

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~xxx~~ a.m./p.m. on February 8, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Erne was absent.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Representative Darrel Webb
Jim Lawing, Attorney for the Department of Revenue
Tom Hatten, Department of Revenue
David Miller, Topeka Attorney
Sergeant Bill Jacobs, Kansas Highway Patrol
Gene Johnson, Kansas Community Alcohol Safety Action Projects
Representative Jim Patterson
Don Strole, Attorney for the Board of Healing Arts
Steve Wortman, Kansas Trial Lawyers Association
Elizabeth Taylor, Kansas Association of Domestic Violence

The minutes of the meeting of February 6, 1984, were approved.

Hearings were held on HB 2772 and HB 2087.

HB 2772 - An act relating to warning of consequences if driver refuses blood alcohol test.

Representative Darrel Webb, sponsor, said the bill was introduced because of a friend's experience when he refused to take a blood alcohol test which resulted in his losing his driver's license for 120 days. He believed the arresting officer should have warned him of the consequences of refusal. Representative Webb suggested, in line 33, that "or breath test" be added after "test of blood".

Jim Lawing said his job as attorney for the Department of Revenue was to hold hearings with people whose licenses are suspended by the Department. The 1982 legislation concerning chemical tests to determine alcohol level in drivers put teeth into proceedings and reduced traffic fatalities. However, the law had a flaw regarding law enforcement officers not being required to tell people they stop for suspected DUI what the consequences are if they refuse to take an alcohol content test. Mr. Lawing described what officers did upon arrest, noting that most will read the person their Miranda rights, which Mr. Lawing believes to be unnecessary, and allows them to remain silent. Remaining silent is considered to be refusal and subjects that person to the possibility of losing their driver's license. The Kansas Supreme Court has ruled that if officers warn drivers of consequences of refusal that is coercion. HB 2772 would correct this. He approved the suggestion to add the breath test.

Tom Hatten, Department of Revenue, said 37 states and the District of Columbia currently require that a warning of some sort be given. The Department favors including the warning provision in the law.

David Miller, Topeka attorney, described a situation of a friend being arrested for DWI who did not take the test because he did not know the consequences. His license was suspended for 120 days which affected his livelihood. He suggested the bill be amended to allow a person to drive to and from work and in the scope of employment. Mr. Miller noted that if a person pleads guilty, no contest, or goes diversion, his license should not be suspended. He believed the specific words of the warning given by officers should be included in the bill to eliminate variance from officer to officer.

Sergeant Bill Jacobs, representing Colonel Bert Cantwell, Kansas Highway Patrol, gave a statement (Attachment No. 1) listing the Patrol's concerns regarding HB 2772. He cited, in his statement, the Kansas Supreme Court case where the Court of Appeals noted it was impressed

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~am~~ XXX/p.m. on February 8, 1984.

with the rule that all persons are presumed to know and are bound to notice general public laws as well as the legal effects of their acts. In additional remarks, Sergeant Jacobs said, although the Miranda warning was not necessary in all cases, it was better to use it all the time because judgments vary from court to court and agency to agency, and a case may be thrown out if it is not used and the officer cannot be present at the hearing. He believed it would be rare if a person has not heard of penalties for refusal.

Gene Johnson, representing the Kansas Community Alcohol Safety Action Projects, supported HB 2772 and the suggested amendment for line 33 regarding the breath test.

HB 2087 - An act relating to controlled substances for weight loss.

Representative Jim Patterson said the bill was requested by members of the medical profession. It prohibits the use of amphetamines and other controlled substances for weight control. He furnished newspaper articles, published in his area, concerning these drugs (Attachment No.2). Representative Patterson offered Attachment No.3 concerning amendments for a substitute bill which rewrites HB 2087 and said another substitute bill would be offered by the Board of Healing Arts. The substitute bills were efforts to tighten the statute to prevent doctors from prescribing amphetamines for weight loss purposes. He had no objection if the Committee wished to introduce a new bill based on the substitute bill suggestions of the Board of Healing Arts. It was noted that an Attorney General's opinion states the Board of Healing Arts cannot prevent this through rules and regulations, and the amendments would give the Board the authority to do what the Attorney General says it presently cannot do.

Don Strole, Attorney for the Board of Healing Arts, presented a suggested substitute for HB 2087 (Attachment No.4).

The Chairman noted the hearing was scheduled for HB 2087 and not for a substitute bill that interested parties had had no opportunity to examine. The motion was made by Representative Solbach that the Committee introduce a new bill based on the Board's of Healing Arts suggestions in Attachment No.4, seconded by Representative Matlack. Motion carried. The Chairman said a hearing on the new bill would be scheduled before the deadline for action. Conferees present for discussion on HB 2087, including Jerry Slaughter of the Kansas Medical Society and Ken Schafermeyer of the Kansas Pharmacists Association, agreed that no further hearing was needed on HB 2087.

HB 2522 - An act relating to preliminary examinations.

The hearing on the bill was continued from the February 7, 1984, Committee meeting. Steve Wortman, Kansas Trial Lawyers Association, clarified that a previous conferee, Jim Rumsey, was a criminal specialist attorney and has the graces of the Kansas Trial Lawyers' parent organization in the field of trial work.

Elizabeth Taylor, Kansas Association of Domestic Violence, rebutted Mr. Rumsey's testimony of February 7 regarding intimidation of victims at preliminary examinations. In all of the cases her organization deals with where women have been battered, they are intimidated by the defense and may change their stories. She did not want these victims to have to go through cross examination in preliminary hearings. It was pointed out that, without preliminary hearings, victims would still be required to attend depositions where they would be questioned by the defense without benefit of a judge being there to control questions.

HB 2713 - An act relating to grounds for arrest.

Because the words, "personal injury" might include such things as mental harm, slander, liability, etc., Representative Solbach moved to amend the bill by changing "personal injury", on line 39, to "bodily injury", seconded by Representative Wunsch. Representative Miller said "bodily harm" was the term most commonly used. He made a substitute motion that "bodily injury" be changed to "bodily harm", seconded by Representative Whiteman. Following discussion, the substitution motion carried.

Representative Miller made a conceptional motion to amend HB 2713 to make its provisions apply to municipal courts, seconded by Representative Wagon. Motion carried. Representative

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MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

room 526-S, Statehouse, at 3:30 ~~a.m.~~^{p.m.} on February 8, 1984.

Patrick moved to report the bill favorably as amended, seconded by Representative Blumenthal. There was discussion regarding a conferee's suggestion that bonding provisions be changed which might be addressed before the bill is reported out of Committee. It was noted the Committee would probably be discussing SB 642 regarding conditions for release on bond at which time bonding requirements could be considered, or an interim study on the bonding laws may be needed. The vote on the motion carried.

Introduction of Bills

Representative Knopp presented four proposals to be introduced as bills requested by the Municipal Judges Association: (1) marriage officiates (HB 2987); (2) clarification of DWI penalty (HB 2989); (3) presentence evaluation in re DWI (HB 2988); and (4) pretrial release (HB 2986). Representative Miller moved that the proposals be introduced as bills, seconded by Representative Harper. Motion carried.

The Committee was adjourned at 5:00 p.m.

SUMMARY OF TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE

Attachment #1
2-8-84

HOUSE BILL 2772

Attachment # 1

Presented by The Kansas Highway Patrol
(Sergeant William A. Jacobs)

February 8, 1984

The Patrol does not have a rigid stance for or against this bill. We would only take this opportunity to point out some matters that do cause concern to us.

The bill as written in line 0033 refers to a chemical test of blood only and not breath. Many police agencies, including the Highway Patrol, test breath samples to determine the blood alcohol content.

There are many court decisions which state that there is no duty placed on an arresting officer to explain the consequences of a refusal to submit to a blood alcohol chemical test. The courts have accepted this without mention of change.

In the Supreme Court case of State v. Young, No. 51,726, there are other cases noted and the following is taken from that case:

"The Court of Appeals in City of Shawnee v. Gruss, 2 Kan. App. 2d 131,576 P.2d 239, rev. denied 225 Kan. 843 (1978), held that under the latter statute a Breathalyzer test operator is not required to inform the person being tested of his right to have an independent test taken by some other authorized person or agency. This holding was based largely on this court's decision in Hazlett v. Motor Vehicle Department, 195 Kan. 439, Syl. paragraph 1,407 P.2d 551 (1965), which holds:

'Under the provisions of K.S.A. 8-1001 and related statutes, there is no duty placed on an arresting officer, making an arrest for the offense of driving while under the influence of intoxicating liquor, to explain the consequences of a refusal to submit to a blood alcohol chemical test.'

In Hazlett the court was impressed with the rule that all persons are presumed to know and are bound to take notice of general public laws of the state where they reside, as well as the legal effect of their acts. In State v. Mezins, 4 Kan. App. 2d 292, 294,605 P.2d 159, rev. denied 227 Kan. 928 (1980), the Court of Appeals concluded that there is no statutory authority or rule of law compelling an arresting officer to inform a motorist of his right to refuse a chemical blood test under K.S.A. 1979 Supp. 8-1001. We believe the decision of the Court of Appeals is sound."

We would mention the fact that the courts have stated that they were impressed with the rule that all persons are presumed to know and are bound to take notice of general public laws as well as the legal effects of their acts. They also note that the decision of the Court of Appeals concluding that an arresting officer need not inform a motorist of his right to refuse a chemical blood test under K.S.A. 8-1001 is sound.

Atch. 1

Attachment #2
2-8-84

Local druggists regard diet pill as 'taboo'

The drug is named Preludin, considered as a diet aid by a few doctors, considered by police as so addictive it drives its users to crime and regarded as taboo by every pharmacist in Coffeyville.

Even the manufacturer of Preludin, Boehringer Ingelheim Ltd. of Elmwood, N.Y., devotes twice as much space in the *Physicians Desk Reference* to the side effects and dangers of the pill as it does to benefits.

The benefits listed are limited to diet. The dangers listed run the gamut, in overdosage, to death.

The book says the pill, available in dosages of 25, 50 and 75 milligrams, is "similar to the prototype drugs of this class used in obesity, the amphetamines.

"Actions include central nervous system stimulation and elevation of blood pressure.

"...Adult obese subjects instructed in

dietary management and treated with anorectic drugs lose more weight on the average than those treated with placebo and diet, as determined in relatively short-term clinical trials. The magnitude of increased weight loss of drug-treated patients over placebo-treated patients is only a fraction of a pound a week."

The *Physicians Desk Reference* advises against prescribing the drug for patients with hardening of the arteries, cardiovascular disease, glaucoma or patients with a history of drug abuse.

Under a paragraph beginning **Warnings**, the book says "tolerance usually develops within a few weeks. When this occurs... the drug should be discontinued."

"...the possibility of abuse of Preludin, brand of phenmetrazine hydrochloride, should be kept in mind when evaluating the

desirability of including a drug as part of a weight reduction program. Abuse of amphetamines and related drugs may be associated with intense psychological dependence and severe social dysfunction.

"There are reports of patients who have increased the dosage to many times that recommended. Abrupt cessation following prolonged high dosage administration results in extreme fatigue and mental depression.

"Manifestations of chronic intoxication with anorectic drugs include severe dermatoses, marked insomnia, irritability, hyperactivity and personality changes. The most severe manifestation of chronic intoxication is psychosis, often clinically indistinguishable from schizophrenia.

Adverse reactions, says the manufacturer, to the cardiovascular system include palpita-

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Attachment # 2

Preludin

Continued from page 1

tions and elevation of blood pressure and to the central nervous system include overstimulation, restlessness, dizziness, insomnia, euphoria, dysphoria, tremor, headache, rarely psychotic episodes at recommended dosages.

To the gastrointestinal system, adverse reactions include diarrhea, constipation and "other gastrointestinal disturbances" and to the endocrine system, impotence.

If those problems can be associated with ordinary use of the drug, they are, nevertheless, mild

compared with abuse of it.

The book says, "Manifestations of acute overdose... include restlessness, tremor, hyperflexia, rapid respiration, confusion, assaultiveness, hallucination, panic states. Fatigue and depression usually follow the central stimulation. Cardiovascular effects include arrhythmias, hypertension or hypotension and circulatory collapse. Gastrointestinal symptoms include nausea, vomiting, diarrhea and abdominal cramps. Poisoning may result in convulsions, coma and death."

Attachment # 2

Atch. 2

3

Curbs to illegal diet pill abuses sought

By JOHN TAYLOR

A Southeast Kansas legislator and the state's Board of Healing Arts both have made proposals that could make it harder to get diet pills for illegal uses.

State Rep. Jim Patterson, R-Independence, says the 1984 Legislature will consider a bill prohibiting the prescribing of amphetamines for weight loss purposes. He proposed the bill during the 1983 session and it is carrying over to the 1984 Legislature.

Meanwhile, the Kansas Board of Healing Arts on Dec. 9 proposed a regulation prohibiting Kansas doctors from prescribing amphetamines

for nearly all purposes.

The moves are both designed to help curb what is viewed as doctors' abuses of "medical judgment" concerning the prescribing of amphetamines for weight-loss purposes.

Montgomery County's assistant prosecutor Ed Randels recently said much of the county's illegal diet pill activity can be traced to the prescription of the pills by Coffeyville Dr. John Vakas through medical judgments that are legal.

"My bill is designed to try to reduce the pressure on doctors," said Rep. Patterson from his home in Independence last week. "There are

people who come into a doctor's office who are somewhat overweight and practically insist on a prescription of amphetamines. I think this (his proposal) would help them."

Patterson said he could not recall what committee his bill was in, but said he had asked for the bill to be held up while representatives of the Kansas Pharmacists Association and the Kansas Medical Association got together to produce a plan agreeable to both sides.

Spokesmen for the two lobbies say that while they agree with the concept of the proposal, they would rather accomplish the same through some sort of regulation, as opposed to legislation.

"There is a federal Controlled Substances Act and a State Controlled Substances Act already," said Kenneth W. Schafermeyer, a spokesman for the pharmacists association. "They are very much in sync with each other and changing the state act would make it confusing.

"We proposed a voluntary measure. I've heard of a problem with (the prescribing of amphetamines) in your area and from

what I understand, pharmacists in the area were not filling those prescriptions.

"What Jim is doing is very commendable. He (Patterson) has heard about the problem in his area and proposed action to curb it. Whether the bill is needed is another question. We think that the voluntary measure will stop the practice even better than legislative action," said Shafermeyer.

"The bill is still alive," said Patterson. "It will carry over to the upcoming session. If I can't get the KPA and the medical association to agree, I expect to get some support from the Board of Healing Arts on the proposal."

Already, the Board of Healing Arts has made a proposal to combat the abuse.

In a Dec. 9 meeting, the board proposed strict regulations for the prescribing of amphetamines, said Don Strole, a spokesman for the board.

"The regulation would limit the dispensing of amphetamines to the treatment of narcolepsy (a condition marked by sudden uncontrollable at-

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Drugs

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tacks in sleep), hyper-kinesis (excessive muscular motion or spasms), depression (if it is shown that other treatments have not worked) and a few other areas," said Strole.

The regulation would prohibit Kansas licensees (doctors) from giving amphetamines or like drugs for the treatment of obesity or fatigue.

"An amendment to the state's Controlled Substances Act would make it inconsistent with the federal Controlled Substances Act. We don't really have a position on (Rep. Patterson's) act. But we do feel it's much easier to do it by regulation. Then we have direct control of our licensees," said Strole.

Strole said the board's proposal would be reviewed by its department of administration for grammatical and technical errors. Then,

the attorney general's office would review to see if the state authorizes such a move. After such a review, the board would officially adopt the plan. Then it would go to the Rules and Regulations legislative committee for final approval before becoming an official regulation of the board.

He said he expected the work on the proposal to be finished by the end of the upcoming legislative session.

Coffeyville a 'hotbed' for diet pill activity

Preludin gets legal start in doctor's office

Montgomery County is a "hotbed" of illegal diet pill activity, an assistant prosecutor says, and much of it can be traced to the prescription of the pills by Dr. John Vakas through medical judgments that are legal.

"I think Coffeyville is (a hotbed for illegal diet pill activity)," said Ed Randels, an assistant in the Montgomery County Attorney's Office.

Preludin, prescribed as a diet aid, is used by drug abusers as "pep pills" or "speed." It is not illegal for a doctor to prescribe preludin or diet pills. But the sale or distribution of the drugs to a person to whom the drug has not been prescribed is a violation of law.

Randels said there is evidence that a large amount of it is prescribed by Dr. Vakas.

Persons with prescriptions for preludin must travel to either Independence or Nowata to have their orders filled because Coffeyville pharmacists refuse to handle the drug. And Randels says a check of records from some pharmacies out-

side of Coffeyville produces some startling results.

"For example," said Randels, "one drug store had accumulated 86 prescriptions over a three- or four-month period for preludin. Three of those prescriptions were from a doctor in Fredonia. Eighty-three of them were from Dr. Vakas."

"In another drug store, there were 82 prescriptions on file written by Dr. Vakas. All of them were for preludin," he said.

Three persons arrested recently on preludin-related charges and either face trials in January or already have pleaded guilty to the charges. And Randels says the three all had some contact — directly or indirectly — with Vakas' office.

"Rhonda Thomas (arrested last summer on charges of selling preludin) came to him repeatedly for preludin. She is an overweight person, so there is nothing illegal with (prescribing preludin to her). But we charged her with three different counts of three different sales of preludin," said Randels.

Herman and Kathy Scott were both charged with one count of selling preludin. Mrs. Scott entered a guilty plea and was fined \$5,000 and sentenced to jail for three to ten years. For cooperating with authorities and confessing, the jail sentence was suspended and she is out on five years probation.

Herman Scott faces a Jan. 9 trial date. Randels said there was evidence presented in Mr. Scott's preliminary hearing that Vakas was the source of his preludin. "The evidence presented that (Vakas) was the source was not as strong as in the Thomas case," Randels said.

Michael F. Anderson, who was arrested and convicted on several burglary charges last summer is expected to testify in the Scott and Thomas trials. "Anderson received preludin from Vakas and went with Thomas to get his prescription filled at Pioneer (a pharmacy in Nowata)," said Randels.

As for Vakas, Randels says there appears to be nothing illegal about what he is doing. "I do know he's

been brought before the state Board of Healing Arts. But because it is in his medical opinion that he prescribes preludin, there is nothing illegal about what he does," said Randels.

Illegal sales of preludin can bring monetary benefits. Randels said street sales can bring nearly \$15 a pill. One pharmacist said one preludin pill costs about \$1 to \$1.25 retail.

The price of preludin and other drugs can be high, especially to the innocent. Randels estimates that 80 to 85 percent of all burglaries in Montgomery County are committed with the intent of selling or trading the property for drugs or drug money.

Randels said he thinks that with continued prosecution of illegal preludin vendors and users, the problem may dissipate in the county. "We believe there are several people believed to be selling who we're still investigating," he said.

Pharmacists, police agree:

Preludin leads only to trouble

A frantic, frenzied drive and demand for the pill Preludin — sometimes prescribed as a diet aid but sought by drug users for a quick "high" — was blamed by police last week for 38 burglaries in Coffeyville and Montgomery County.

Coffeyville police and pharmacists agree: Preludin and related amphetamines are nothing but trouble.

To the man, Coffeyville pharmacists say they refuse to stock Preludin and other amphetamines (also known as "pep pills," "bennies," "speed," or, to a doctor who legitimizes them, "diet pills").

It is not illegal for a doctor to prescribe them as a diet pill.

Most of the pharmacists quit stocking the pills several years ago — some of them after their own stores were targets of break-ins in which the burglars looked exclusively for amphetamines. "They would walk right by other drugs and pick them out," said one druggist.

The pharmacists also agree, generally, that the medical literature indicates the pills are more likely to do harm than good.

Their view, if not understated, is reinforced even by the medical literature about the drug Preludin provided by the manufacturer, Boehringer Ingelheim Ltd.

Coffeyville police announced last week the arrests of 15 persons on charges relating to 29 burglaries in the city and nine in the county.

"The majority of people arrested committed the burglaries for drugs," police said. They said the specific drug was Preludin, prescribed as a diet pill.

Everyone of them (the burglaries) stemmed from that," said Detective Glenn Welsh.

One pharmacist said the pill costs about \$1 to \$1.25 retail, but brings up to \$15 a pill on the street.

Police said the drug sometimes is ground into a powder, mixed with water and injected into the veins and hits the body like an explosion. They said the drug abuser sometimes takes one pill for a "high," then needs two and then three and so forth.

Detective Welsh said one of the suspects arrested in the burglaries needed up to \$300 a day to support his habit.

Coffeyville pharmacists questioned by the *Vanguard* were unanimous in their condemnation of Preludin and other amphetamines.

John Isaacs of Isaacs Pharmacy Inc. said Preludin stimulates the body by causing a leak of adrenalin, making the person feel like "they are speeded up and going great guns." The user may not eat, he said.

After 10 to 15 days, he said, the body runs out of adrenalin and a crash occurs. It has become even more hazardous now that some people have started to inject the drugs with needles.

Isaacs, like all other pharmacists in Coffeyville, said his store refuses to stock amphetamines and related drugs. But he said he didn't think it would do any good for the U.S. Food and Drug Administration to ban them.

"If they banned them, the underworld would take over the distribution," he said.

R.E. Layton of Columbia Drug said there is talk that the FDA may ban their use and distribution except for narrow research purposes.

"There's so much trouble with it that we don't handle it," he said. Like Isaacs, Layton

did people who come into the store from out of town simply are told, "We don't carry it."

Tulsa, he said, some drug stores have put large signs in their front windows saying they don't stock amphetamines and narcotics to reduce the danger of burglaries.

Steve Rauch of Med-Econ Pharmacy said, "We haven't stocked it for the last three or four years. It has a nationwide abuse potential. We had too many calls from people who, in our ethical judgment, were not using responsibly."

Dean Bauer of Plaza Pharmacy said his store stopped carrying them when there was a rash of break-ins several years ago. He said people seeking the pills were told no and, further, that no one in Coffeyville stocks it.

Bauer said the drug pusher can spend \$35 for a doctor's office call and maybe \$30 for the pills and turn around and sell them for up to \$700. The buyers, he said, often get the money for the purchases by ripping people off.

Rex Holeman of The Prescription Shop and Bob Cott of Rx Pharmacy and a spokesman for Revco also said they had stopped stocking them a long time ago.

"There's all kinds of literature from the AMA and so forth stating the feeling that there's no place for them at all," Cott said. He said there was a time when people traveled throughout the country seeking the pills.

He said he gets few, if any, calls for the pills now because people seeking them know they are not stocked in Coffeyville.

Attachment 3
2-8-84

Pat

Session of 1983

Attachment # 3

HOUSE BILL No. 2087

By Representative Patterson

1-25

0016 AN ACT concerning the ~~uniform controlled substances act;~~
0017 ~~making the prescribing of amphetamines for the exclusive~~
0018 ~~treatment of obesity, weight control or weight loss unlawful;~~
0019 ~~prescribing penalties for violations.~~

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. ~~(a) It shall be unlawful for any person licensed to~~
0022 ~~practice medicine and surgery to prescribe, dispense or admin-~~
0023 ~~ister any amphetamines or sympathomimetic amine drug or~~
0024 ~~compound thereof designated as a schedule II controlled sub-~~
0025 ~~stance under K.S.A. 65-4107 and amendments thereto for the~~
0026 ~~exclusive treatment of obesity, weight control or weight loss. A~~
0027 ~~violation of this section shall constitute a class A misdemeanor.~~

0028 ~~(b) This section shall be part of and supplemental to the~~
0029 ~~uniform controlled substances act.~~

0030 Sec. 2. This act shall take effect and be in force from and
0031 after its publication in the statute book.

[Sec. 4]

(a) Amphetamine and sympathomimetic amine-controlled substances shall not be prescribed, ordered, dispensed, administered, supplied, sold or given except as provided in this statute. A departure from this statute shall constitute unprofessional conduct pursuant to K.S.A. 65-2837 and amendments thereto.

(b) "Amphetamine" or "sympathomimetic amine" means any and all anorectic-controlled substances that are designated as Schedule II, III, or IV by K.S.A. 65-4100 to 65-4111, and which have a stimulant effect upon the central nervous system.

(c) When any licensee prescribes, orders, dispenses, administers, sells, supplies or gives any amphetamine or sympathomimetic amine-controlled substance, the patient's medical records shall adequately document and the prescription order shall indicate the specific diagnosis and purpose for which the drug is being given. Such diagnosis and purpose shall be restricted to:

- (1) the treatment of narcolepsy;
- (2) the treatment of drug-induced brain dysfunction;
- (3) the treatment of hyperkinesia;
- (4) the differential diagnostic psychiatric evaluation of depression;
- (5) the treatment of depression shown by adequate medical records and documentation to be refractory to other therapeutic modalities;
- (6) the clinical investigation of the effects of such drugs or compounds. Before any such investigation is begun, the licensee shall, in addition to other requirements of applicable laws, apply for and obtain approval of the investigation from the board of healing arts; and
- (7) the treatment of any other disorder or disease for which such drugs or compounds have been found to be safe and effective by competent scientific research which findings have been generally accepted by the scientific community. Before a licensee can prescribe or dispense an amphetamine or a sympathomimetic amine for a particular condition under this subsection, the licensee shall obtain a determination from the board that the drug or compound is safe and effective for such particular condition.

(d) Except as authorized in subsection (e) of this statute, a licensee of the board shall not prescribe, order, dispense, administer, supply, sell or give any amphetamine

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or sympathomimetic amine-controlled substances for the treatment of obesity, weight control, weight loss or fatigue.

(e) (1) In cases of obesity that are shown by adequate medical records and documentation to be dangerous to the patient, a licensee may prescribe or dispense sympathomimetic amine drugs or compounds designated as Schedule IV by K.S.A. 65-4111, for a short term period. This short term period shall not exceed a total of twelve weeks in a given twelve month period.

(2) Whenever a licensee prescribes or dispenses a sympathomimetic amine drug or compound under this subsection, the licensee shall obtain a complete medical history of the patient, including a complete history of all drugs or compounds used by the patient. If a licensee knows or has reason to know that a patient has obtained any amphetamines or sympathomimetic amines in the preceding twelve months from any other source, the licensee shall not prescribe or dispense any such drug or compound for a period which, in combination with any previous period of use by the patient in the preceding twelve months, totals more than twelve weeks.

(3) A licensee who prescribes or dispenses sympathomimetic amine drugs or compounds under this subsection shall closely monitor the effects of the drug or compound on the patient. If any dangerous adverse side effects occur during the use of the drug or compound by the patient, the licensee shall immediately inform the patient that the patient must cease using the drug or compound and shall cease prescribing or dispensing the drug or compound to the patient.

Section 2. K.S.A. 65-2837 is hereby amended to read as follows:

65-2837. Same; professional incompetency, unprofessional conduct, false advertisement and advertisement defined. As used in K.S.A. 65-2836 and amendments thereto and in this section:

(a) "Professional incompetency" means: (1) One or more instances involving gross negligence; or (2) repeated instances involving ordinary negligence.

(b) "Unprofessional conduct" means: (1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee. (2) Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured. (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives. (4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed. (5) Performing, procuring or aiding and abetting in the performance of procurement of a criminal abortion. (6) Willful betrayal of confidential information. (7) Advertising professional superiority or the performance of professional services in a superior manner. (8) Advertising to guarantee any professional

service or to perform any operation painlessly. (9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause. (10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107 and amendments thereto. (11) *Prescribing or dispensing amphetamines or sympathomimetic amines, except as authorized in section 1.*

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

Section 3. K.S.A. 1983 Supp. 65-2836 is hereby repealed.

SUGGESTED SUBSTITUTE FOR HOUSE BILL NO. 2087

An Act concerning the prescribing of amphetamines.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) It shall be unlawful for any person licensed to practice medicine and surgery to prescribe, order, dispense, administer, supply, sell or give any amphetamines or sympathomimetic amine drug or compound designated as a Schedule II, III, or IV central nervous system stimulant in the Uniform Controlled Substances Act as defined by K.S.A. 65-4107 - 65-4111 and amendments thereto, except as provided in this act. A departure from this statute shall constitute unprofessional conduct pursuant to K.S.A. 65-2837 and amendments thereto.

(b) When any licensee prescribes, orders, dispenses, administers, sells, supplies or gives any amphetamine or sympathomimetic amine designated as a Schedule II, III, or IV central nervous system stimulant as defined in K.S.A. 65-4107, 65-4111 and amendments thereto, the patient's medical record shall adequately document and a prescription order shall indicate the specific diagnosis and purpose for which the drug is being given. Such diagnosis and purpose shall be restricted to:

- (1) the treatment of narcolepsy;
- (2) the treatment of drug-induced brain dysfunction;
- (3) the treatment of hyperkinesis;
- (4) the differential diagnostic psychiatric evaluation of depression;
- (5) the treatment of depression shown by adequate medical records and documentation to be refractory to other therapeutic modalities;
- (6) the clinical investigation of the effects of such drugs or compounds. Before any such investigation is begun, the licensee shall, in addition to other requirements of applicable laws, apply for and obtain approval of the investigation from the board of healing arts; and
- (7) the treatment of any other disorder or disease for which such drugs or compounds have been found to be safe and effective by competent scientific research which findings have been generally accepted

by the scientific community. Before a licensee can prescribe or dispense an amphetamine or a sympathomimetic amine for a particular condition under this subsection, the licensee shall obtain a determination from the board that the drug or compound is safe and effective for such particular condition.

(c) (1) In cases of obesity that are shown by adequate medical records and documentation to be dangerous to the patient, a licensee may prescribe or dispense sympathomimetic amine drugs or compounds designated as Schedule III or IV by K.S.A. 65-4109 and K.S.A. 65-4111 and amendments thereto, for a short term period. This short term period shall not exceed a total of twelve weeks in a given twelve month period.

(2) Whenever a licensee prescribes or dispenses a sympathomimetic amine drug or compound under this subsection, the licensee shall obtain a complete medical history of the patient, including a complete history of all drugs or compounds used by the patient. If a licensee knows or has reason to know that a patient has obtained any amphetamines or sympathomimetic amines in the preceding twelve months from any other source, the licensee shall not prescribe or dispense any such drug or compound for a period which, in combination with any previous period of use by the patient in the preceding twelve months, totals more than twelve weeks.

(3) A licensee who prescribes or dispenses sympathomimetic amine drugs or compounds under this subsection shall closely monitor the effects of the drug or compound on the patient. If any dangerous adverse side effects occur during the use of the drug or compound by the patient, the licensee shall immediately inform the patient that the patient must cease using the drug or compound and shall cease prescribing or dispensing the drug or compound to the patient.

Section 2. K.S.A. 65-2837 is hereby amended to read as follows: As used in K.S.A. 65-2836

and amendments thereto and in this section:

(a) "Professional incompetency" means: (1) One or more instances involving gross negligence; or (2) repeated instances involving ordinary negligence.

(b) "Unprofessional conduct" means: (1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee. (2) Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured. (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives. (4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed. (5) Performing, procuring or aiding and abetting in the performance of procurement of a criminal abortion. (6) Willful betrayal of confidential information. (7) Advertising professional superiority or the performance of professional services in a superior manner. (8) Advertising to guarantee any professional

service or to perform any operation painlessly. (9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.

(10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107 and amendments thereto. (11) *Prescribing or dispensing amphetamines or sympathomimetic amines, except as authorized in section 1.*

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

Section 3. K.S.A. 1983 Supp. 65-2836 is hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the statute book.