Approved April 25, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~p.m.~~ on March 27, 1984 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jim Green, Kansas Bureau of Investigation
Representative Elizabeth Baker
Representative Jim Patterson
Representative Robert Frey
Dan Strole, Board of Healing Arts
Kenneth Schafermeyer, Kansas Pharmacists Association
Bill Dean, Merrell Dow Pharmaceuticals, Inc.
Jerry Slaughter, Kansas Medical Society
Harold Riehm, Kansas Association of Osteopathic Medicine
Gene Galloun, Pennwalt Corporation

House Bill 3029 - Forwarding of fingerprints to FBI.

Jim Green stated he is pleased to advise the committee that the bureau is in full support of the statutory changes proposed in this bill. A copy of his testimony is attached (See Attachment No. 1). A committee member inquired if there was a fiscal note on the bill? Mr. Green replied, if this becomes law, each card that comes in has to be classified, and there are six positions to handle the cards. The chairman said he didn't understand the difference between record keeping access the KBI has and the highway patrol has. He said he had a letter from the superintendent of the highway patrol saying that this is unnecessary. Mr. Green replied, he is not aware of the superintendent's letter. He said he thinks the basic problem is the FBI keeps two kinds of records on their automatic system. The state is currently receiving the hot file. A committee member commented, with this bill, two different agencies are classifying the fingerprints. The problem of accessing classification of fingerprints is a matter of years not months down the pike to get this solved.

House Bill 2598 - Sale of tobacco products to persons under 18 unlawful.

Representative Elizabeth Baker appeared to encourage the committee to pass this bill out favorably today. Senator Burke moved to report the bill favorably; Senator Gaines seconded the motion. Following committee discussion concerning technical amendments to the bill, Senator Burke and Senator Gaines withdrew their motion.

House Bill 3037 - Limitations on prescribing of amphetamines.

Representative Jim Patterson appeared in support of the bill and explained the primary objective is to make it more difficult to try to get these amphetamines on the street. He said some people who get prescriptions sell them on the street.

Representative Robert Frey testified the bill is a pretty good compromise that has been reached by the medical providers and the pharmacists and the pharmaceutical suppliers. A committee member inquired, what is the penalty? Representative Frey replied, this authorizes certain penalties. That person will be brought before the board and charged with the crime. A committee member commented he understood the problem is with disciplining people who are prescribing the drugs.

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./p.m. on March 27, 1984

House Bill 3037 continued

Dan Strole testified the Board of Healing Arts strongly urges the passage of this bill. A copy of his testimony and a copy of the proposed amendments are attached (See Attachment No. 2). A committee member referred to the proposed language "in the licensee's own handwriting". Mr. Strole stated they want the doctor to be the one responsible if this drug is prescribed. The committee member inquired if doctors tell their nurses to call in? Mr. Strole replied, yes; but they care most that the prescription is in writing and the doctor taking the responsibility. They don't want a doctor to call pharmacists and prescribe this. The chairman inquired if it would do any harm to use "in writing"? Mr. Strole replied, wouldn't do any harm to us. The committee member inquired, concerning the proposed "handwriting" language, isn't that throwing a burden on the doctor? Mr. Strole replied, I don't think so; I don' think these conditions are all that prevelant. Unless it is put in writing, there is the danger that doctors, who want to abuse the system, can get around it. Schedule II drugs all have to be in writing anyway.

Kenneth Schafermeyer testified the Kansas pharmacists are concerned about the overprescribing and misuse of amphetamines, and are supportive of this effort to control the prescribing of these drugs. A copy of his testimony is attached (See Attachment No. 3).

Bill Dean testified his company would like to go on record that they find, as a manufacturer, they can live with the proposed amendments.

Gene Balloun testified they generally support the bill. A copy of his testimony is attached (See Attachment No. 4). In response to a question concerning the term "short term treatment," he suggested leaving out that wording and make that a medical term.

Jerry Slaughter stated the medical society supports the bill and the proposed amendments

Harold Riehm testified his association also supports the bill and the proposed amendments.

The hearings on House Bills 3029 and 3037 were concluded.

House Bill 2055 - Increased court fees for Sedgwick county law library.

The chairman explained the actions taken yesterday on the bill; the bill was amended to include the contents of Senate Bill 794, and was reported favorably as amended. Senator Mulich moved to reconsider the action taken on the bill yesterday; Senator Winter seconded the motion, and the motion carried.

House Bill 2598 - Sale of robacco products to persons under 18 unlawful.

Following committee discussion, Senator Burke moved to amend the bill to provide the same provision in a separate section, rather than K.S.A. 79-3386; Senator Winter seconded the motion, and the motion carried. Senator Gaines made a substitute motion to report the bill adversely; Senator Mulich seconded the motion, and the motion carried.

House Bill 3037 - Limitations on prescribing of amphetamines.

Senator Gaines moved to adopt the proposed amendments; Senator Werts seconded the motion, and the motion carried. Senator Gaines moved to report the bill favorably as amended; Senator Feleciano seconded the motion, and the motion carried.

House Bill 2931 - Proceedings in aid of execution.

Staff handed out a copy of the amendments made to the bill for the committee to discuss at a later time (See Attachment No. 5).

The meeting adjourned.

3-27-84

GUESTS

SENATE JUDICIARY COMMITTEE

| NAME | ADDRESS | ORGANIZATION |
|---|---|---|
| Don Strole | ~~20~~ TOPEKA | Bd of Healing Arts |
| Elizabeth W CARLSON | Topeka | Bd of Healing ARTS |
| Gene Ballou | Overland Park | Pennwalt Corp. |
| Annette Cordova | Kansas City | KPRA |
| Kay Schatzmeyer | Topeka | KS Pharmaceutical Assoc. |
| Jim Clark | " | KCOAA |
| Jim Patterson | Independence | Legislature |
| [illegible] | [illegible] | [illegible] |
| Jim Greig | Topeka | KBI |
| Robert Rubin | Topeka | KAOM |
| Marjorie J. VanBuren | " | OJA |
| Kim C. Denny | Wichita | Sedg. Co. |
| Barry Massey | Topeka | AP |
| Bill Dean | O.P. Ks. | Merrell Dow |

3-27-84
attach. #1

Testimony of

James R. Green, Administrative Officer
Kansas Bureau of Investigation

before

The Senate Committee on Judiciary

March 27, 1984

I am pleased to advise the Committee that the Bureau is in full support of the statutory changes proposed in HB 3029. I would like to preface my remarks by pointing out that the only significant change is in lines 0050 to 0054. It is the Bureau's understanding that all other changes were added by the Revisor of Statutes' staff to improve the clarity of the statute.

The intent of the bill is to have the law enforcement agencies that submit fingerprint cards send both copies currently required by law to the Kansas Bureau of Investigation (KBI) rather than one to us and one to the Federal Bureau of Investigation (FBI). The KBI will then forward the second copy (at no cost to the state) to the FBI if it meets their requirements.

This change is requested for four reasons: 1.) it will increase compliance with the current statute; 2.) it will decrease the discrepancies between the Kansas Central Repository (KBI) and the federal repository (FBI); 3.) it is part of the preparation required for Kansas to become a participant in the FBI's Interstate Identification Index (III); and 4.) the FBI and the KBI agree that it is more appropriate for states to have a single agency send cards ('sole source submission').

Currently, it appears that sometimes agencies only submit one of the two cards required. If it is to the FBI, then Kansas has no record until the FBI notifies us, and the 'rap sheet' does not have the support of a fingerprint card on file. We estimate noncompliance is currently in the range of 17% to 36%, and that this bill would cut this in half. It would also make the state's records more timely and accurate for the use of local and state agencies.

Though Kansas is currently the only state in the union that does not have direct access to the FBI's computerized criminal history system (III), we hope to obtain this access and go on to being a full-fledged participant in the system. This legislation would be required for participation (though not for simple access). And lastly, the FBI would prefer that we screen all the cards sent to them, in order to cut down on the reject rate.

Atch. 1

KBI Testimony - HB 3029 March 27, 1984

The fiscal impact on the KBI would be the addition of one identification technician, approximately $17,712. While we cannot estimate precisely the number of additional cards that would be submitted, we are currently understaffed in this area (approximately a two month backlog) and any additional load will require additional staff.

3-27-84
attach. #2

TESTIMONY BY THE BOARD OF HEALING ARTS IN SUPPORT OF HOUSE BILL 3037

Chairman Pomeroy and Members of the Committee.

The Board of Healing Arts strongly urges the passage of House Bill 3037. This bill represents a cooperative effort by the Board, The Kansas Medical Society, The Kansas Osteopathic Association and the Kansas Pharmacists Association, to deal with a very significant problem in this State. In the following remarks I will try to highlight the problem and then explain why this bill is necessary.

I have attached to my testimony an article which explains in detail the amphetamine problem and the approach Wisconsin took in response to it. It shows clearly how successful the regulation was. House Bill 3037 is modeled after the Wisconsin law, and thus, it is reasonable to assume that similar success would be accomplished here in Kansas.

Put simply the problem is caused by too many doctors prescribing too many amphetamines and amphetamine-like drugs for obesity. Our experience is that this is a statewide problem. I would estimate that at least one-fourth of my time and the Secretary of the Board's time is spent dealing with complaints regarding the prescribing of these drugs. We write between 5-10 letters a month to doctors indicating that they are over-prescribing amphetaimes or similar drugs. In the last 6 months we have formally restricted 11 doctors, prohibiting them from prescribing or dispensing any of these drugs at all. Unfortunately, the indications are that this represents only the tip of the iceberg, since we only become aware of such problems when we receive complaints from individuals, or information from the Drug Enforcement Administration.

The doctors who prescribe or dispense these drugs fall into several categories: First, there are the "script" doctors who write prescriptions simply to make money from the office visits. Second, there are the dispensing physicians who buy large quantities of the drugs and them mark them up 200-300%. Third, there are doctors who are unknowing and misinformed who believe they are being helpful to people who

Att. 2

need to lose weight. Such doctors do not intend to deliberately mistreat patients. In fact, many are rural general practitioners who have spent many years taking care of the people in their communities.

The consequences of such practices can be devastating. Amphetamines are of little effect in the control of obesity, but have very dangerous side effects. Many patients either abuse the drugs or become addicted to them. The drugs also have a tremendous street value. For example, Preludin, an amphetamine-like drug, has a value on the streets which is ten times what the "patient" pays for it. It is thus easy to see what occurs. A network of people who are somewhat overweight go to unsuspecting doctors who prescribe or dispense amphetamines or similar drugs to them, believing that the drug will help the patient to start a weight-control program. The "patients" pool their pills and then sell them on the streets.

House Bill 3037 will go a long way towards stopping this growing problem. The bill will serve the following objectives:

(1) It will restrict the prescribing or dispensing of all Schedule II amphetamines or sympathomimetic amines to the conditions listed in Section 1, Subsection (b). This effectively means that all amphetamines and drugs, like Preludin, cannot be prescribed or dispensed for obesity. If the Wisconsin experience is any indication, this should put the "script" doctors and the "fat" clinics out of business. After the Wisconsin law went into effect, there was a 97% reduction in the sale of amphetamines.

(2) The bill will have a preventative or deterrent value. The rural unsuspecting doctor would know that these pills should not be prescribed for anyone for obesity. Thus, legitimate patients who in the past may have suffered some dangerous side effects or may have become addicted to the drugs will no longer suffer such consequences. The illegitimate patients will not be able to obtain the drugs, and thus, there is a greater chance that the drugs will not find their way to the streets.

In other words, we will have prevented harm from ever occurring instead of trying to "mop up" in piecemeal fashion after the harm has occurred. In this respect, the bill is analogous to setting air quality standards or adopting building codes, which prevent numerous illnesses or accidents from occurring.

(3) The bill would also give notice to all our licensees what

the Board's standards are in regard to the prescribing or dispensing of amphetamines or sympathomimetic amines. Presently, the Board's standard is not specifically defined, and thus, licensees can legitamately argue that they were not aware of it or that inconsistent application can occur. This obviously is not an ideal situation for either the Board or it's licensees. This bill will put teeth into the law and make it much easier for the Board to deal with the problem, while at the same time ensuring that all licensees are treated fairly and equally.

The Board does recognize that there may be legitimate cases of obesity where a drug of this kind may be effective, and perhaps necessary. House Bill 3037 addresses this possibility in Subsection (c) of Section 1, which allows Schedule III and IV sympathomimetic amines to be prebscribed or dispensed for a short term period. These drugs, as their scheduling suggests, do not have as high of stimulant effect and thus are not as subject to abuse either by the patient or on the streets. Thus, if used only for a short term they may be effective in obesity treatment, if other methods have not worked. Our experience has shown, however, that when the amphetamines or Preludin are not available, Schedule III and IV drugs will be substituted in their place. Didrex (Schedule III) and Tenuate (Schedule IV) are good examples of such drugs. Thus, it is necessary that the Board have some regulatory power over them as well.

As I indicated before, all interested parties have spent a great amount of time drafting a bill with which we can all live, but which will hopefully solve a serious problem in this State. House Bill 3037 is the product of that effort. We urge the favorable passage of it out of this committee. Thank you.

DGS/sl
Attachment

#2

From:
Kansas State Board of Healing Arts

STATE REGULATIONS ON AMPHETAMINES

Arizona
Arkansas
California
Colorado
Florida
Indiana
Iowa
Kentucky
Maryland
Massachusetts
Minnesota
Nevada
New Hampshire
New Jersey
New York
Pennsylvania
South Carolina
Washington
West Virginia
Wisconsin

Missouri

innovations

# PRESCRIPTION DRUG ABUSE CONTROL: THE WISCONSIN APPROACH

by Keon S. Chi


## SUMMARY

Until recently, Wisconsin was no exception to the growing nationwide trend of growing prescription drug abuse and diversion. Today, however, Wisconsin is regarded as a model state in dealing with controlled substances and in helping federal agencies as well as other states. Wisconsin's programs and activities in reducing prescription drug abuse, especially amphetamine abuse, have received national attention. The model program was presented in 1979 to Congressional hearings and a special meeting sponsored by the White House. Congress adopted legislation in 1980 requiring the U.S. Attorney General to provide reports to all states based on the approach pioneered by Wisconsin; and the Wisconsin approach was featured in 1980 at the White House Conference on Prescription Drug Misuse, Abuse, and Diversion. The innovative aspect of the Wisconsin model lies in cooperative efforts among several regulatory agencies in the state to stop diversion of controlled substances by a small percentage of doctors and pharmacists. A comprehensive program has been coordinated by a state agency—the Controlled Substances Board—assisted by professional licensing boards and law enforcement agencies in the state. Subsequently, the sale and abuse of amphetamines has decreased drastically, by more than 90 percent, within a period of two to three years. During that period, the State Medical Society issued strict prescription guidelines for amphetamines; the Pharmacy Examining Board conducted an audit of pharmacies; the Medical Examining Board investigated physicians and promulgated an administrative rule; and the state Department of Health and Social Services restricted Medical Assistance payments for amphetamines to only a few legitimate uses.

The Wisconsin experience exemplifies what interagency cooperation can achieve in combating the prescription drug abuse problem. State-federal coordination has also helped a great deal. Equally significant has been reducing the sale of amphetamines without corresponding increases in sales of other controlled substances, at least during the period surveyed.


The author wishes to thank Robert T. Angarola, formerly with the White House Domestic Policy Staff, now a partner in the law firm of Hyman and Phelps, P.C., Washington, D.C.; W. Wayne Bohrer, Chief, State and Industry Unit, Drug Enforcement Administration; Charles E. Barner Jr., assistant secretary, Florida Department of Professional Regulation; Ernest Sjoblom, Director, Missouri Bureau of Narcotics and Dangerous Drugs; and especially David E. Joranson, drug abuse specialist and staff to the Wisconsin Controlled Substances Board, for their generous help in collecting data for this study. For further information on the Wisconsin approach to prescription drug abuse control, contact David Joranson (608) 267-7704, or the Innovations Transfer Program staff (606) 252-2291, The Council of State Governments, P.O. Box 11910, Iron Works Pike, Lexington, Kentucky 40578.

## Controlling Amphetamine Abuse

Wisconsin, in the past, was similar to other states in the sizable number of prescription drugs sold on the street. In addition, Medicaid recipients were obtaining prescriptions, then selling drugs at a profit.

Wisconsin's comprehensive approach to control prescription drug abuse began in 1976 when the Controlled Substances Board (CSB), through the Drug Enforcement Administration (DEA), learned about physicians purchasing large quantities of amphetamines (Biphetamine 20). Biphetamine 20, available in the illicit market as "black Cadillac" or "black beauty," contains a combination of amphetamine and dextro amphetamine both of which were subject to the strict regulatory control of Schedule II of the state Controlled Substances Act.

The manufacturer's product information calls for Biphetamine 20 to be prescribed for exogenous obesity. The amphetamine product was chosen for investigation by the CSB for two reasons: first, the drug was widely available in the black market; and second, Wisconsin state officials were able to obtain the product's purchase data from the DEA's Automation of Reports and Consolidated Orders System (ARCOS), a computerized record of manufacturers' and distributors' reports of retail purchases.

The analysis of the 1975 purchase information on Biphetamine 20 showed that of 922,700 dosage units purchased by state practitioners, 26 individuals purchased 118,300 dosage units, or about 13 percent of the total purchases. The 26 included 20 physicians; three osteopaths; two dentists; and one podiatrist. The top five practitioners were connected with 71 percent of the purchases; and 10 of the 26 dispensing practitioners were from the urban Milwaukee area.

Concerned about such high concentrations of amphetamines in the Milwaukee area, the CSB in 1977 shared its analysis of the ARCOS data with the state pharmacy and medical licensing boards, requesting that they determine the legitimacy of the dispensing or prescription of the drugs. Specifically, the CSB asked the Pharmacy Examining Board (PEB) to review the physicians' prescription patterns. At the direction of the PEB, state pharmacy inspectors conducted an unprecedented prescription audit at 10 pharmacies that had purchased the largest quantities of Biphetamine 20. The results, which were subsequently sent to the Medical Examining Board (MEB), showed that of the total 10,202 prescriptions filled, approximately 83 percent or 8,432 prescriptions were written by eight physicians.

Utilizing these statistics, the CSB sponsored a symposium on "Diversion of Licit Controlled Substances" which was attended by state leadership of the medical, dental, nursing, and pharmacy professions and licensing authorities, and representatives of state and federal health and law enforcement agencies. The timely symposium in 1977 was widely publicized by the news media throughout the state.

The action taken by the Wisconsin MEB was equally swift. The board promptly initiated investigations of 60 physicians, while the board began to clarify its position on the medical safety and usefulness of amphetamines. The MEB concluded that there was no statistically reliable evidence showing that the drug had lasting positive effects in treating obesity and that there existed a high potential for abuse.

At the same time, it was acknowledged that amphetamines are medically useful for the treatment of some conditions such as narcolepsy and hyperkinesis. It was in this context that the state MEB issued an administrative rule under the state medical practice act which, in effect, made the prescribing of amphetamines, along with phenmetrazine, in the treatment of obesity, "unprofessional conduct." In addition, the rule was designed to permit the use of amphetamines in cases such as treatment of narcolepsy, hyperkinesis, drug-induced brain dysfunction, epilepsy, depression shown to be refractory to other therapeutic modalities, the differential diagnostic psychiatric evaluation of depression, or the clinical investigation of the effects of such drugs.

The MEB's initial administrative rule restricted all anorectic drugs in Schedules II, III and IV. But the rule was later amended to apply only to Schedule II drugs and took effect in 1977. Since 1977, the MEB has received only seven requests for exceptions to the new amphetamine rule. Of these requests, only three were granted: two relating to research and one for a patient with diabetic neuropathy.

Faced with the growing concern about amphetamines, the Wisconsin Department of Health and Social Services (DHSS) conducted an investigation of Title XIX (Medical Assistance) claims for amphetamine prescription. As a result of the investigation, the DHSS in 1977 stopped reimbursement of Title XIX claims for all Schedule II, III and IV amphetamine and anorectic products, unless a prior authorization had been approved. Title XIX prior authorization requests have been reviewed by the Bureau of Health Care Financing (BHCF) within the DHSS. Since the inception of the policy, according to the BHCF, only 10 to 15 requests have been received monthly, the majority from psychiatrists for depression ("unresponse to ordinary medications and treatment") and from pediatricians for the "hyperactive child." BHCF staff estimate that the annual Medicaid reimbursement level for amphetamines dropped from $100,000 in 1976 to approximately $1,000 in 1979.

## Controlled Substances Board

The cooperative approach in controlling drug abuse, as described above, has been directed and coordinated by the Controlled Substances Board, an agency created

in 1970 by the state legislature. The Board, established by Chapter 161 of the Wisconsin Statutes, is authorized to administer certain provisions of the Controlled Substances Act (CSA), including proper placement of psychoactive drugs having abuse potential into the schedules of the act, and granting special authorizations to permit nonpractitioners involved in research, teaching and other functions to possess controlled substances.

The Board serves as an advisory agency on drug abuse to the public, the legislature, state departments and agencies, and to the State Council on Alcohol and Other Drug Abuse, of which the CSB is a member. The Board also provides technical assistance to various state agencies and individuals to interpret provisions of the CSA, and revises and publishes the schedules of controlled substances.

The Board membership consists of the state Attorney General; the Secretary of the Department of Health and Social Services; the Chairman of the Pharmacy Examining Board; the Secretary of the Department of Agriculture, Trade and Consumer Protection; a pharmacologist and a psychiatrist—the latter two appointed by the governor for three-year terms. Staff services for the six-member Board are provided by the DHSS' Office of Alcohol and Other Drug Abuse.

Since 1970, the CSB, in cooperative efforts, has conducted annual symposia to help public and professional understanding of drug abuse and controlled substance issues. Symposia topics have included the abuse of aerosols and inhalants; use of narcotic antagonists; the role of law in the social control of drugs; diversion of licit controlled substances; and use and diversion of sedative hypnotics. The CSB has also been involved in reviews of sale and control of "look-alikes," phencyclidine (PCP); and use of Delta 9-THC for cancer patients. Since 1976 the Board has paid most attention to control of diversion problems involving amphetamines, sedative-hypnotics, narcotics and "Ts and Blues."

### Cooperative Approach

The cooperative effort undertaken by Wisconsin officials was subsequently formalized in a 1980 memorandum ("Memorandum of Cooperation for Controlling Diversion of Controlled Substances in Wisconsin"). A review of the memorandum will illustrate how the agencies have actually been able to realize interagency and state-federal cooperation.

Parties to the memorandum were the Controlled Substances Board, Pharmacy Examining Board, Medical Examining Board, Dentistry Examining Board (DEB), Veterinary Examining Board (VEB), and U.S. Drug Enforcement Administration. The memorandum was designed to develop and maintain a high degree of cooperation between state agencies and the federal government by strengthening working arrangements between them. In the memorandum they agreed that the CSB, because of its composition and its statutory relation to the Uniform Controlled Substances Act, would serve as a focal point for coordination of agency efforts, prepare reports for the public, state agencies and the DEA describing controlled substances distribution patterns and trends, monitor overall observance of state amphetamine regulations, and participate in periodic work-planning and coordinating meetings with state agencies and the DEA.

On the other hand, the PEB, MEB, DEB, and VEB reaffirmed their authorities and responsibilities for initiating investigations of their practitioners and adjudicating violations of the non-criminal ethical controlled substances law. They specifically agreed to: (1) participate in periodic work-planning and coordinating conferences with other state agencies and DEA; (2) provide the DEA with information on the initiation of results of any controlled substances and license investigations and of actions concerning Wisconsin practitioners; (3) regularly analyze controlled substances purchase reports from CSB and DEA and initiate investigative and regulatory actions; (4) undertake specialized projects to monitor and foster compliance with controlled substances law; (5) provide the DEA with complaints or any other information concerning registrants (manufacturers, distributors, etc.); and (6) report suspected criminal activities to enforcement agencies.

The Drug Enforcement Administration agreed to: (1) provide annual ARCOS reports (drug category, excess purchase, other special reports) to the CSB, MEB, and PEB; (2) review triplicate order forms routinely and provide reports to appropriate state licensing boards for follow-up; (3) refer all pertinent information and complaints concerning state-licensed registrants to the appropriate licensing board; (4) not conduct investigations of community level registrants unless in coordination with state boards; (5) notify state licensing boards of the initiation or results of regulatory or criminal investigations and actions against Wisconsin registrants; (6) conduct drug accountability investigations of drug manufacturers, wholesalers, distributors, and packagers to determine the adequacy of their reports; (7) routinely notify the appropriate state boards when excessive sales of controlled substances to Wisconsin registrants are discovered; (8) conduct joint field investigations or audit with personnel of state agencies; (9) provide assistance to state and local associations of Wisconsin pharmacists for the purpose of upgrading their approaches to the prevention of theft of controlled substances from pharmacies; (10) provide annual reports to CSB and PEB describing the previous year's experience concerning theft of controlled substances from Wisconsin pharmacies; and (11) participate in mutually arranged periodic work planning and coordinating conferences with state agencies.

In December 1981, the Wisconsin Legislature unanimously passed Assembly Bill 930, requiring the CSB to enter into formal agreements with state and federal

agencies to control the abuse of prescription drugs and to monitor cooperation between the agencies involved. The legislation recognized the value of interagency cooperation in diversion control and strengthened the CSB's authorities and responsibilities in further reducing drug abuse and diversion in Wisconsin.

## Results

The results of Wisconsin's cooperative approach in controlling prescription drug abuse are surprising. The DEA's computerized data system, ARCOS, showed a sharp decline in amphetamine purchases in Wisconsin within the first two years: from approximately 40,000 grams in 1976 to under 4,000 grams in 1978. As shown in Figures 1 and 2, the sale of amphetamines between 1976 and 1980 to physicians, pharmacists and hospitals dropped by 92 percent. In 1976, Wisconsin ranked 26th among the states in per capita consumption of amphetamines; but by 1979 the state ranked 50th in the nation.

The decline in amphetamine purchases has also been correlated with a decrease in amphetamine-related arrest rates, as reflected in arrest data from police departments in the Milwaukee area (103 in 1976 to 76 in 1977, to 23 in 1978, to six in 1979, and nine in 1981). The decline in arrests for illegal sale of amphetamines was confirmed by a separate survey of law enforcement officials conducted by the state Justice Department. (Incidentally, the DEA arrested two physicians who were responsible for writing over 10,000 prescriptions. They were subsequently convicted in federal court for unlawful distribution of a controlled substance.)

Furthermore, amphetamine restrictions have received favorable reaction from drug abuse treatment providers in the state. Available statistics on amphetamine purchases in Wisconsin appear to substantiate the recent pronouncement to the CSB by David Joranson, a drug abuse specialist and CSB staffer: "The diversion of amphetamine-related drugs from legitimate sources—physicians and pharmacists—is all but gone."

A significant implication of the Wisconsin experience is that there has been no correspoding increase in purchases in drugs in Schedule III or IV. There has been, instead, an apparent decline in the sale of other drugs. Between 1976 and 1979, for instance, data from a small sample of Wisconsin drug distributors indicate that purchases of one Schedule IV anorectic decreased 77 percent, while purchases of another Schedule IV anorectic decreased 49 percent. Sale of methaqualone, a commonly abused sedative sold under brand names such as Quaaludes and Sopor, dropped 90 percent between 1976 and 1981; sale of amorbarbital decreased by 84 percent during the same period; and by 1982 the sale of phenmetrazine, a stimulant, dropped 99 percent.

It has been noted earlier that Wisconsin has drastically reduced reimbursement by the Medical Assistance Program for amphetamine prescriptions. It is also worth noting that the state has continued to take measures to curb drug abuse among recipients of the Medical Assistance Program. In 1981, for example, Wisconsin state

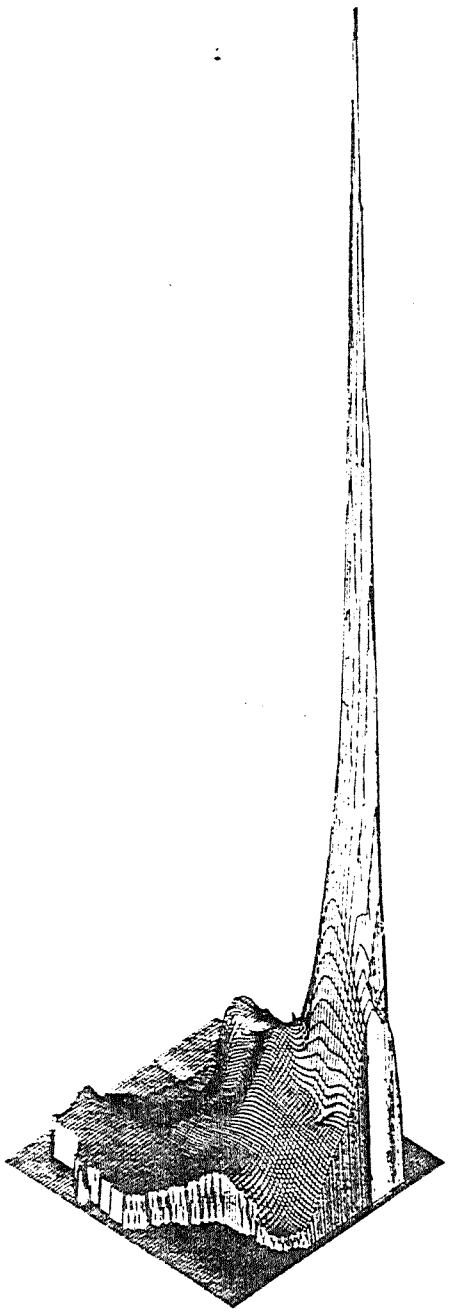

*Fig. 1 Amphetamine Grams Purchased in 1975*

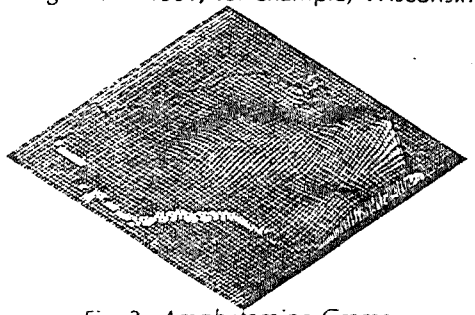

*Fig. 2 Amphetamine Grams Purchased in 1980*

officials, utilizing the Medicaid Management Information System, identified 140 Medicaid recipients who were charged with abusing drugs, including narcotics, sedatives, tranquilizers and soporifics.

Although a majority of drug recipients obtained prescriptions from a few physicians and pharmacists, some sought drugs from as many as 45 different physicians and 35 different pharmacies in 12 communities in the state. And it was found that over 38 percent of the total prescriptions were obtained from four physicians, who later were charged with drug abuse "for the price of an office call, a drug dispensing fee, or other gratuities." These findings are the result of cooperative efforts between Medicaid and other health insurance agencies. In addition, the Medical Assistance Program pharmacy consultant is a member of the CSB.

Although the Medicaid primary provider program in Wisconsin has contributed to helping the primary physicians and/or pharmacies manage the recipient's drug abuse problem, an alternative approach has been initiated in the state whereby pharmacists' dispensing practices are readily identifiable by the Medicaid program. The alternative—known as the Pharmacy Primary Provider Program—has proven to be more effective in controlling drug abuse; and the new program has eliminated legal problems associated with the Medicaid primary provider program, such as those involving recipients' civil liberties, confidentiality issues, and the time-consuming administrative appeal process.

### Evaluation

Some national advisors consider the Wisconsin program "the most farsighted and innovative" in the nation, according to Robert T. Angarola, who served for several years in the White House Drug Policy Office. The success of Wisconsin's Controlled Substances Board is attributable to several factors, among them the positive attitudes and approaches of state government officials, cooperation among professional societies in the state, and the use of new techniques in data collection and analysis.

The CSB in Wisconsin has demonstrated that it has a lasting plan, instead of a "quick-fix" program, to reduce prescription drug abuse problems. State officials, supported by legislative measures, established a permanent government agency—the Controlled Substances Board—with broadly-defined authority to coordinate the prevention and control of prescription drug diversion, emphasizing interagency cooperation.

The Wisconsin experience might be looked at from another angle: that is, the CSB began with a cooperative approach and early recognition that prescription drug abuse was not merely a law enforcement issue. The CSB then devoted more attention to working within the regulatory and peer pressure framework.

Close cooperation among the regulatory agencies has been a major strength of the Wisconsin program. In particular, the willingness of the leaders of the MEB and the PEB to take preventive measures and to conduct self-evaluations and investigations has been an important source of the program's success. Further, state government officials, before taking action, have been receptive to ideas and concerns of various interest groups representing medical and pharmaceutical industries in the state.

The fact that Wisconsin was the first state to use the federal drug information system along with the state system as a source of information should be noted here in measuring the effectiveness of the Wisconsin approach. The ARCOS data, combined with the computer cartography technique developed in Wisconsin, provided a comprehensive picture for identifying the amphetamine problem areas.

As a result of the amphetamine control experience, the CSB has also been able to identify diversion problems involving other prescription drugs. The ARCOS data has provided necessary information on several drugs in Schedule II, and Wisconsin officials have been able to pinpoint suspected overprescriptions. Perhaps the Wisconsin program could not have been as efficient as it has been without direct communication and cooperation between the CSB and the DEA.

### Initiatives at the National Level

Prescription drug abuse, although not as well recognized as illegal drug abuse, has been a nationwide problem in the United States for many years. A 1979 national survey showed that the use of prescription drugs was second to the use of marijuana. Moreover, health hazards are not less serious than those of illegal drug abuse. A recent GAO report shows, for instance, that 75 percent of the most frequently mentioned controlled drugs in the Drug Abuse Warning Network (DAWN) emergency room reports in 1980 were prescription drugs.

Currently over 20 billion dosage units of some 20,000 drug products, which are controlled under federal law, flow through over 625,000 registered manufacturers, distributors and dispensers. And, of those, nearly 99 percent involve retail level practitioners—physicians, dentists, pharmacies, veterinarians, hospitals and educational institutions.

Controlling prescription drugs is a joint responsibility of states and the federal government. At the federal level, the legal framework for controlling drug abuse was established by Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, commonly referred to as the Controlled Substances Act. Although the Drug Enforcement Administration, created in 1973, is the lead agency of the federal government in enforcing controlled substances laws and regulations, the DEA's administrator, since 1982, reports to the director of the FBI, who is authorized to supervise drug enforcement efforts. Currently, some 200 DEA diversion investi-

#2

gators enforce regulation of the legal manufacture and distribution of prescription drugs.

Two pilot projects have been initiated recently by the DEA. Operation Script was begun in 1979 to identify high-level violators. Although the DEA concentrated nearly 500 prescription drug investigations in 24 cities, and although about one-third of the targets had been convicted or had lost their medical or pharmacy licenses through revocation, suspension or surrender, the project failed to meet its objectives, according to a 1982 GAO report. In 1981, the DEA initiated a permanent program, the Targeted Registrant Investigations Program (TRIP), designed to focus DEA investigations on retail violators.

According to a recent DEA survey of state health-care-related regulatory agencies and professional associations in 50 states, the most serious source of prescription drug diversion is pharmacy theft. Nationwide, the number of drug thefts reported to the DEA since 1976 has risen by 29 percent, and retail pharmacies account for most, if not all, of these thefts. To deal with drug thefts, the DEA, in addition to the Pharmacy Theft Prevention Program which became fully available in 1977, created the Registrant Drug Theft Program. Its purpose was to develop a proposed amendment to the 1970 Controlled Substances Act which would provide for mandatory minimum sentences in violent drug theft situations. Under that program, most states are expected to revise their statutes.

Between 1978 and 1980, two congressional hearings and a White House conference were held to discuss desirable courses of action to control the diversion and abuse of prescription drugs. Major themes of the hearings and conferences have centered around the need for coordinated efforts involving the three levels of government in cooperation with professional organizations and regulatory, licensing and law enforcement agencies.

The 1980 White House conference made specific recommendations so that states and localities would have more timely access to DEA's ARCOS information and use of DAWN or a statewide mini-DAWN system. Responding to these recommendations, DEA has changed ARCOS reporting from annually to quarterly, and the agency has also adopted Wisconsin's "mapping" technique for targeting practitioners most likely to be diverting drugs.

One significant development is that the American Medical Association (AMA) is currently in the process of devising a new model plan to help states determine the extent of drug abuse and diversion. The model plan is patterned after Wisconsin's approach and is known as Prescription Abuse Data Synthesis (PADS). The model synthesizes data from several different sources for use by states: Automated Reports and Consolidated Orders System (ARCOS); Drug Abuse Warning Network (DAWN), which is a record of drug mentions from drug-related emergency room visits in 26 major metropolitan areas; statistics on theft of controlled substances collected by the DEA; Medicaid Management Information System (MMIS) involving state records of reimbursement for medical assistance services; state crime laboratory reports regarding drug-related investigations; drug abuse treatment program admissions; and drug-related arrests by local law enforcement agencies. The AMA expects to complete the PADS model in 1983, and drug abuse agencies in each state will be able to have access to it.

**Four Categories of Errant Prescribers**

Joseph H. Skom, MD, clinical professor of medicine at Northwestern University Medical School, Chicago, and chairman of AMA's Steering Committee on Prescription Drug Abuse, offers four categories for doctors who misprescribe:

- Dishonest—or "script"—doctors probably represent no more than 1 percent of all practicing physicians, but they are responsible for the majority of prescription drugs earmarked for illegal use.
- Disabled doctors are those whose professional competance has been impaired by physical or emotional illness. Impaired physicians are not responsible for much misprescribing, according to available data.
- Dated doctors are poor prescribers because they have not kept pace with developments in pharmacology and drug therapy. They may prescribe excessive amounts of drugs for unusually long periods, prescribe drugs that are not appropriate for the condition being treated, or prescribe drugs when another type of therapy is indicated.
- Duped doctors have ethical intentions but misprescribe because they accede to pressure from patients who are drug abusers or who wish to obtain drugs for sale to others.*

*From *American Medical News*, November 12, 1982.

### Transferability

The role of states in controlling prescription drug abuse should be reemphasized. The states are the most appropriate level of government to solve the prescription drug abuse problem since states, in addition to their enforcement capabilities, hold regulatory authority over the licenses of physicians, pharmacists, veterinarians and dentists who divert drugs into the illicit market.

Obviously, many states have not implemented effective methods of curbing drug problems. In fact, most states lack a single agency for administering a program of interagency diversion control and prevention. In Wisconsin, the addition of these new responsibilities to an interagency board already vested with controlled substances scheduling authority was a logical and practical choice.

States also administer the Medicaid program, sometimes abused by recipients but more often by providers. Many state governments have not been able to investigate Medicaid fraud, however. According to the U.S.

House of Representatives Select Committee on Aging's 1982 report on Medicaid Fraud Enforcement, many states need legislative measures—to subpoena, arrest, and seize evidence—before Medicaid Fraud Units can investigate and prosecute. The report found that state Medicaid Fraud Units have not been successful in getting interagency cooperation, and that as many as 20 states have not even applied for the 90 percent federal funding for Medicaid Fraud Units because of "the resistance of state Medicaid administrators who do not want to share their powers or have them taken away."

As demonstrated in the Wisconsin approach, additional legislative actions might be necessary to launch a comprehensive program. Presently, the AMA is considering drafting papers on this issue; there is a need to enact legislation to enable authorities to take regulatory and peer pressure action to deal with the diverters before having to go to the criminal justice system.

It appears that state legislators also need to be better informed about the activities of the substances abuse office. In Wisconsin, such knowledge prompted enactment of necessary legislation, since key legislative leaders had been informed of the situation.

Additionally, states can learn from Wisconsin some lessons having little to do with legal mechanisms. Professional organizations, for example, can initiate and implement various preventive measures to control prescription drugs; statewide or regional conferences and seminars can be held to educate state authorities to take steps to handle the drug abuse problem; and state drug abuse agencies might try to devise ways and means to have law enforcement and medical personnel work closely together in an atmosphere of trust and cooperation.

### Other States

Florida is often cited as another model state with innovative programs to control prescription drug abuse. As a result of the 48-hour delay rule and educational programs initiated in 1977, for example, the number of methaqualone and amphetamine prescriptions was reduced by more than 70 percent. In 1980, the Florida legislature approved the creation of 12 investigator positions within the Department of Professional Regulation (DPR), which regulates 32 professions, including physicians, osteopaths, dentists, podiatrists, veterinarians, naturophathic physicians, nurses and pharmacists.

The investigators, through two surveys of pharmacies in 1980 and 1981, helped identify drug prescribers involved in the operation of so-called "stress clinics" in Southeast Florida. Those establishments prescribed methaqualone (Quaalude) to treat young persons with "stress problems." As a result of DPR actions against health care practitioners in "stress clinics," Florida officials report there are now no known "stress clinics" in the state.

The DPR has recently added another dimension to its ability to identify those involved in drug diversion. Through cooperation with the DEA, the DPR began to maintain copies of DEA 222 forms for all drug purchases in Florida. DEA 222 forms must be used by pharmacists when ordering Schedule II drugs from wholesale distributors or other pharmacies. Similarly, medical practitioners must utilize the 222 form when purchasing drugs for office use from pharmacies or wholesale distributors. Effective November 1982, this system enables the DPR to assess whether individual medical practitioners are purchasing Schedule II drugs beyond what is considered reasonable.

Missouri initiated the Controlled Substance Prescription Survey Program in 1981 to detect "inappropriate" prescribing and dispensing practices. Specifically, the survey's purposes are to identify practitioners who prescribe indiscriminately; identify pharmacies filling forged, altered or excessive prescriptions; and to identify "professional patients."

Under the program, prescriptions on file at pharmacies or physicians' dispensing records are hand-recorded by field representatives on forms submitted to electronic data processing. The data are used to generate specific information, such as prescriptions issued to patients by individual practitioners, individual patient records to detect persons obtaining prescriptions from several physicians, and information on files at particular pharmacies for audit purposes.

Administered by the Bureau of Narcotics and Dangerous Drugs within the Missouri Division of Health, the program has generated information used in actions against practitioners as well as patients. In the past two years, over 100 actions have been taken by the bureau, which currently uses four field investigators and two clerical assistants to check 16,000 practitioners.

### Conclusion

Wisconsin has been able to eliminate "script doctors," who have been responsible for prescribing large quantities of drugs with abuse potential. The Wisconsin experience would indicate that elimination of sources of diversion has been largely responsible for sales reduction. Some questions still remain to be answered, however.

There could be, for example, more pressure on physicians to prescribe narcotics. The fact is that anyone in Wisconsin who tries to obtain amphetamines and other controlled substances could easily get them from practitioners in other states. And the effects of declining prescription drug abuse on the overall problem of drug abuse has yet to be measured. Nevertheless, the Wisconsin approach could be used as a model by other states contemplating a lasting, single state agency to curb prescription drug abuse and diversion.

#2

## BIBLIOGRAPHY


Comptroller General's Report to the Congress, *Comprehensive Approach Needed to Help Control Prescription Drug Abuse*, October 19, 1982.

Comptroller General's Report to the Congress, *Retail Diversion of Legal Drugs: A Major Problem With No Easy Solution*, March 10, 1978.

Daily, Alfred D., Theodore Collins, and Lois Nance. "Identification of Occult Polypharmacy," *Wisconsin Medical Journal*, Vol. 81, November 1982, pp. 19-21.

Rosenberg, Neil D. "The Brakes Are on 'Speed'," *The Milwaukee Journal*, November 14, 1982.

Schulmerich, Frederick D. "Diversion Investigation: Prescription Drugs," Grau & Jacobson, eds. *Criminal and Civil Investigation. Handbook*, McGraw-Hill, 1981.

Trebach, Susan. "Scheme to Get Painkilling Pills Revealed," *Milwaukee Sentinel*, December 10, 1982.

Treffert, Harold A., and David Joranson. "Restricting Amphetamines: Wisconsin's Success Story," *Journal of the American Medical Association*, Vol. 245, No. 13, April 3, 1981, pp. 1336-1338.

U.S. Department of Justice, Drug Enforcement Administration. *Comprehensive Final Report on State Regulatory Agencies & Professional Associations*, U.S. Government Printing Office, 1977.

U.S. Department of Justice, Drug Enforcement Administration. "Drugs of Abuse," reprinted from *Drug Enforcement*, Vol. 6, No. 2, 1979.

U.S. Department of Justice, Drug Enforcement Administration. *Registrant FACTS*, Vol. 6, No. 2 (1980); Vol. 7, No. 1 (1981); Vol. 8, No. 1 (1982).

Wisconsin Controlled Substances Board, *Controlling Amphetamine Misuse and Abuse*, July, 1980.





RM 723
Price: $4.00

April 1983

3-27-84
Strok
Attach. #2

As Amended by House Committee

Session of 1984

# HOUSE BILL No. 3037

By Committee on Judiciary

2-20

AN ACT concerning certain controlled substances; placing restrictions on the prescribing thereof; authorizing certain penalties for failure to comply; amending K.S.A. 1983 Supp. 65-2837 and repealing the existing section.

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

New Section 1. (a) It shall be unlawful for any person licensed to practice medicine and surgery to prescribe, order, dispense, administer, sell, supply or ~~given any amphetamines~~ give any amphetamine or sympathomimetic amine ~~drug or compound~~ designated ~~as a central nervous system stimulant~~ in schedule II, III or IV under the uniform controlled substances act, except as provided in this section. Failure to comply with this section shall constitute unprofessional conduct under 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 ~~drug or compound~~ designated ~~as a central nervous system stimulant~~ in schedule II, III or IV under the uniform controlled substances act, the patient's medical record 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 one or more of the following:

(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

in the licensee's own handwriting

Atch. 2

#2

records and documentation to be ~~refractory~~ to other ~~therapeutic modalities~~. unresponsive forms of treatment

(6) The clinical investigation of the effects of such drugs or compounds, in which case, before the 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.

~~(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, in which case, before prescribing, ordering, dispensing, administering, selling, supplying or giving the drug or compound for a particular condition, the licensee shall obtain a determination from the board of healing arts that the drug or compound ~~is safe and effective~~ can be used for that particular condition.

7) The short term treatment of obesity with Schedule III and IV amphetamines or sympathomimetic amines, as may be defined by rules and regulations adopted by the Board of Healing Arts

8)

~~(c) In cases of obesity that are shown by adequate medical records and documentation to be refractory to other therapeutic modalities, a licensee may prescribe or dispense sympathomimetic amine drugs or compounds designated as central nervous system stimulants in schedule III or IV under the uniform controlled substances act for short term use, as may be defined by rules and regulations of the board of healing arts.~~

Sec. 2. K.S.A. 1983 Supp. 65-2837 is hereby amended to read as follows: 65-2837. 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

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 or 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, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by 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.

Sec. 3. K.S.A. 1983 Supp. 65-2837 is hereby repealed.

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

#2

3-27-84

Attach. # 3

THE KANSAS PHARMACISTS ASSOCIATION
1308 WEST 10TH
PHONE (913) 232-0439
TOPEKA, KANSAS 66604

KENNETH W. SCHAFERMEYER, M.S., CAE
PHARMACIST
EXECUTIVE DIRECTOR

STATEMENT TO SENATE JUDICIARY COMMITTEE

MARCH 27, 1984

SUBJECT: House Bill 3037 Regarding Amphetamines

Mr. Chairman and members of the committee. My name is Ken Schafermeyer and I am Executive Director of the Kansas Pharmacists Association--an organization representing approximately 80% of the practicing pharmacists in the State of Kansas. I appreciate the opportunity to address you on House Bill 3037 regarding restrictions on the prescribing of amphetamines for weight control.

We are concerned about the overprescribing and misuse of amphetamines and we are supportive of this effort to control the prescribing of these drugs.

The Kansas Pharmacists Association has been working with the Kansas State Board of Healing Arts, the Kansas Medical Society and the Kansas Association of Osteopathic Medicine on this issue. Together, we developed HB 3037 as introduced. We have, however, discovered a few minor problems and have agreed to some technical amendments which you have been given. I would like to explain the reasons for these clarifications:

1. The intent of the bill was to address only scheduled amphetamines or sympathomimetic amines--not unscheduled drugs. However, a few drug products combine an unscheduled sympathomimetic amine (such as Phenylpropanolamine) with a scheduled drug (such as Codeine). Therefore, such products would be a scheduled sympathomimetic amine "drug or compound" and physicians would not be allowed to prescribe them under this act. This problem is simple to take care of by removing the words "drug or compound" so that the bill refers only to those amphetamines or sympathomimetic amines which, by themselves, are scheduled drugs.

2. Not all amphetamines and sympathomimetic amines are "central nervous system stimulants" but still have abuse potential, By deleting the words "central nervous system stimulant," the intent of this bill is clarified.

3. A third amendment clarifies that the notation of the purpose of the prescription must be written on the prescription by the physician. Since the prescription may pass through the hands of the doctor, the nurse, receptionist, patient, pharmacy clerk and finally the pharmacist, we feel that this wording provides some assurance of authenticity and makes it clear that the patient can't simply fill in one of the approved purposes himself.

4. The language in Subsection (c) was clarified and put into Subsection (b) where it really belonged.

These changes are all technical in nature and all four groups which have worked on this bill are in agreement. We applaud the efforts of the Board of Healing Arts to address this problem and we urge your support of this bill with the amendments which I have described. Thank you very much for the opportunity to address you on this issue.

3-27-84

Attach. #4

Pennwalt Corporation is a 133 year old firm founded and headquartered in Philadelphia, Pennsylvania with sales of approximately $1 billion in the most recent fiscal year. Pennwalt's Pharmaceutical Division, headquartered in Rochester, New York, produces a wide variety of over-the-counter and prescription drugs. Among the Division's prescription drugs is a non-amphetamine anorectic drug product, IONAMIN. IONAMIN is a sustained release drug containing as its active ingredient a resinated form of phentermine, classified as a Schedule IV controlled substance under Federal law. It has been approved by the Federal Food and Drug Administration (FDA) as safe and effective for use in weight reduction. Because it is a Schedule IV sympathomimetic amine, it would be included among the class of drugs covered by Section 1(c) of the proposed legislation (House Bill 3037).

Two requirements of Section 1(c) of the proposed legislation are of great concern as applied to the use of Schedule III and IV substances in the treatment of obesity. These are (1) the requirement that Schedule III and IV drugs shall not be dispensed except when obesity has been shown to be "refractory to other therapeutic modalities", and (2) the requirement that the drug therapy shall be limited to "short term use as may be defined by rules and regulations of the Board of Healing Arts." Pennwalt respectfully submits that these requirements may operate to deny persons with a serious health problem-obesity-a program of drug therapy which the FDA has found to be safe and effective in treatment of that condition.

In 1974, FDA approved IONAMIN and a number of other non-amphetamine anorectics as safe and effective for use as "a short-term (a few weeks) adjunct in a regimen of weight reduction based on a caloric restriction." 39 Fed. Reg. 26459 (July 9, 1974). The finding as to IONAMIN was based on the results of a year-long research program conducted by Pennwalt and submitted to FDA in 1971. In this study, which met FDA requirements for "adequate and well controlled studies," a population of 110 obese adults completed the program and was studied for periods of up to twenty weeks, during which time IONAMIN was administered for periods of up to sixteen weeks. The clinical efficacy data showed both continuous and intermittent IONAMIN therapy to be highly and significantly effective in causing weight loss at a rate greater than that achieved by placebo.

In addition, there was no sign of serious drug toxicity or habituation at any time during or after the treatment.

Atch. 4

Thus, adequate and well controlled studies submitted to FDA as part of the drug efficacy study implementation (DESI) program convinced FDA of the efficacy of the non-amphetamine anorectics in general and of IONAMIN in particular. In the case of IONAMIN, Pennwalt's efficacy study showed continuing therapeutic effectiveness of the product in patients receiving up to sixteen weeks of continuous therapy, with no indication of drug dependence or serious adverse side effects.

In 1980, Drug Evaluations, a publication of the American Medical Association, discussed drug therapy for obesity. That publication confirms the seriousness of obesity as a medical condition and the difficulty of treatment for that condition, and recommends continuous anorectic drug therapy for up to twelve weeks and intermittent therapy thereafter, when indicated. Specifically AMA states:

> "If no significant weight loss occurs during a four to six week trial, anorexiant therapy should be discontinued. When weight loss continues during this period, these agents may be given for a total of twelve weeks. Although studies have shown that anorexiants remain effective for periods longer than twelve weeks, it is preferable to use them intermittently to achieve additional weight loss when a weight plateau is reached despite good dietary habits, exercise and other measures."
>
> AMA Drug Evaluations (1980), pp 939 et seq.

In light of the information reviewed above, the proposed legislation is contrary to accepted medical learning, approved by the FDA, which recognizes IONAMIN as a drug of choice. The proposed language is unduly restrictive in requiring physicians to determine that obesity is "refractory to other therapeutic modalities" before prescribing Schedule III or IV anorectics.

In addition, the proposed requirement is vague and therefore extremely difficult to enforce. There are numerous forms of possible "therapeutic modalities" for obesity, ranging from self prescribed diets through various types of behavior modification programs to psychoanalysis. Drug therapy may include various types of OTC drugs or prescription drugs. Because of this wide variety, the precondition to use of Schedule III or IV drugs is unclear. Thus, physicians may be unduly deterred from using potentially useful Schedule III or IV drugs in legitimate therapy or, conversely, the Board of Healing Arts may find that it is unable to enforce this vague provision.

As for the proposed restriction to "short term use", Pennwalt believes the clinical trials supporting FDA's finding that IONAMIN is safe and effective, which involved use of the drug for up to sixteen weeks of continuous therapy, are sufficient to support the previously cited AMA recommendation that anorexiant therapy may be given for a total of twelve weeks.

Pennwalt, therefore, respectfully recommends that the proposed legislation be amended to (1) permit up to twelve weeks of continuous therapy with Schedule III or IV anorectics and (2) delete the precondition that obesity be found refractory to other therapeutic modalities before permitting their use.

3-27-84
attach. #5

CRH2931ml

PROPOSED REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Judiciary

Recommends that House Bill No. 2931

"AN ACT concerning civil procedure; relating to proceedings in aid of execution; amending K.S.A. 60-2419 and repealing the existing section."

Be amended:

On page 2, in line 59, before "specified", by inserting "date";

On page 3, following line 91, by inserting:

"New Sec. 2. All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness shall specify the amount of funds, credits or indebtedness to be withheld by garnishee. A garnishee holding property, funds, credits or indebtedness belonging or owed to the defendant which is in excess of such amount stated in the order of garnishment may withhold or charge the defendant's account with a garnishee's service fee not exceeding $5 and pay to the defendant the remaining portion of such property, funds, credits or indebtedness.

Sec. 3. K.S.A. 60-715 is hereby amended to read as follows: 60-715. Except as provided in K.S.A. ~~1982 Supp.~~ 60-1607 and amendments thereto, an order of garnishment before judgment may be obtained only upon order of a judge of the district court pursuant to the procedure to obtain an order of attachment. No garnishment shall be commenced before judgment on plaintiff's claim in the principal action where such garnishment proceedings affect the earnings of the defendant, except as provided by K.S.A. ~~1982 Supp.~~ 60-1607 and amendments thereto. An order of garnishment may be in lieu of, or in addition to, the order of attachment, as designated by the written direction of the party seeking the order. Such written direction shall state the amount

Atch. 5

of the plaintiff's claim.

Sec. 4. K.S.A. 60-716 is hereby amended to read as follows: 60-716. As an aid to the enforcement of the judgment, an order of garnishment may be obtained and shall be issued by the clerk of the court from which execution is issuable, either in connection with an execution or independently thereof as designated by the written direction of the party entitled to enforce the judgment. Such written direction shall state the amount of the judgment and shall designate whether the order of garnishment is to be issued for the purpose of attaching earnings or for the purpose of attaching other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor for the purpose of enforcing (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, ~~his or her~~ the written direction shall so indicate. No bond is required for an order of garnishment issued after judgment.

Sec. 5. K.S.A. 60-717 is hereby amended to read as follows: 60-717. (a) Form. (1) An order of garnishment, issued independently of an attachment, either prior to judgment or as an aid for the enforcement of a judgment, for the purpose of attaching any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings, shall state the amount of property, funds, credits or indebtedness to be withheld by garnishee which shall be 1 1/2 times the amount of plaintiff's claim as stated in the affidavit or 1 1/2 times the amount of the judgment as stated in the written direction of the party entitled to enforce the judgment. The order is declared to be sufficient if substantially in the following form:

"In the District Court of _____ County, Kansas, A. B., Plaintiff, vs. C. D., Defendant, and E. F., Garnishee. The State of Kansas to the Garnishee: If you hold any property, funds, credits or indebtedness belonging to or owing the

defendant, the amount to be withheld by you pursuant to this order or garnishment is not to exceed $ . You are hereby ordered as a garnishee to file with the clerk of the above named court, within 10 days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you sign your answer, indebted to the defendant, or have in your possession or control any property, funds or credits belonging to the defendant, excluding earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such funds, credits or indebtedness and description of any such property. For the purpose of this order, if you are, at the time this order is served upon you, an executor or administrator of an estate containing property, credits, indebtedness or funds to which defendant is or may become entitled as a legatee or distributee of the estate upon its distribution, you are deemed to be indebted to the defendant to the extent of such property, credits, indebtedness or funds. You are further ordered to withhold the payment of any such indebtedness, credits or funds up to the amount stated above, or the delivery away from yourself of any such property, until the further order of the court. Your answer on the form served herewith shall constitute substantial compliance with this order.

"Failure to file your answer may entitle the plaintiff to judgment against you for the full amount of the claim and costs.

"Witness my hand and seal of the court at _____ in this county, this _____ day of _____, 19__, _____, Clerk of the court, _____ County."

(2) An order of garnishment, issued independently of an attachment as an aid for the enforcement of a judgment and for the purpose of attaching earnings of the defendant, is declared

to be sufficient if substantially in the following form:

"In the District Court of _____ County, Kansas, A. B., Plaintiff, vs. C. D., Defendant, and E. F., Garnishee. The State of Kansas to the Garnishee: You are hereby ordered as a garnishee to file with the clerk of the above named court, within 30 days after service of this order upon you, your answer under oath stating whether you are indebted to the defendant by reason of earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such indebtedness. Computation of the amount of your indebtedness shall be made as prescribed by the answer form served herewith and shall be based upon defendant's earnings for the entire normal pay period in which this order is served upon you. You are further ordered to withhold the payment of that portion of defendant's earnings required to be withheld pursuant to the directions accompanying the answer form until the further order of the court. Your answer on the form shall constitute substantial compliance with this order.

"Failure to file your answer may entitle the plaintiff to judgment against you for the full amount of the claim and costs.

"Witness my hand and seal of the court at _____ in this county, this _____ day of _____, 19__, _____, Clerk of the court, _____ County."

If such order of garnishment is issued at the written direction of the party entitled to enforce the judgment, pursuant to K.S.A. 60-716 and amendments thereto to enforce (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, the clerk of the district court shall cause such purpose to be clearly stated on the order of garnishment and the accompanying garnishee's

answer form immediately below the caption. If the garnishment is to enforce a court order for the support of any person, the garnishment shall not exceed 50% of an individual's disposable earnings unless the person seeking the garnishment specifies to the garnishee a greater percent to be withheld, as authorized by subsection (g) of K.S.A. 60-2310 and amendments thereto.

(b) Service and return. The order of garnishment shall be served on the garnishee, together with two copies of the form for the garnishee's answer prescribed in K.S.A. 60-718 and amendments thereto and returned by the officer making service in the same manner as an order of attachment. If the order is served prior to a judgment on the plaintiff's claim, the order shall also be served on the defendant, if the defendant can be found, but failure to serve the defendant shall not relieve the garnishee from liability under the order.

(c) Effect. An order of garnishment issued to attach any property, funds, credits or other indebtedness belonging to or owing the defendant, other than earnings, shall attach (1) all such property of the defendant which is in the possession or under the control of the garnishee, and all such credits, funds and indebtedness due from the garnishee to the defendant at the time of service of the order up to the amount stated in the order of garnishment, and (2) all such property coming into the possession or control of the garnishee and belonging to the defendant, and all such credits, funds and indebtedness becoming due to the defendant between the time of the serving of the order of garnishment and the time of the signing of the answer of the garnishee, up to the amount stated in the order of garnishment, but if the garnishee is an executor or administrator of an estate and the defendant is or may become a legatee or distributee thereof, the order of garnishment shall attach and create a first and prior lien upon any property or funds of such estate to which the defendant is entitled upon distribution of the estate up to the amount stated in the order of garnishment, and the garnishee shall be prohibited from paying to the defendant any of such

property or funds, except that which is in excess of the amount stated in the order, until so ordered by the court from which the order of garnishment was issued. Should the garnishee hold funds or credits or be indebted to defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

An order of garnishment issued for the purpose of attaching earnings of the defendant shall have the effect of attaching the nonexempt portion of the defendant's earnings for the entire normal pay period in which the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310 and amendments thereto, and computation thereof for a normal pay period shall be made in accordance with the directions accompanying the garnishee's answer form served with the order of garnishment.

Sec. 6. K.S.A. 60-718 is hereby amended to read as follows: 60-718. (a) Within 10 days after service upon a garnishee of an order of garnishment issued to attach any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings, the garnishee shall file a verified answer thereto with the clerk of the court, stating the facts with respect to the demands of the order. If the answer of the garnishee is mailed to the clerk of the court, it shall be deemed filed when mailed. The answer of the garnishee shall be sufficient if substantially in the following form, but the garnishee's answer shall contain not less than that prescribed in the form:

ANSWER OF GARNISHEE

State of Kansas

County of _____

_____ being first duly sworn, say that on the _____ day of _____, 19__, I was served with an order of garnishment in the above entitled action, that I have not delivered to the defendant _____, any ~~money, personal~~

property, ~~goods,-chattels,--stocks,--rights~~ funds, credits nor ~~evidence--of~~ indebtedness belonging to the defendant, other than earnings, except that which is in excess of the amount stated in the order of garnishment, since receiving the order of garnishment, and that the following is a true and correct statement:

(1) (~~Money~~ Funds or indebtedness due) I hold ~~money~~ funds or am indebted to the defendant, other than for earnings due and owing defendant, as of the date of this answer, in the following manner and amounts: _____.

(2) (Personal property or credits in possession) I have possession of personal property~~,-goods,-chattels,-stocks,-rights,-credits,-or-effects~~ or credits of the defendant, as of the date of this answer, described and having an estimated value as follows:_____.

(3) (To be answered by garnishee who is an executor or administrator of an estate) I am an _____ (executor or administrator) of the estate of _____ containing funds, credits, indebtedness or property to which defendant is or may become entitled as a _____, (legatee or distributee) and I understand that the order of garnishment shall attach and create a first and prior lien on all such property or funds to which defendant becomes entitled upon distribution of the estate up to the amount stated in the order of garnishment, and that I am prohibited from delivering to defendant any such property, credits, indebtedness or funds except that which is in excess of the amount stated in the order of garnishment until further order of the court from which the order of garnishment was issued. The approximate date for distributing the assets of the estate is _____, 19__.

I will hold the above described ~~moneys~~ funds, property, credits and indebtedness up to the amount stated in the order of garnishment, or other items in my possession, until the further

order of the court.

_____

(Signature), Garnishee

Subscribed and sworn to before me this _____ day of _____, 19__.

INSTRUCTIONS TO GARNISHEE

This form is provided for your convenience in furnishing the answer required of you in the order of garnishment. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the clerk of the above-named court within the time prescribed in the order of garnishment.

(b) Within 30 days after service upon a garnishee of an order of garnishment issued for the purpose of attaching any earnings due and owing the defendant, the garnishee shall file an answer thereto with the clerk of the court, stating the facts with respect to the demands of the order. If the answer of the garnishee is mailed to the clerk of the court, it shall be deemed filed when mailed. If the defendant is not employed by the garnishee or has terminated employment with the garnishee, the answer is not required to be verified. Otherwise, the answer shall be verified. The answer of the garnishee is declared to be sufficient if substantially in the following form, but the garnishee's answer shall contain not less than that prescribed in the form:

ANSWER OF GARNISHEE

The defendant_____

Terminated employment on_____. (check one)
(date)

Was never employed.

_____

(Signature) Garnishee

If one of the above applies, you are not required to complete the remainder of this form and it is not required to be

verified. You must return the form within the time prescribed in the order of garnishment.

If neither of the above applies, you must complete the remainder of this form and have it verified.

==========

State of Kansas

County of _____

_____, being first duly sworn, say that on the _____ day of _____, 19__, I was served with an order of garnishment in the above entitled action, that since being served with ~~said~~ the order I have delivered to the defendant _____, only that portion of the defendant's earnings authorized to be delivered to the defendant pursuant to the instructions accompanying this form and that the statements in my answer are true and correct.

INSTRUCTIONS TO GARNISHEE

The order of garnishment served upon you has the effect of attaching that portion of the defendant's earnings (defined as compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) which is not exempt from wage garnishment. This form is provided for your convenience in furnishing the answer required of you in the order. It is designed so that you may prepare your answer in conjunction with the preparation of your payroll. Wait until the end of the normal pay period in which this order has been served upon you and apply the tests set forth in these instructions to the entire earnings of the defendant-employee during the pay period, completing your answer in accordance with these instructions. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the clerk of the above-named court within the time prescribed in the order of garnishment.

First, furnish the information required by paragraphs (a)

through (f) of the form below. Read carefully the "Note to Garnishee" following paragraph (f). Then, if the total amount of the defendant-employee's disposable earnings are not exempt from wage garnishment, complete paragraphs (g) and (h) of the form by computing the amount of defendant-employee's disposable earnings which are to be paid over to the defendant-employee by using the following table:

I. If the defendant-employee's disposable earnings are less than

$100.50 for a Weekly pay period

$201.00 for a Bi-Weekly pay period

$217.75 for a Semi-Monthly pay period

$435.50 for a Monthly pay period

Pay the employee as if the employee's pay check were not garnished.

II. If the defendant-employee's disposable earnings are

$100.50 to $134.00 for a Weekly pay period

pay the defendant-employee $100.50

$201.00 to $268.00 for a Bi-Weekly pay period

pay the defendant-employee $201.00

$217.75 to $290.33 for a Semi-Monthly pay period

pay the defendant-employee $217.75

$435.50 to $580.67 for a Monthly pay period

pay the defendant-employee $435.50

Any disposable earnings remaining after payment of the above amounts shall be retained until further order of the court.

III. If the defendant-employee's disposable earnings are more than

$134.00 for a Weekly pay period

pay the defendant-employee 75% of the defendant-employee's disposable earnings

$268.00 for a Bi-Weekly pay period

pay the defendant-employee 75% of

the defendant-employee's disposable earnings $290.33 for a Semi-Monthly pay period

pay the defendant-employee 75% of the defendant-employee's disposable earnings $580.67 for a Monthly pay period

pay the defendant-employee 75% of the defendant-employee's disposable earnings

Any disposable earnings remaining after payment of the above amounts shall be retained until further order of the court.

IV. SUPPORT ORDERS. If the person seeking the garnishment for court ordered support desires to garnish more than 50% of disposable earnings, that person may request in writing to the clerk of the court to check one of the below applicable percentages:

55% Employee also supports a spouse or dependent child not covered by this support order and payments are 12 weeks overdue.

60% Employee does not support a spouse or dependent child and payments are not 12 weeks overdue.

65% Employee does not support a spouse or dependent child and payments are 12 weeks overdue.

STATEMENT OF GARNISHEE

(a) The normal pay period for defendant is weekly _____ every two weeks _____ semi-monthly _____ monthly _____ (designate one).

(b) This answer covers earnings for the normal pay period beginning on the _____ day of _____, 19__, and ending on the _____ day of _____, 19__, which normal pay period includes the day on which the order of garnishment was served upon me.

(c) Total gross earnings due for the normal pay period covered by (b) above are ..... $_____

(d) Average gross earnings for normal pay period as

designated in (a) above ..... $_____

(e) Amounts required by law to be withheld for the normal pay period covered by (b) above are:

(1) Federal social security tax ..... $_____

(2) Federal income tax ..... $_____

(3) State income tax ..... $_____

(4) Railroad retirement tax ..... $_____

Total ..... $_____

(Deduct only those items listed above)

(f) Disposable earnings for the normal pay period covered by (b) above are (subtract (e) from (c) above) ..... $_____

Note to Garnishee: If the order of garnishment states at the top of the order that it is issued to enforce (1) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (2) a debt due for any state or federal tax, you must retain in your possession until further order of the court ~~all of~~ the disposable earnings shown in (f) above. If the order of garnishment states at the top of the order that it is issued to enforce an order of any court for the support of any person, you must retain in your possession until further order of the court 50% of the disposable earnings shown in (f) above, or such greater percentage as may be indicated in paragraph IV above. If the order of garnishment is not issued for any of such purposes, compute the amount of earnings which may be paid to defendant pursuant to the instructions accompanying this form and furnish the information required by (g) and (h) below.

(g) In accordance with the instructions accompanying this answer form, I have determined that the amount which may be paid to defendant is ..... $_____

(h) After paying to defendant the amount stated in (g) above, ~~I am holding~~ the remainder of defendant's disposable earnings in the amount of ..... $_____

I will hold in my possession until further order of the court all of the moneys required herein to be withheld.

_____
(Signature), Garnishee

Subscribed and sworn to before me this _____ day of _____, 19__.

Answer of garnishee must be filed with the clerk of this court pursuant to Kansas law.

(c) The clerk shall cause a copy of the answer to be mailed promptly to the plaintiff and the defendant. Within 10 days after the filing of the answer by the clerk, the plaintiff or the defendant or both of them may reply thereto controverting any statement in the answer. If the garnishee fails to answer within the time and manner herein specified, the court may grant judgment against garnishee for the amount of the plaintiff's judgment or claim against the defendant, but if the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the defendant. Such judgments may be taken only upon written motion and notice given in accordance with K.S.A. 60-206 and amendments thereto. Notwithstanding the foregoing, if the garnishee is a public officer for the state or any instrumentality thereof and the indebtedness sought by plaintiff to be withheld from defendant is an indebtedness to defendant incurred by or on behalf of the state or any instrumentality thereof, judgment against the state or such instrumentality shall be limited to an amount for claim and costs not exceeding the total amount of the indebtedness of the state or instrumentality thereof to defendant. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answer are deemed to be confessed. If a reply is filed as herein provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn statements of the

answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against property of the defendant.

Sec. 7. K.S.A. 60-721 is hereby amended to read as follows: 60-721. (a) Upon determination of the issues, either by admissions in the answer or reply, or by default, or by findings of the court on controverted issues, judgment shall be entered fixing the rights and liabilities of all the parties in the garnishment proceedings (1) by determining the liability of garnishee upon default, ~~or~~ (2) discharging the garnishee, ~~or~~ (3) making available to the satisfaction of the claim of the plaintiff any indebtedness due from the garnishee to the defendant which has been attached or any property in the hands of the garnishee belonging to the defendant which has been attached, including ordering the payment of money by the garnishee into court, or the impoundment, preservation and sale of property as provided for the disposition of attached property, ~~or~~ (4) rendering judgment against the garnishee for the amount of ~~his or her~~ the garnishee's indebtedness to the defendant which has been attached or for the value of any property of the defendant held by the garnishee ~~, and~~ which has been attached or (5) if the answer of a garnishee is controverted without good cause, the court may award the garnishee judgment against the party controverting such answer damages for ~~his or her~~ the garnishee's expenses, including reasonable ~~attorneys'~~ attorney fees, necessarily incurred in substantiating the same.

(b) When judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and the court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the court may issue a continuing order of garnishment to allow any indebtedness that will become due from the garnishee to the defendant because of an employer-employee relationship to be made available to the plaintiff on a periodic and continuing

basis for so long as the court issuing the order may determine or until otherwise ordered by such court in a further proceeding. No order may be made pursuant to this subsection ~~(b)~~ unless the court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one year of support as ordered and the defendant receives compensation from ~~his or her~~ the employer on a regular basis in substantially equal periodic payments. On motion of a defendant who is subject to a garnishment order pursuant to this subsection ~~(b)~~, the court for good cause shown may modify or revoke any such order.

Sec. 8. K.S.A. 61-2003 is hereby amended to read as follows: 61-2003. An order of garnishment before judgment may be obtained only upon order of a judge of the district court pursuant to the procedure to obtain an order of attachment. No garnishment proceedings shall be commenced before judgment on plaintiff's claim in the principal action where such garnishment proceedings affect the earnings of the defendant.

The order of garnishment may be in lieu of, or in addition to, the order of attachment, as designated by the written direction of the party seeking the order. Such written direction shall state the amount of the plaintiff's claim.

Sec. 9. K.S.A. 61-2004 is hereby amended to read as follows: 61-2004. As an aid to the enforcement of the judgment, an order of garnishment may be obtained 10 days after judgment and shall be issued by the clerk of the court from which execution is issuable, either with an execution or independently thereof and without the requirement that an execution be returned unsatisfied, as designated by the written direction of the party entitled to enforce the judgment. Such written direction shall state the amount of the judgment and designate whether the order of garnishment is to be issued to attach earnings or to attach other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor to enforce (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy

act or (3) a debt due for any state or federal tax, the written direction of the party shall so indicate. No bond is required for an order of garnishment issued after judgment.

Sec. 10. K.S.A. 61-2005 is hereby amended to read as follows: 61-2005. (a) Form of garnishment order. An order of garnishment, issued independently of an attachment for the purpose of attaching earnings or for the purpose of attaching other property of the defendant, and the answer of the garnishee are declared to be sufficient if substantially in compliance with the appropriate form prescribed in the appendix to this act. If an order of garnishment is issued at the written direction of the party entitled to enforce the judgment, pursuant to K.S.A. 61-2004 and amendments thereto, for the purpose of enforcing (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, the clerk of the court shall cause such purpose to be clearly stated on the order of garnishment and the accompanying garnishee's answer form immediately below the caption thereof. If the garnishment is to enforce a court order for the support of any person, the garnishment shall not exceed 50% of an individual's disposable earnings unless the person seeking the garnishment specifies to the garnishee a greater percent to be withheld, as authorized by subsection (g) of K.S.A. 60-2310 and amendments thereto.

(b) Service and return. The order of garnishment shall be served on the garnishee, together with two copies of the appropriate form for the garnishee's answer prescribed in the appendix to this act, and returned by the officer making service in the same manner as an order of attachment. If the order is served prior to a judgment on the plaintiff's claim, the order shall also be served on the defendant, if the defendant can be found, except that the order shall not be served on the defendant until after service has been made on the garnishee. Failure to serve the defendant shall not relieve the garnishee from

liability under the order.

(c) Effect. An order of garnishment issued for the purpose of attaching any property, funds, credits or other indebtedness belonging to or owing the judgment debtor, other than earnings, shall have the effect of attaching (1) all such personal property of the defendant which is in the possession or under the control of the garnishee, and all such funds, credits and indebtedness due from the garnishee to the defendant at the time of service of the order up to the amount stated in the order of garnishment, which shall be 1 1/2 times the amount of plaintiff's claim or the judgment, and (2) all such personal property coming into the possession or control of the garnishee and belonging to the defendant, and all such funds, credits and indebtedness becoming due to the defendant between the time of the serving of the order of garnishment and the time of the signing of the answer of the garnishee, ~~except that~~ up to the amount stated in the order of garnishment, which shall be 1 1/2 times the amount of plaintiff's claim or the judgment. Where the garnishee is an executor or administrator of an estate where the defendant is or may become a legatee or distributee thereof, the order of garnishment shall have the effect of attaching and creating a first and prior lien upon any property or funds of such estate to which the defendant is entitled upon distribution of the estate up to the amount stated in the order of garnishment, which shall be 1 1/2 times the amount of plaintiff's claim or the judgment, and such garnishee shall be prohibited from paying over to the defendant any of such property or funds except that which is in excess of the amount stated in the order of garnishment until so ordered by the court from which the order of garnishment was issued. Should the garnishee hold funds or credits or be indebted to defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

An order of garnishment issued for the purpose of attaching earnings of the defendant shall have the effect of attaching the nonexempt portion of the defendant's earnings for the entire

normal pay period in which the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310 and amendments thereto, and computation thereof for a normal pay period shall be made in accordance with the directions accompanying the garnishee's answer form served with the order of garnishment.

Sec. 11. K.S.A. 61-2006 is hereby amended to read as follows: 61-2006. Within 10 days after service upon a garnishee of an order of garnishment issued for the purpose of attaching any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings, and within 30 days after service upon a garnishee of an order of garnishment issued for the purpose of attaching any earnings due and owing the defendant, the garnishee shall file an answer thereto with the clerk of the court stating the facts with respect to the demands of the order. If the answer of the garnishee is mailed to the clerk of the court, it shall be deemed filed when mailed. If the garnishment is for the purpose of attaching earnings and the defendant is not employed by the garnishee or has terminated employment with the garnishee, the answer is not required to be verified. Otherwise, the answer shall be verified. If the office or principal place of business of the garnishee is outside the county where the court is situated, the garnishee shall have 30 days to file an answer in all cases. The answer of the garnishee may be on the appropriate form prescribed in the appendix to this act, but in no event shall the garnishee's answer contain less than that prescribed in the form.

The clerk shall cause a copy of the answer to be mailed promptly to the plaintiff and to the defendant at the ~~address~~ addresses to which ~~summons--was~~ the summonses were directed. Within 10 days after the filing of the answer by the clerk, the plaintiff or defendant, or both of them, may reply thereto, controverting any statement therein.

If the garnishee fails to answer within the time and manner herein specified, the court may grant judgment against garnishee

for the amount of the plaintiff's judgment or claim against the defendant, but if the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the defendant~~,--but--the~~. Such judgment may be taken only upon written motion and notice given in accordance with ~~subsection (d) of~~ K.S.A. 60-206 and amendments thereto. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answers are deemed to be confessed. If a reply is filed as herein provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against personal property of the defendant.

Sec. 12. K.S.A. 61-2009 is hereby amended to read as follows: 61-2009. The provisions of K.S.A. 60-721 and amendments thereto shall be applicable to actions pursuant to this chapter.

Sec. 13. Form No. 7 in the appendix of forms following K.S.A. 61-2605 is hereby amended to read as follows:

Form No. 7: ORDER OF GARNISHMENT AND RETURN WHERE ORDER ISSUED TO ATTACH PROPERTY OTHER THAN EARNINGS OF DEFENDANT

In the _____ Court of _____ County, Kansas.

_____

Plaintiff,

vs.

* _____ No. _____

Defendant,

and

_____

Garnishee.

ORDER OF GARNISHMENT

#5



To the above-named garnishee:

If you hold any property, funds, credits or indebtedness belonging to or owing the defendant, the amount to be withheld by you pursuant to this order of garnishment is not to exceed $ _____.

You are hereby ordered as a garnishee to file with the clerk of the above-named court, within _____ days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you ~~file~~ sign your answer, indebted to or have in your possession or control any personal property, funds or credits belonging to the defendant, excluding earnings (compensation for personal services, whether denominated as wages, salary commission, bonus or otherwise) due and owing defendant, and stating the amount of any such funds, credits or indebtedness and description of any such property. For the purpose of this order, if you are, at the time this order is served upon you, an executor or administrator of an estate containing property, credits, indebtedness or funds to which defendant is or may become entitled as a legatee or distributee of the estate upon its distribution, you are deemed to be indebted to the defendant to the extent of such property, credits, indebtedness or funds. You are further ordered to withhold the payment of any such indebtedness, up to the amount stated above, or the delivery away from yourself of any such property, until the further order of the court. Your answer on the form served herewith shall constitute substantial compliance with this order.

Failure to file your answer as aforesaid may entitle the plaintiff to judgment against you for the full amount of ~~his--or her~~ the plaintiff's claim and costs.

(Signature), Clerk

Dated _____

[Seal of the Court]

*(The defendant's address should be shown ~~following his or~~

~~her name~~ if the case is not yet in judgment and service on the defendant is also desired.)

RETURN ON ORDER OF GARNISHMENT

On _____, 19__, at __ o'clock, __ m., I received this order of garnishment and I hereby certify that I served the same as follows:

(1) Service on Garnishee. I served said order of garnishment, together with two ~~(2)~~ copies of a form for garnishee's answer, on each of the garnishees at the time and in the manner following~~, to wit~~: _____

_____.

(2) Service on Defendant. I also served a copy of said order of garnishment on each of the defendants on the dates and in the manner following~~, to wit~~: _____

_____.

Fees

Service, First Person ..... $_____

_____ Additional Persons ..... $_____

_____ Persons Not Found ..... $_____

Mileage: _____ miles ..... $_____

_____

Total ..... $_____

Sec. 14. Form No. 8 in the appendix of forms following K.S.A. 61-2605 is hereby amended to read as follows:

Form No. 8: GARNISHEE'S ANSWER TO ACCOMPANY ORDER OF GARNISHMENT IN FORM No. 7

(Caption of Case)

ANSWER OF GARNISHEE

State of Kansas )

) ss.

County of _____ )

_____, being first duly sworn, say that on the __ day of _____, 19__, I was served with an order of garnishment in the above entitled action, that I have not delivered to the

defendant, _____, any ~~money,--personal~~ property, ~~goods,~~ ~~chattels,--stocks,--rights,~~ funds, credits nor ~~evidence---of~~ indebtedness belonging to the defendant, other than earnings, except that which is in excess of the amount stated in the order of garnishment, since receiving said order of garnishment, and that the following is a true and correct statement:

(1) (~~Money~~ Funds or Indebtedness Due) I hold ~~money~~ funds or credits or am indebted to the defendant, other than for earnings due and owing defendant, as of the date of this answer, in the following manner and amounts: _____.

(2) (Personal property or credits in possession) I have possession of personal property~~,--goods,--chattels,--stocks,--rights,--credits--or--effects~~ or credits of the defendant, as of the date of this answer, described and having an estimated value as follows: _____.

(3) (To be answered by garnishee who is an executor or administrator of an estate) I am an _____
(executor or administrator)
of the estate of _____, containing funds, credits, indebtedness or property to which defendant is or may become entitled as a _____,
(legatee or distributee)
and I understand that the order of garnishment has the effect of attaching and creating a first and prior lien on all such property or funds to which defendant becomes entitled upon distribution of the estate up to the amount stated in the order of garnishment and that I am prohibited from delivering to defendant any such property, credits, indebtedness or funds except that which is in excess of the amount stated in the order of garnishment until further order of the court from which the order of garnishment was issued. The approximate date for distributing the assets of the estate is _____, 19__.

I will hold the above described ~~moneys~~ funds, property,

credits and indebtedness up to the amount stated in the order of garnishment, or other items in my possession, until the further order of the court.

_____

(Signature), Garnishee

[Jurat]

INSTRUCTIONS TO GARNISHEE

This form is provided for your convenience in furnishing the answer required of you in the order of garnishment. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the clerk of the above-named court within the time prescribed in the order of garnishment.";

Also on page 3, by renumbering sections 2 and 3 as sections 15 and 16; in line 92, by striking "60-2419 is" and inserting "60-715, 60-716, 60-717, 60-718, 60-721, 60-2419, 61-2003, 61-2004, 61-2005, 61-2006 and 61-2009 are";

In the title, in line 18, after the semicolon, by inserting "relating to garnishment;"; also in line 18, by striking "60-2419" and inserting "60-715, 60-716, 60-717, 60-718, 60-721, 60-2419, 61-2003, 61-2004, 61-2005, 61-2006 and 61-2009"; in line 19, by striking "section" and inserting "sections; also amending Form Nos. 7 and 8 in the appendix of forms following K.S.A. 61-2605";

And the bill be passed as amended.

_____ Chairperson