

Approved \_\_\_\_\_

2/6/86  
Date sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at \_\_\_\_\_  
Chairperson

1:30 /a.m./p.m. on February 5, 1986n room 423-S of the Capitol.

All members were present except:

Representative Ed Bideau, excused

Committee staff present:

Emalene Correll, Research  
Bill Wolff, Research  
Norman Furse, Revisor  
Sue Hill, Secretary to Committee

Conferees appearing before the committee:

Mr. Everett Willoughby, Executive Director, Kansas Board of Pharmacy  
Representative Sandy Duncan  
Ken Schafermeyer, Executive Director, Kansas Pharmacists Association  
Phil Elwood, Attorney for Kansas Dental Board  
Carl Schmitthenner, Executive Director of Kansas Dental Association

Visitor's register, (See Attachment No. 1.)

Chairman called meeting to order and invited Staff to do the briefing on HB 2729 and HB 2732. Bill Wolff began briefing:--

Briefing on HB 2729:-- The first changes recommended begin on Page 5, line 193, the definition of "unprofessional conduct" inserted into the regulation. This is new language in the statutes, but is old language the board had used for some time in its rules and regulations in place of the term "gross immorality" This is a way of using a more contemporary term, and would not carry all the complications that "gross immorality" might. Page 9, lines 311 through 313, it was discovered the Board was requiring an examination of those being licensed by reciprocity. That was questioned, and Joint Committee asked the Board to get an Attorney General's opinion. That now is available and it does determine that the Board does not have the authority to require a basic examination for reciprocity, but the Board could require a person to take an exam on the basic law regulating pharmacy in this state. Lines 310 through 312 make that point. Next change appears top of page 11, a new requirement to be placed in the statutes that every pharmacy must establish and maintain a patient profile record of each patient served by that pharmacy.

This language was incorporated in a new rule and regulation the Board adopted in the last filing period. Upon review of that language, the Joint Committee did not believe Statutory Authority existed for the Board to place that requirement on Pharmacists, therefore, legislature must make this decision on said authority through legislation. Page 12, lines 432 and 433, Certification of grades for each applicant for examination and registration for not less than \$10 and not more than \$25. This language is meant to be a clarification of fees to be paid. Other changes he said are cleanup. He then answered questions from members.

Briefing on HB 2732:-- He gave background, i.e., in 1976, an attempt to clean up statutes, and the removal of examples in the rules and regulations was done so that the volumes of regulations could be cut down. However, a few years ago the Board of Denistry was given language in statute that they could show examples in their rules and regulations. Now the Joint Committee on rules and regulations still believes these examples are unnecessary and too lengthy, so that is the issue before you today. He then answered numerous questions from members.

Revisor, Mr. Furse stated that rules and regulations could, (should), be left in and the latter part of the sentence in regard to examples would be struck, this accomplishing what needs to be done.

Chair invited conferees to begin hearings on HB 2729:--

Mr. Everett Willoughby, gave hand-out to members, see (Attachment No.2). He spoke in support of HB 2729 and offered an amendment. He stated changes in terminology to clarify and some existing regulations incorporated into statutes by definition. Also a request to establish authority for the Board to mandate patient profile records for

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S, Statehouse, at 1:30 a.m./p.m. on February 5, 1986

each patient the pharmacy serves. The bill also gives the Board authority to charge a fee for certification of grades for pharmacists reciprocating to Kansas, and the authority to administer a Kansas law examination to pharmacists reciprocating into Kansas. He offered an amendment, Page 6, Sec. 2, (5), line 0217, with language, "the registrant has violated a provision of the federal or state food, drug, and cosmetic act or the uniform controlled substances act of the state of Kansas.

A change also on Page 8, Sec. 3 (b), line 0296. He said they are requesting applicants for examination for practice of pharmacy file with the Board office the necessary papers at least 30 days before the examination date. Bill presently reads 10 days and this does not allow adequate time for processing. Further the Board is requesting statutory authority to administer only the Kansas pharmacy law exam for reciprocals into the state. Section 4, Page 10 is reworded for clarification. Page 11, line 379, Board requesting authority to mandate patient profile records, Page 12, line 432, Board requesting authority to charge fee for certification of grades for pharmacists reciprocating to Kansas from another state. He then stated HB 2729 is a good bill and he urged members for their favorable support. He answered numerous questions, i.e., who is authorized to see this patient profile other than patient, pharmacists, doctor; cost of administering this file; difficulty in including over the counter drug purchases on this file; and possible problems of mandating of said profile.

Representative Sandy Duncan spoke in support of HB 2729. The cleanup language and use of more contemporary language does not change the interpretation of HB 2729. The Rules and Regulations continues to make these changes as they appear before their committee, words as "gross immorality" are less than precise, and are being changed. Further, language in regard to patient profile, it was the Committee's intent this file be for prescription drugs. He supports the language about the patient profile and feels it a good professional practice. He agreed with Mr. Willoughby's testimony on the other points earlier brought out. He urged for favorable support of this bill. There was much discussion on patient profile, and the difficulty in keeping same when over the counter drugs could not be noted if purchased in various pharmacies.

Representative Duncan spoke then in support of HB 2732, again the committee on Rules and Regulations felt the examples in statutes were redundant and should be eliminated. He urged for favorable consideration of this bill.

Chair reverted back to HB 2729.

Mr. Ken Shafermeyer, Kansas Pharmacists Association, speaking to the patient profile language in the bill. Their Association feels this should include over the counter medications as well, so that the pharmacist could adequately counsel the patient about adverse interaction of drugs, and agreed this can only be done with patient's cooperation. He answered numerous questions from members, i.e., many go out of their way to keep records and feel it actually reduces liability. If they don't keep such a profile record, it indicates they don't care, if they do keep it and counsel the patient they do care; there are many systems available to pharmacists for this record keeping; There is a state requirement that pharmacists issue necessary warning on some medications that interact with others.

Hearings closed on HB 2729.

Hearings began again on HB 2732:--

Mr. Phil Elwood, Attorney for Kansas Dental Board, gave hand-out to members, (see Attachment No.3). He stated the language in Statutes was amended in 1983 by this committee. The regulation, as adopted, constitutes a statement by the Board concerning types of advertising it would consider to be false, fraudulent, misleading or deceptive. He gave examples and answered numerous questions from members, i.e., regulation includes a requirement that there be means to verify available discounts and that advertising concerning the discounts not include adjectives as "cut-rate", "lowest", "bargain".

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 423-S, Statehouse, at 1:30 4:44 p.m. on February 5, 1986.

Hearings continued on HB 2732:---

Carl Schmitthenner, Executive Director of Kansas Dental Association, spoke in opposition of HB 2732. When this bill was developed, he said, we did not envision these problems that have been spoken to today. Their Association feels the present guidelines have been very helpful and their Board has been able to work with members in knowing what they can do in respect to these guidelines. He answered questions from members, i.e., if there are problems with overcharging, the information is given to the Board to make judgments, though to his knowledge there have been no situations of this type.

Hearings closed on HB 2732.

Chair welcomed visitors, a large number of Licensed Practical Nurses having LPN Day at the Capitol. He thanked them for their interest.

Meeting adjourned.

GUEST REGISTER

DATE 2-5-86

HOUSE

PUBLIC HEALTH AND WELFARE

Date 2-5-86

NAME	ORGANIZATION	ADDRESS
Carl Schmitthener	Ks Dental Assn.	Topeka
CYNTHIA BARRETT	Ks. DENTAL BOARD	TOPEKA
H. H. Wood	Atty - Ks Dent. Bd.	Topeka
Bernice Myers	Senator - Salishurip Secy	Topeka
Helen Stephens	Ks. Assn. of Counseling & Dev.	Topeka
Jacquie Dales	Ks. Assn. of Counseling & Dev.	Topeka
Kathy Koenig	KFLPN	Topeka
Alice Hammond	KFLPN	Topeka
Jessith LPN	KFLPN	Topeka
K. Brown	KFLPN	Topeka Kansas
Delra Proctor LPN	KFLPN	Topeka
Liz MADISON LPN	KFLPN - Adusgate	Topeka
Jim McBride	Observer	Topeka
Larry L. Huey	SRS / ADAS	Topeka
Rebecca Crenshaw	Prof. Psychologists	"
Doris Watts	KFLPN	Praine Village, Kans.
Janine M. Duffin	KFLPN	Rt 2 Box 39 Lindborn, Kan. 67456
Dorothy R. Hayward	KFLPN	Box 205 Marion, Kans 66861
Erlene R. Lesley	KFLPN	7903 Hillside Lenexa, Ks. 66215
Joanne Hill	Ks Physical Therapy Assn.	Topeka

Attachment 1  
2-5-86  
Hs. PHW



*Attm. 2*

# Kansas State Board of Pharmacy

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TOPEKA, KANSAS 66601-1007  
PHONE (913) 296-4056

STATE OF KANSAS



JOHN CARLIN  
GOVERNOR

HOUSE BILL 2729

EVERETT L. WILLOUGHBY  
EXECUTIVE SECRETARY

LYNN E. EBEL  
BOARD ATTORNEY

Mr. Chairman, Members of the Committee, I am Everett Willoughby, Executive Secretary of the Kansas State Board of Pharmacy, appearing on behalf of the Board to speak in favor of the passage of House Bill 2729. At the same time, I would like to offer an amendment to the bill, a copy of the amendment is included in your packet.

House Bill 2729 will amend portions of the Pharmacy Act and repeal some existing sections. Some changes in terminology have been used to clarify and some existing regulations have been incorporated into the statute by definition. Also included in the bill is the request to establish authority for the Board to mandate patient profile records for each patient served by the pharmacy. The bill also will give the Board of Pharmacy the authority to charge a fee for certification of grades for pharmacists reciprocating out of Kansas. One section would give the Board the authority to administer a Kansas law examination to pharmacists reciprocating into Kansas.

The first major change occurs on page 5, line 0193. "Unprofessional conduct" presently appears as K.A.R. 68-5-14, "gross immorality" and had been expanded to include intentional falsifying or altering records or prescriptions and unlawful possession of drugs and unlawful diversion of drugs to others.

In support of these added definitions, we recently had a pharmacist on video tape taking Ritalin 20 mg, a Schedule II drugs, from the pharmacy in Wichita where he worked. A drug audit of the pharmacy by our Drug Inspectors proved that nearly 24,000 Ritalin tablets were missing from the pharmacy. The missing Ritalin have a street value of approximately \$20,000. The police department apprehended him with 57 Ritalin tablets on his person. He subsequently was charged with possession and other charges, all misdemeanors. The Board of Pharmacy had, and until the passage of this bill will have, no jurisdiction in the case because we can act only on felony convictions. This bill will allow us to take action to revoke, suspend, or deny renewal of a license due to illegal possession by the pharmacist.

The proposed amendment would be entered on page 6, Sec. 2.(5), line 0217, "the registrant has violated a provision of the federal or state food, drug and cosmetic act or the uniform controlled substances act of the state of Kansas."

*Attachment 2  
2-5-86  
Hs. PHW*

Presently, the Board may revoke, suspend, place in a probationary status, or deny renewal of a registration of a pharmacy upon finding that the owner or any pharmacist employed at such pharmacy is convicted of a violation of the Pharmacy Act or the Uniform Controlled Substances Act of the State of Kansas, or the federal or state Food, Drug and Cosmetic Act. This is the pharmacy registration, not the pharmacist involved.

Another change can be found on page 8, Sec. 3(b), line 0296. We are requesting that applicants for examination for the practice of pharmacy file with the Board office the necessary papers at least 30 days before the examination date. Ten (10) days does not allow enough time for the Board office to complete the paper work required and order the required number of exams for applicants, whose numbers may vary from 15 to 60. The requested number of days is comparable to other states' requirements.

The Kansas Attorney General's informal opinion of June 14, 1985, states that they do not feel the Board has the authority to administer exams for reciprocity. Therefore, the Board is requesting statutory authority to administer only the Kansas pharmacy law exam for reciprocals into the state. Forty-one states of the 48 that allow reciprocity administer the law exam. The Board feels that familiarity with Kansas pharmacy laws and compliance with the laws is necessary so the public health and welfare can be protected.

K.S.A. 65-1642, Sec. 4, page 10, has been reworded to clarify and to condense the statute to a readable state. The 3 years required for the keeping of prescription records previous to the passing of the act in 1982 has been grandfathered in, so that now all state records must be kept a minimum of 5 years.

One page 11, line 0379, the Board is requesting authority to mandate patient profile records. Presently, approximately 70% of the pharmacies now have them in use, either written or by automated prescription systems. It is important in today's practice for all health care professions to keep accurate records to protect the public health. With the many new and extremely potent drugs now being prescribed, we feel it is essential that pharmacies monitor new and different medications that are prescribed for individuals to be able to assist the physician in his choice of drugs and to alert him of possible antagonistic interactions and possible allergic reactions to a combination of drugs he might otherwise prescribe.

On page 12, line 0432, the Board is requesting authority to charge a fee for certification of grades for Kansas pharmacists reciprocating from Kansas to another state. This is a detailed and time consuming process which, if incorrectly done, could prevent the pharmacist from reciprocating his license to another state.

House Bill 2729 is a good bill, and the Board of Pharmacy respectfully requests that you consider it favorably.

ELW:arb

PROPOSED AMENDMENT TO HB 2729

Page 6, Sec. 2.(5), line 0217

- (5) the registrant has violated a provision of the federal or state food, drug and cosmetic act or the uniform controlled substances act of the state of Kansas.



*Attn. 3*  
*2/5/86*

ISSUES CONCERNING HOUSE BILL NO. 2732  
PROPOSED AMENDMENT TO K.S.A. 65-1437  
Presented by  
H. PHILIP ELWOOD

- A. It is the duty of the Kansas Dental Board (the Board) to carry out and enforce the laws of the State of Kansas, as developed by the Legislature.
1. The Board has developed a regulation set out at K.A.R. 71-1-14, acting upon the authority granted when the statute in question was amended in 1983.
  2. The purpose of the regulation as adopted is to more clearly define concepts or types of advertising which may be false, fraudulent, misleading or deceptive. The regulation is not intended to be coercive or restrictive.
- B. The regulation, as adopted, constitutes a statement by the Board concerning the types of advertising it would consider to be false, fraudulent, misleading or deceptive. These include advertising which:
1. create a false expectation of favorable results;
  2. relates to the quality of dental service provided;
  3. is likely to appeal to a lay person's fears;
  4. contains statements that "in reasonable probability" will cause a lay person to be deceived.
- Example: honorary degrees, memberships in societies, etc. which create an impression of special qualification not warranted by the nature of the degree held.
5. Part B of the regulation includes a substantial list of information which may be disseminated. The list is not restrictive, but does provide authority for a number of significant items of information such as the availability of credit, foreign language ability, office hours, telephone service, etc., and is intended to include all of the relevant information which anyone would want to publish. If it doesn't, other relevant information, if truthful, may be disseminated.
  6. The regulation includes a requirement that there be a means to verify available discounts and that advertising concerning the discounts not include

*Attachment 3*  
*2-5-86*  
*Hs. PHW*

adjectives such as "cut-rate," "lowest," "bargain," etc.

C. The Issue

Is the Board to have authority to propound any regulation with respect to advertising or is the statute enough?

1. The U.S. Supreme Court recognized the state's power to prohibit advertising that is "inherently misleading." In re R.M.J., 455 U.S. 191 at 203, i.e. admission to the bar of the United States Supreme Court.
2. The U.S. Supreme Court in the recent case of Zauderer v. Office of Disciplinary Counsel, 105 U.S. 2265 (1985) established that ". . . Commercial speech that is not false or deceptive and does not concern unlawful activities, however, may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest."
3. The Federal District Court in Bishop v. Committee on Professional Ethics, 521 F. Supp. 1219, recognized a state interest in controlling "unprofessional and hucksterish adjectives" and the U.S. District Court for the District of Kansas in Bolton v. Kansas State Board of Healing Arts, 473 F. Supp. 728 (1979) recognized "high standards for truthfulness" may be established. . . . The practice of puffery . . . has no place in the advertising of healing arts professionals. The well-being of people who may be unsophisticated in health care matters is a compelling interest of the state. The licensor of healing arts professionals has the right and duty to demand strict adherence to truthful advertising -- advertising that is verifiable.