, okay? So it really...you know, I wish I would have had it sooner; that way, maybe we would have had, you know, a better dialogue and maybe a better understanding of just exactly what the concerns are. So this kind of come later on down the line. [LB803]

SENATOR CAMPBELL: Dr. Hanssen, who provides the weekend seminars? [LB803]

G.H. HANSSEN: Well, basically, that one from Creighton University. Here, let me just take a look here real quick. One was actually sponsored by the Nebraska Physical Therapy Association. And this one here, Creighton University, July 21, 2007. I don't have a copy of the other one here right now. But, you know, it seemed like these things started to hit the radar screen when this legislation was actually being considered. It was either very close to or in conjunction with, you know, and then we also noticed, too, that once the...you know, the legislation had actually passed and they were of the impression that they were able to do manipulation and this type of thing, or. Then basically the advertisements started going through the roof in the newspapers and that type of thing. As a matter of fact, I'll just give you one more example of that. This one is out of Norfolk, Nebraska, here. I think I brought it up here with me. Oh, I left it back...okay, but I'll...just a minute here. I purposely looked that one over because, like I said, I noticed that you were starting to get a little weary-eyed up here, so I didn't want to... [LB803]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR CAMPBELL: We may look that way, but...(laughter). [LB803]

G.H. HANSSEN: You're just sharp as an eagle, aren't you? [LB803]

SENATOR GAY: We're just faking you out (laughter). [LB803]

G.H. HANSSEN: (Laugh) Okay. Oh, yeah, this one right here. Okay, I'll just...Norfolk Daily News, Thursday, February 28, 2008, entitled "Physical Therapy Evolving." It states that many physical therapists are getting away from ultrasound, stimulation, and hot packs. Even though they are important tools, therapists are "beginning"--remember--beginning to use more hands-on techniques, such as manual therapy, acupuncture (sic--acupressure), and manipulation and mobilization. And this statement here kind of dovetails with what I had talked about and found earlier, you know, with these weekend seminars and kind of dovetails in, you know, with the legislative process that had taken place. And I know this is pawned off as being a turf war or whatever or seemingly so. But, you know, I mean, you just cannot get adequate education through a weekend seminar. I've gone through the training. I've helped train students, you know, in the chiropractic college that I attended as a teacher's assistant. And there is a learning curve. There's a big learning curve as far as your...I mean, the best way I can explain it, I guess, is reaching a black belt level. You know, you just don't go in and put your black belt on and then sit there and try to achieve that level of proficiency--and there is a level of proficiency associated with that. [LB803]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB803]

G.H. HANSSEN: Thank you so much. I appreciate it. [LB803]

SENATOR GAY: Other opponents? [LB803]

DOUGLAS VANDER BROEK: (Exhibits 21, 22, and 28) My name is Douglas Vander Broek, V-a-n-d-e-r B-r-o-e-k. I'm a practicing chiropractic physician in Lincoln and speak in opposition to LB803. I'm a member of the Board of Chiropractic, although my testimony today is my personal opinion. It does not represent the Board of Chiropractic. I agree with the people from Creighton and UNMC educational institutions that education needs to be considered on a national, not a local, scale. And with that, I would like to submit to you a study. I don't have enough copies for all the committee members because I didn't plan on introducing this, but a study that was done by three physical therapists, published in their journal in April of 2004. It's entitled "Joint Manipulation Curricula in Physical Therapist Professional Degree Programs." To quote just from a couple of places in the study, "Of the responding professional degree programs..."--and let me back up just a moment. In this study, all 199 institutions in the U.S. that were currently providing an accredited professional degree in physical therapy were surveyed. So to quote in one area from the study, "Of the responding professional

Health and Human Services Committee  
January 21, 2010

---

degree programs, 75 percent are either currently teaching joint manipulation or soon plan to do so." So they lumped together in that 75 percent so we really don't know how many schools were actually teaching joint manipulation just about 6-7 years ago. When you look at the numbers of this study, it comes to approximately maybe more than half of the PT schools were even teaching it at that time. Now, the study further concluded, "Based on our findings, at this time there is very little consistency in joint manipulation curriculum across programs that are teaching it. Our results illustrate that joint manipulation is not currently taught in all physical therapist professional degree programs." So nationally, it seems that nobody knows exactly what is being taught in the joint manipulation curriculum where it is being taught. Now if you don't receive any training when you're in school--and keep in mind that PTs are licensed from all over the United States to practice in Nebraska, as are chiropractors--and if a PT or any other professional doesn't receive any training while they are in school, the other option is to receive training while they are out of school. And I've submitted copies of a weekend seminar taught at Creighton University. The title of the seminar is "Thrust Manipulation in the Management of Neck and Low Back Pain." This seminar was taught on July 21, 2007. The seminar was approved by the Nebraska chapter of the APTA. The hours were accepted for continuing education for both PTs and PTAs by the Nebraska Board of Physical Therapy for 7.5 hours of continuing education credit. Now I'll submit to you the...I've submitted the promotional brochure, the syllabus for the course, the complete set of notes which the attendees at the seminar received, which is also the same as the PowerPoint presentation which was given at the seminar, 7.5 hours. These materials were provided to us by people within the profession of physical therapy that felt this training was totally inadequate and they have concerns about that. They were asked to step forward themselves, and said that they would prefer not to because of the repercussions that would be directed at them from within their profession. Just a couple of things from here, and again you have the complete notes you can refer to. In the 7.5 hours of training on that Saturday, 45 minutes, from 8:15 to 9 a.m., was used to cover "Screening for Red Flags," which covered all the possible contraindications to doing even high speed thrust manipulation, even on the cervical spine. There's no way you can cover all the dangers that are involved in 45 minutes on a weekend. The national accreditation argument...I've heard many times about losing national accreditation. I've actually never seen proof of that. The only example I can use, when I was in Chiropractic College at Palmer College in Iowa, for two years the state of Iowa removed the ability of chiropractors to do lab work and give nutritional advice. Palmer is a nationally accredited institution. During those two years, although that was something that was particular to the state of Iowa, that didn't cause any change in the curricula, the teaching, even the clinical experience for public patients, for those chiropractic students at Palmer during that period of time. I think what you need to consider when we look at education, is not what the maximum is, because, for example, in chiropractic, in two years I'm supposed to get 36 hours of education, continuing ed. And there's years when I have 100 hours. And I think all the PTs that we've seen here today probably are people who go far above the minimum. But when we look at public safety, we need to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

look at the minimum requirement, the lowest common denominator that can allow that person to legally go out and do that procedure. And that's what the interpretation currently is. So from the studies that I've seen, from the weekend seminar that I've reviewed, it appears to me that the minimum requirement is no joint manipulation teaching while in physical therapy school and a 7.5 hour seminar on a weekend during which PTs and PTAs were told, on Monday morning you can do this in your clinic. And in the case of PTAs, when asked about that, they were told, well, the qualifier is, if your PT feels competent, feels that you are competent. So the qualifier seems to be if you feel like you're competent to do it, go for it. I thank you for your time, and ask if there's any questions I would answer to the best of my ability. [LB803]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. How many more opponents are going to be speaking? [LB803]

JEREMIAH RETHWISCH: I think I'm the last one. [LB803]

SENATOR GAY: Last one. And I assume there's no neutral? All right. [LB803]

JEREMIAH RETHWISCH: (Exhibits 24, 25, and 27) Dr. Jeremiah Rethwisch. I practice in Omaha, Nebraska. I testify on behalf of the Nebraska Chiropractic Physicians Association today in strong opposition of LB803. As a chiropractor, I have very little, if any, training in surgical procedures; therefore, it's not in my scope of practice to do that. If I wanted to increase my scope of practice to perform surgery, how would I do that? Well, I could go back to school and become a surgeon. I could go through the 407 process; prove that I have the same clinical competency as the surgeons that are already performing that procedure have. Both of those are perfectly acceptable options that have been done by many individuals in many professions, many times. As an alternative, if I didn't want to do those two things I could find the statute that regulates the practice of surgery, introduce a bill and ask for an exemption from that statute, and then come up with my own rules and regulations about surgery as not to be held to the same standards that are already in place. That probably sounds ridiculous. Well, it should. If you haven't realized, that's exactly what LB803 is attempting to do. It's yet one more attempt at bypassing the 407 process which has been established by the state of Nebraska as a way to expand one scope of practice. If I were a physical therapist and I wanted to prove that I had manipulation as part of my scope of practice since the inception, I would find the old statutes and read what the scope of practice was and point out where it included manipulation. Well, I have the old statute here. Nowhere in here does it include anything about manipulation. It says heat, light, water, electricity, massage, and exercise. As another alternative, I might go through the education and find the syllabus and find all their classes that talk about manipulation; print those out. Well, I went on Creighton's Web site and UNMC's Web site. I couldn't find any classes specific to manipulation. I found lots about manual therapy. But again, manual therapy, as we know, includes Grades I-IV mobilization; it does not include Grade V. And Grade

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

V is the exact same procedure as a chiropractic adjustment. There is no difference. Now I also looked up all the number of hours and training for a DC program--Doctor of Chiropractic--compared to a Doctor of Physical Therapy. And you'll see on the left here, it's the Doctor of Chiropractic program (sic--on the right); and on the right is the Doctor of Physical Therapy (sic--on the left). And I'll include that for your review. I tried to find the hours and make a graph of the difference in hours of manipulation. But like I said, I couldn't find any in UNMC or Creighton's program. I looked at the school that I went to and I found around 500-some clock hours of courses specifically in manipulation, and then I went to all the other schools and generated this graph. And there are anywhere from about 400-700 hours specifically in manipulation. So I'd like to consider that and compare that to some of these weekend seminars. I am aware of about a dozen or more states which strictly prohibit physical therapists from performing manipulation by statute. Of those states, there are many thriving physical therapy schools, physical therapy programs in there, which are unaffected by the state statutes which regulate licensed physical therapists. This idea that this is going to impact Creighton and UNMC's credentialing is unwarranted. Are there any questions? [LB803]

SENATOR GAY: Thank you, Doctor. Any questions from the committee? I don't see any. Thank you. And then all these handouts that you gave, we'll get it circulated, and also the book that was handed out. I've asked the page to make sure...we won't leave without those, so...that are over here. Any questions? I don't see any. Thank you. Last call for any opponents. No neutral. With that, we'll have Senator Nordquist close. And while he's coming up I just want to thank all of you for taking time out of your practices and work day to come all the way here. I heard several times, you guys look tired. Well, we're not tired, but...we do this...but, you know, it's important. We try to schedule these obviously so people with like interests, that you don't have to come down here twice, so that's why we did it. But you all did an excellent job, I thought, handling yourself and speaking to the issue, and we certainly appreciate that. So go ahead, Senator Nordquist, on your close. [LB803]

SENATOR NORDQUIST: Thank you, Senator Gay. It's a tiring job at times but we're well compensated for it, so that makes up. (Laughter) Kind of a few points I just want to wrap up on, and I know it's getting late in the day and I yet have another bill before this committee, so I apologize for that. I remember the time line very clearly. I was here as a staff person on the floor of the Legislature the night that a lot of this went down. And just let me kind of reiterate the point that they tried to do a 407 process. The department said you don't need one; this isn't an expansion of the scope of practice. An amendment...the bill that came out was a Christmas tree bill that had this piece in it that included the word "manipulation"...mobilization and manipulation. Well, an amendment was filed by Senator Smith, Congressman Smith now, on the floor, and Senator Jensen was very concerned about taking down an entire Christmas tree bill. So they came back. They worked out a deal, even after the committee had unanimously supported it, worked out a deal. And if you ever get a chance, I encourage you to read the transcript



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

from that night. Senator Bourne probably gave the most impassioned speech I had ever seen on the floor of the Legislature in the six years I've been down here. But...so it gets to the point that...I mean, there was a lot of talk today about public safety, and yet there has been no incidence of problems with physical therapists doing this, and they've been doing it in this country since the 1920s--a Grade V mobilization. We heard a lot of...you know, a lot of rhetoric today. Power grab. I heard someone say something about the facts and the law and pounding the table. Well, on the facts and law (inaudible) side, you kind of disparage your opponent a little bit. And, you know, you might want to count the numbers of papers in front of you today that were handed out from one side going after the other side. That's concerning. I mean, going after a couple of our...our two finest medical institutions or two medical institutions in this state. Physical therapists are trained side-by-side, many times in the same classroom, same classes as physicians, as our pharmacists. They take a lot of anatomy, physiology,...not kinesiology but anatomy, physiology with them at the University of Nebraska Med Center and at Creighton University. This bill gets to the point of separating these two professions because they're two distinct...they have two different views of how we treat people in healthcare practice. One is training with physicians and pharmacists in those classes in a traditional medical model and the other is...they have separate classes, separate schools, and it's described by HHS as alternative medicine. It's a different model. And the only way we can get to it...I mean, we've got a lot of bright people here--certainly Senator Gay. (Laughter) A lot of bright...no (laugh). [LB803]

SENATOR GAY: That'll get you far. [LB803]

SENATOR NORDQUIST: A lot of bright people here. But I don't know that we have the expertise as legislators to get to...to write this in a way that this problem won't continue. And we heard, during this bill, the problem with harassment of physical therapist professions being accused of unlawfully practicing chiropractic care. One of those, the one you heard from, was from Creighton. The other was from UNMC. We're spending state tax dollars for that guy to have an attorney to defend himself. I think this is a big problem that I think LB803 could be a real solution going forward. Again, I really think that you did not hear one incidence today of a problem, and this has been going on for years and years and years. I'd be happy to take any questions. [LB803]

SENATOR GAY: Thank you, Senator Nordquist. Are there any questions? We know where to find you. Thank you. [LB803]

SENATOR NORDQUIST: Thank you. [LB803]

SENATOR GAY: (Also see Exhibits 36 and 37.) That will close on that. And your next... [LB803]

SENATOR NORDQUIST: We can get going right now if you'd like. [LB803]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: We'll close the public testimony on LB803 and it looks like LB790.  
[LB803]

SENATOR NORDQUIST: (Exhibit 26) Thank you, Chairman Gay and members of the Health and Human Services Committee. My name is Jeremy Nordquist and I represent District 7 in Omaha. LB790 would require the Department of Health and Human Services to compile and publish an annual report that lists each employer in Nebraska which employs ten or more individuals receiving Medicaid benefits during the previous year. The report will also list the number of employees receiving those benefits employed by those employers and where that business is located at. It is my hope that such a report will help us learn how we can work with business leaders to move their employees off of public insurance to private sector insurance, and highlight the fact that there are thousands of hardworking Nebraskans who are employed, who are trying to do things the right way, that do need public assistance to make ends meet for their families. Colleagues, Medicaid was never intended to serve as a long-term alternative to private insurance. I've heard anecdotes around our own state that companies are...that some companies are handing out Medicaid forms to their newly hired employees. Businesses who intentionally replace insurance benefits with Medicaid put the burden on the taxpayers, and it's especially unfair for those Nebraska businesses that are doing things the right way and have to compete against that. Last year, I requested a report similar to the one my predecessor requested very similar to what we're doing here--there are some modifications--and I think those are going around now. You'll see the list from '05 that my predecessor requested and then last year's list. What we found was pretty staggering. Last year, there were over 484 businesses...there were 484 businesses who are employing 25 or more Medicaid recipients or family units as the report is broken up by. Just four years earlier, there were only 147. It's a 229 percent increase in the number of businesses listed. According to a recent study...and we all know Medicaid is a big expenditure of our state budget--nearly 20 percent. Rising medical costs, increasing demands in services, declining tax revenues, really puts us in a pinch as state policymakers. And we owe it to ourselves to learn as much as we can about who's receiving our benefits, where they're employed. A couple of things...I've been...the last couple days, folks have approached me with concerns of the bill and I'm more than happy to work on these. I gave the committee counsel an amendment. I didn't bring copies but if you guys choose to go forward with this legislation you could take a look at that. Two pieces in that amendment. There is concern about privacy, that if we are listing--there's no minimum number of employees and we're going to list ten--that the potential is there that a small business that doesn't, that pays low wages, doesn't offer benefits, that all their employees could be on the list and that would obviously jeopardize privacy. The second piece is that I don't...the reports that you see have a raw number for a number of family units that are receiving Medicaid. And, you know, at the top, obviously, are the state's biggest employers. I think, you know, including a provision in there that would list a percentage of total work force would be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

beneficial for us as policymakers to have that information, as well. I'm more than willing to work with the Department of Health and Human Services, and they collaborate with the Department of Labor, to get that information. I'd appreciate your consideration of LB790. Thank you. [LB790]

SENATOR GAY: Any questions? Senator Howard. [LB790]

SENATOR HOWARD: Have all the chiropractors left? (Laugh) Jeremy, thank you. Thank you, Chairman Gay. [LB790]

SENATOR GAY: You need one now for sitting all day? [LB790]

SENATOR HOWARD: I want to be cautious. Two questions. First off, which ones that were current? [LB790]

SENATOR NORDQUIST: Well, the longer one would be the more current one. (Laughter) But, sorry, I got...we... [LB790]

SENATOR HOWARD: I didn't see a date on either one of these. [LB790]

SENATOR NORDQUIST: There might be a date on the bottom of them. My staff can point... [LB790]

SENATOR HOWARD: I looked. I didn't... [LB790]

SENATOR NORDQUIST: I don't know if they're well marked. [LB790]

SENATOR HOWARD: Okay. So the 2009 is the most current you've got? [LB790]

SENATOR NORDQUIST: Yep, yep. [LB790]

SENATOR HOWARD: All right. So that begs the question of...I know for a fact there are employees of the Department of Health and Human Services, and that's not listed on here. [LB790]

SENATOR NORDQUIST: Oh, it's not? [LB790]

SENATOR HOWARD: No, I didn't see it. [LB790]

SENATOR NORDQUIST: Is it state of Nebraska? State of Nebraska probably is. [LB790]

SENATOR HOWARD: Well, I looked under Nebraska. Is it listed in a different...?

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

[LB790]

SENATOR NORDQUIST: You know...well, I don't...but, you know, there are a lot of...  
[LB790]

SENATOR STUTHMAN: There's a lot. Health and Human Services-Omaha. [LB790]

SENATOR NORDQUIST: Yes. And some of them are broken up... [LB790]

SENATOR HOWARD: Did you see them? Where did you see it at? [LB790]

SENATOR NORDQUIST: Some businesses that have multiple locations. [LB790]

SENATOR HOWARD: Oh, under Health and Human Services. By location? [LB790]

SENATOR NORDQUIST: So there would have to be some work with the department to get those pieces worked out. The other provision in the bill would be to have this posted and available to the public on a Web site. [LB790]

SENATOR GAY: Anything else? [LB790]

SENATOR HOWARD: Oh, no. Thank you. [LB790]

SENATOR NORDQUIST: Yeah. [LB790]

SENATOR GAY: Senator Campbell. [LB790]

SENATOR CAMPBELL: Thank you, Senator Gay. Senator Nordquist, when I served on the Medicaid Reform Council prior to coming to the Legislature, we did discuss some of these lists. One of the things that we asked in determining who goes on the list, if you can separate out a family member that, for instance...what would I say? They have a child that is just multiple needs, they qualify for Medicaid, they're always going to qualify. It's not a situation where, yes, they are employed by that agency or business, but they legitimately should be receiving Medicaid, or mental health, or an elderly member perhaps of the family that you're taking care of. So we didn't...we weren't able to separate those out and I don't know that they can. But just so you know, we did discuss that people should look at this, understanding that there are some legitimate reasons why people have Medicaid coverage. [LB790]

SENATOR NORDQUIST: Yeah, absolutely, I agree with you. And, you know, the largest one on the list was Walmart. They are one of the largest employers in the state. And, you know, so that's why obviously they have a big raw number. But one of the services that they do is they bring on a number of folks with developmental disabilities,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

and so that's artificially inflating the number. And if there's a way, legislatively, but I don't know that there is, so I would hope in the public's...you know, you're worried about the perception. And I would, too, that you know, for instance, Mosaic is on there, and obviously the reason is, you know, the population that they're working with and serving. So if there is a way to go around that, yes. Otherwise, you know, I hope to encourage the public to keep that in mind as they look at that, as well. [LB790]

SENATOR CAMPBELL: Thank you. [LB790]

SENATOR GAY: Senator Gloor. [LB790]

SENATOR GLOOR: Yes, thank you, Chairman Gay, and I just reiterate what Senator Nordquist and I have talked about, and I'm glad to see that he's taking to heart looking at some things like percentages. I'm sure my employer... [LB790]

SENATOR NORDQUIST: Absolutely. I think that would be as beneficial as the raw number. [LB790]

SENATOR GLOOR: I am actually looking to see if my former employer is listed on here,... [LB790]

SENATOR NORDQUIST: (Laugh) There's a lot of them on there. [LB790]

SENATOR GLOOR: ...but it could be because we hired a number of people who were developmentally disabled, and as a result, even though we may have...a percentage would show that we had a very high percentage of employees who were covered by insurance and not by Medicaid, as opposed to the raw number, would make it look like we had a large number who were just Medicaid. And to emphasize the developmentally disabled, I see on here that one of the higher ones, in Grand Island anyway, is Goodwill Industries. [LB790]

SENATOR NORDQUIST: Um-hum. Sure. Yep. [LB790]

SENATOR GLOOR: But clearly, there's a reason that the developmentally disabled would be hired. But I think what you're talking about here gets to the heart of some of the larger debate we're having in this country, and that is whose responsibility, ultimately, is it to provide that coverage? Should it be the employers' or the government's? [LB790]

SENATOR NORDQUIST: Yep, yep. Thank you. And I'd be more than willing...I just had a long conversation with Director Chaumont yesterday and she sent a letter and indicated I'd be more than willing to address their concerns as a department. [LB790]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: So on this, I guess this list, can you go again how this got developed? [LB790]

SENATOR NORDQUIST: It was...well, actually back when... [LB790]

SENATOR GAY: We're already doing this. [LB790]

SENATOR NORDQUIST: Oh,...what's that? How it got developed? [LB790]

SENATOR GAY: This...yeah, how did we get to this? [LB790]

SENATOR NORDQUIST: Yeah, back in '05, the initial one, my predecessor, John Synowiecki was part of a...we talked about running an amendment to a bill and actual...I think it was on Nebraska Advantage to look at whether or not we should be putting benefits as a requirement in there. So one of the ideas was to run this as an amendment to require...I think he got 23 or 24 votes on the floor. So instead he sent a letter to the department, because the department, at the time, had a lot of concerns it wasn't introduced as a bill. So it was just a floor amendment. So we worked with the department and they were able to come up with this list, and time went by, and last year I thought about it again and just sent a letter asking for the same report, which, you know, is continued on. We can continue to do that. There's a few other pieces I would like to potentially...you know, the percentage is good if the department can get that. And then again I'm not always going to be around here, and I think this is important information for legislators to have before them. [LB790]

SENATOR GAY: But so then what you're saying is this reads ten (inaudible)... [LB790]

SENATOR NORDQUIST: Yeah, and... [LB790]

SENATOR GAY: ...so a list, this would be a lot of pages probably, and then I guess if I'm a small... [LB790]

SENATOR NORDQUIST: You know, and there was no magic reason to that, and we can back it up to 25 again or 50 or whatever the committee thinks is appropriate, but. [LB790]

SENATOR GAY: Senator Gloor. [LB790]

SENATOR GLOOR: Just...excuse me. Thank you, Mr. Chairman. By way of...I want to understand this list. When it lists out-of-state locations--St. Louis, Missouri, and whatnot--is that because we're dealing with corporate headquarters and...? [LB790]

SENATOR NORDQUIST: Exactly. Yep, yep. [LB790]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GLOOR: And so that's where the numbers come from. But it could be...there was one in the '09 numbers that I had no idea, from the name, whether it was a statewide location where they were...whether they were centered in Omaha even though their corporate offices might be in St. Louis or whatnot. Is it beneficial if we can't get a handle on where they're located, or is it just more important that we know...? [LB790]

SENATOR NORDQUIST: Well, the employees are still...they're receiving benefits in Nebraska. [LB790]

SENATOR GLOOR: True. Correct. [LB790]

SENATOR NORDQUIST: They're likely...likely their pay stub or something is coming from a corporate headquarters. Because...and I don't know the technical side but there is a cross-reference between HHS and the Department of Labor on this to produce this list, so. [LB790]

SENATOR GLOOR: Okay. [LB790]

SENATOR GAY: I've got another question for you then and maybe I missed this too. If we did this...I mean, what are we going to do with the data when it's done? Because we can get it now. You just got it. But what do we do with it then when it's done? How, as legislators, if we did this year after year after year and created a law to make them do this, what are we going to do with the data? [LB790]

SENATOR NORDQUIST: Well, you know, long term, I don't know that there's an answer to that. But certainly, in the short term, continuing to see who's perennially on that list and then have conversations with, you know, what can we do to ease the burden on the public benefits; what kind of structure can we have. And part of that may be taken care of by pending federal legislation if that ever goes forward. But, obviously, then the list...you know, whether we need it or not, and if they're going to cover 130 or 150 percent of people...or people up to 150 percent of poverty on Medicaid, then that obviously would change a lot of numbers. [LB790]

SENATOR GAY: Yeah. Senator Campbell had a question. [LB790]

SENATOR CAMPBELL: Just...thank you, Senator Gay. Just when we talked about it, it was in the context...I mean, we were all curious about the large corporations, but we also talked about it in the context, because there was an attempt to do a study of small businesses and what the tipping point was for them in terms of employees and paying their health insurance. And so we were looking at it in context as to whether there needed to be some state programs that would address small business. That was only

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

one component, Senator Gay, that we looked at. But it's really difficult...we finally left the list alone because, again, defining who these people are and the legitimate nature of some of the people, we became concerned that this would, unless you had lots of disclaimers to the information, how helpful would it be? [LB790]

SENATOR GAY: I had a...I'm just going to bring this up. I had a bill in the Revenue Committee a couple years ago to provide a tax incentive, and one was a credit for anybody under ten employees, to entice them to provide health insurance. [LB790]

SENATOR CAMPBELL: Yeah. [LB790]

SENATOR GAY: The fiscal note was \$400 million on that. (Laughter) Obviously, I got it the day before the... [LB790]

SENATOR NORDQUIST: Big spender. [LB790]

SENATOR GAY: It didn't go over well, but I said, we're here to just discuss this. The next one on 25 or more and this is a tax deduction, and it was under 25, and that was \$290 million or \$300 million, so it's very expensive to do this. [LB790]

SENATOR NORDQUIST: Sure, sure. [LB790]

SENATOR GAY: But I figured, you know, the old, well, let's steer them a bit. It's a tough deal, I'll tell you. [LB790]

SENATOR NORDQUIST: Yeah. And if there's any way...you know, it's identifying that tipping point of what...how small of an incentive can you give to get them to come forward, so, you know. [LB790]

SENATOR GAY: Yeah, I know. What is it? And this wasn't a whole lot. I think it was five...it was a three-year deal so you wouldn't just get it and drop it though. [LB790]

SENATOR NORDQUIST: Sure. [LB790]

SENATOR GAY: You know, what I mean? Get it and leave but? [LB790]

SENATOR NORDQUIST: Yep, yep. [LB790]

SENATOR GAY: Okay. All right, Senator Wallman has a question. [LB790]

SENATOR WALLMAN: Thank you, Jeremy. Yeah, that's an interesting list, and will it climb...you know, percentages? I think it's a good idea to keep track of it. I think somebody has a bill in here now if you...you can be checked for drugs if you get



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

assistance, isn't it? [LB790]

SENATOR HOWARD: It's Charlie, I think... [LB790]

SENATOR NORDQUIST: Yeah, I think Senator Janssen did that. Yeah, yeah. [LB790]

SENATOR WALLMAN: Some states tried it. I guess it was unconstitutional. But, you know, things like this, maybe we can do something. [LB790]

SENATOR NORDQUIST: Yeah. [LB790]

SENATOR GAY: Senator Howard. [LB790]

SENATOR HOWARD: Just a quick question. I'm looking through...this is a really curious list. Do you have any idea why Metro Community College, their city report...their reporting city is Westminster, Colorado? (Laugh) I mean, do we know this is accurate? [LB790]

SENATOR NORDQUIST: Yeah, that is a very...yeah, I'd... [LB790]

SENATOR HOWARD: I wouldn't have guessed that one. [LB790]

SENATOR GLOOR: That's my point. [LB790]

SENATOR GAY: Maybe they do their billing or payroll out of there. [LB790]

SENATOR HOWARD: It's an auxiliary campus. (Laugh) [LB790]

SENATOR NORDQUIST: Yeah. Maybe we can track that down. [LB790]

SENATOR GAY: Was this full-time...was this full-time employees? [LB790]

SENATOR NORDQUIST: No. And that's the other thing; that's the other thing too, yeah. [LB790]

SENATOR GAY: Oh, so it's a lot of part-timers, because I noticed Taco Bell. All right. [LB790]

SENATOR GLOOR: It might be a contract. It might be a contract they have with somebody for food service and housekeeping. [LB790]

SENATOR NORDQUIST: To do billing. [LB790]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: All right. We'll hear from proponents. [LB790]

SENATOR NORDQUIST: Thank you. [LB790]

SENATOR GAY: You bet. [LB790]

KEN MASS: Senator Gay and the committee, my name is Ken Mass; that's M-a-s-s. I'm with the Nebraska AFL-CIO and here today in support of LB790. Not to take much more of your time, but basically talking about Medicaid. It was not intended to be a long-term alternate to private insurance. And we're seeing more and more of that today. Businesses use, now, Medicare. Taxpayers on the hook for usually being employer's contribution to health insurance policies. When widely used, this practice is unfair to Nebraska taxpayers, most of whom already pay their fair share of their own healthcare coverage, and especially unfair to responsible Nebraska businesses and employers who pay a portion of their employees' health insurance, as well as state taxes. In a comment also in the survey, you're going to see name changes as businesses merge with other ones, and you may see a business drop off with no percentages and another business start up with nothing and going up. So you've got mergers and you've got name changes and corporation changes and it's going to come into play. I think the resources and the report would be very beneficial to find out what is happening in the state of Nebraska as far as Medicare. So any questions? Feel free to ask them. [LB790]

SENATOR GAY: Senator Howard. [LB790]

SENATOR HOWARD: Well, I think, you know, you need a lot more definitive information. This is interesting, but I noticed that McDonald's is listed on there and we all know that McDonald's is typically used as an entry, you know, for people coming off of the public assistance and being trained to be, I don't know, customer service, whatever you want to really call it. But I think we need to know if they continue...if then the corporation picked them up. You know, they may enter as receiving aid but then what do the McDonald's do for them? [LB790]

KEN MASS: Well, I think you've got...not talking, picking on McDonald's or anything, but I think you've got employers that come to...and Nebraska and all states. They may or may not offer insurance to their employees. It might not be available. But basically, the trend is go to the state for your healthcare. And that's the wrong idea but that's going on. I think some of that is part of that figure that you're going to probably see, if you can find out about it (inaudible). [LB790]

SENATOR HOWARD: And you would like to think the state would lead by example, by not having their own employees on... [LB790]

KEN MASS: Well, that's the name of the game. Yep. [LB790]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

SENATOR GAY: Any other questions? I don't see any. Thanks, Ken. [LB790]

KEN MASS: Thank you. [LB790]

SENATOR GAY: Other proponents. Any opponents that want to speak on this? [LB790]

TIM KEIGHER: Sorry. I fell asleep during the chiropractors' testimony. (Laugh) Good afternoon, Chairman Gay and members of the committee. My name is Tim Keigher; that is K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers and Convenience Stores Association, opposed to LB790. NPCA represents about 175 members, representing about 1,200 retail outlets selling fuel and convenience store items throughout the state. I guess, obviously, the convenience store industry employs a lot of entry level people, a lot of part-time people. They are part time because they are going to school. It's a second job maybe for some of them. A spouse has a full-time job; they're just trying to pick up some extra money doing some part-time work. And I guess listening...I mean, I agree with Senator Nordquist, that, you know, this is a cost to the state. Does it put my members who are able to pay some health insurance costs at a competitive disadvantage with others who are using Medicaid as their insurance? Yes, it does. But I guess I still don't understand what the list is accomplishing. We're going to create this list and post it. Is it just to embarrass them? I don't know. I guess I haven't figured out what the purpose of the list is yet. So I'm willing to listen to Senator Nordquist and see if we can come to some compromise on this, but at this point I think we're going to be opposed to it. So with that, I'd try to answer any questions. [LB790]

SENATOR GAY: Thank you, Tim. Senator Wallman. [LB790]

SENATOR WALLMAN: Thank you, Chairman Gay. Welcome to this committee, Tim. [LB790]

TIM KEIGHER: Thank you. [LB790]

SENATOR WALLMAN: I agree with you on this list thing to private business. But it would...did the convenience stores get together and have big packages for employees? I personally think people ought to pay for their own, you know, or... [LB790]

TIM KEIGHER: Well, there are quite a few of my members... [LB790]

SENATOR WALLMAN: ...to make everybody pay. Now we pay for a lot of people. [LB790]

TIM KEIGHER: Yeah. I mean, there are a lot of my members who, for competitive

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

reasons in different parts of the state, you know, pay for a portion of healthcare. Others where they don't have to, for competitive reasons, they don't. I spoke with one of my members this afternoon who employs a lot of people. And he operated a convenience store with a restaurant and he couldn't make it go. He sold that to someone who is now operating it who he told me has very good food, but he doesn't pay any benefits at all and he's able to make it. So, you know, it put him out of the business at that location because of this. So, I don't know, I guess I'm just confused on what the list really serves...what its purpose is. [LB790]

SENATOR WALLMAN: Welcome to the club. (Laughter) [LB790]

SENATOR GAY: Any other questions? I don't see any. Thanks. [LB790]

TIM KEIGHER: Thank you. [LB790]

SENATOR GAY: Other opponents? I don't see any. Anyone neutral? [LB790]

JIM OTTO: Senator Gay, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association, and I'm here representing both associations in a neutral capacity just--on LB790--just to make a couple of points and then get out of here, I guess. First of all, thank you to Senator Nordquist for who's very receptive to...of concerns we raised on the behalf of retailers of actually putting the percentage in, besides the raw number, because if you just put in the raw number I think we could almost all predict the answers, and the percentage really tells us something about who is doing what maybe. Retailers aren't really concerned about the results, percentagewise. They'll probably fall somewhere in the middle of all the employers. So they're not really concerned that they're going to look bad when you look at the percentages especially. So that's the reason that we are neutral to the bill as with the percentage in it. I would ask that you...as you consider whether or not to advance the bill or not advance the bill, would ask you that you consider a few things. First of all, I'd ask you to think about your first job. If I think about my high school...my first actual substantive high school job, I hate to admit this...I actually...I'm sure I don't look it but I started at \$1.45 an hour, and that was 20 cents above minimum wage, in 1964. So I know I don't look that old, right? But...(laughter). But it was a great job. It was a great...I worked after school in high school. It was a great job. I was...I thought it was a great wage. It helped me save money for college. It was a part-time job. I could work the hours in. And that's really the same thing that exists among retailers today, is they offer many part-time jobs for young people, for a second income maybe in a family where that would be the part-time job. And this bill, as I read it, includes all jobs, not just full-time jobs, but it includes all jobs. So I would consider that. Secondly, that it is one more requirement on businesses that in tight times they've got to make another report. I don't know how complicated the report is. Actually it wouldn't be near as big of a burden on large businesses, probably,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Health and Human Services Committee  
January 21, 2010

---

as it is on the smaller businesses. And thirdly, if you really, in reality, we can probably, at least for the large corporations, pretty much get the results by looking at Missouri's study. Missouri has already done the study. If you go look at Missouri, if you get a copy of the Missouri study, we could probably pretty much predict the results. So with that, I'd be glad to answer any questions. [LB790]

SENATOR GAY: Thank you. Senator Wallman. [LB790]

SENATOR WALLMAN: Thank you, Chairman Gay. Welcome, too, Jim. [LB790]

JIM OTTO: Thank you. [LB790]

SENATOR WALLMAN: In healthcare, you know, we talk about reform and all this stuff, nationally. I think it's up to retail to do it--you know, small retail businesses. My family has got so many employees. They're probably going to drop health insurance for the employees because of the cost. So I think retailers are going to have to come up with an answer. You can tell your friends that, because they know how to run a small business; they know how the ups and downs are. And small business--that's economic development. [LB790]

JIM OTTO: I agree with you on that, Senator, except that one of the things that I always...a little stickler of mine is everybody always talks about the cost of health insurance. And the cost of health insurance goes up, up, up, up, and it really, the reason that cost of health insurance goes up is because the cost of healthcare goes up. Somehow we don't make that jump to talking about the cost of healthcare, and that is why it gets more and more expensive and that's why many, many businesses have chosen not to provide it. [LB790]

SENATOR GAY: And third-party payers and no transparency and a hundred other things...but yeah, it's tough. Any other questions? I don't think so. Thanks. Thank you. [LB790]

SENATOR WALLMAN: Thank you. Thank you, Chairman. Thank you, Jim. [LB790]

JIM OTTO: Thank you. [LB790]

SENATOR WALLMAN: We made you stick around today. [LB790]

SENATOR GAY: (See also Exhibit 35) Anyone else neutral? Senator Nordquist, would you like to close? Senator Nordquist waives close. Thank you all. [LB790]