

Approved

3-19-92
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Carol H. Sader at
Chairperson

1:30 a.m./p.m. on March 3, 1992 in room 423-S of the Capitol.

All members were present except:

Rep. Hackler, Rep. White, absent
Rep. Grant, excused
Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norman Furse, Revisor
Sue Hill, Committee Secretary
Conferees appearing before the committee:

Bob Williams, Kansas Pharmacists Association
Tom Hitchcock, Kansas Board of Pharmacy
Nick Willard, Retired Person's Services, (AARP Pharmacy Service)
Delbert D. Konnor, American Managed Care Pharmacy Association
William W. Sneed, Legislative Counsel, Health Insurance Association
of America.

Chair called meeting to order welcoming all those present.
She drew attention to (Attachment No. 1), a letter of clarification
on HB 2796 from the State Board of Cosmetology.

Chair requested a staff briefing on HB 3064.

BRIEFING ON HB 3064.

Mr. Furse gave a comprehensive explanation of HB 3064, noting this
issue has been discussed since the early 1980s. He explained new
language and pointed out technical issues. He answered questions.

HEARINGS BEGAN ON HB 3064.

Bob Williams, Executive Director, Ks. Pharmacists Association (Attach-
ment No 2), noted his written testimony also details a paper trail
of previous years' work on the issue discussed in HB 3064. Recorded
as (Attachment No. 2-A) are Drug Law statistics for other states.
Mr. Williams asked members to keep in mind that pharmacy is a health
care profession, not a commodity. Drugs are unique. Not only are
drugs injury reducing, but can be injury producing. For a number of
years, in the interest of public health, the Board of Pharmacy has
attempted to gain some regulatory control over an increasing number
of nonresident pharmacies mailing prescription medications to Kansas
residents. He drew attention to a paper trail between the Board and
the office of the Attorney General in an attempt to clarify the
authority of the Board to regulate these nonresident pharmacies. He
noted, at the request of Chairperson Sader, he had been in contact
with the AARP representative regarding their concerns with HB 3064,
and as a result of those conversations, the AARP is in support of HB
3064. The Kansas Pharmacists Association does not believe requiring
nonresident pharmacies to register with the Kansas Board of Pharmacy
and requiring them to comply with state regulations places an "undue
burden" on that group. He noted concern about "foreign versions" of
approved prescriptions drugs and discussed this topic. He urged
support. Mr. Williams answered numerous questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 a.m./p.m. on March 3, 1992.

HEARINGS CONTINUED ON HB 3064.

Tom Hitchcock, Kansas State Board of Pharmacy, (Attachment No.3), noted this proposed legislation in subsection (j) on page 3, lines 10-15 would allow the Kansas Board of Pharmacy to require registration of a pharmacy outside the state, the same as for pharmacies operating inside the state if such pharmacy dispenses and sends prescriptions to residents of Kansas. HB 3064 would further grant the Board the authority to promulgate regulations which would be specific to out-of-state pharmacies as KAR 68-7-11 is specific to a hospital pharmacy and KAR 67-7-12 is specific to a community pharmacy. He urged passage. He answered questions.

Nick Willard, representing Retired Persons Services, Inc. (RPS), offered hand-out (Attachment No. 4). The Pharmacy Service has helped to meet health care needs of AARP members for more than 32 years. He noted all the pharmacists for RPS are licensed. He noted every customer has chosen the package of medications, price, convenience and service over that offered by their local retail druggists. New language that has been discussed with the Board of Pharmacy, and the Pharmacists Association that sets out forward clearly the extent to which Kansas pharmacy law and rules will govern non-resident pharmacies while serving Kansas residents. He drew attention to his attachment that states support for HB 3064 because the agreed-to-rules neither add to the regulatory burden under which they operate in Missouri, nor provide for conflicts between Kansas and Missouri law. They believe the agreement reached between the AARP people and the Pharmacists Association represents a consensus for an equitable balance between their respective interests. In the spirit of fairplay, he asked that the Kansas Board of Pharmacy and the Kansas Pharmacists Association both take steps to ensure that those Kansas pharmacies serving Missouri and Nebraska residents register under those states' respective non-resident pharmacy laws. He answered numerous questions.

Delbert Konner, American Managed Care Pharmacy Association (Attachment No. 5), spoke in opposition to HB 3064. The fundamental problem with HB 3064 is its anti-competitive nature. His printed testimony indicated the bill is unconstitutional as a violation of the commerce clause of the United States Constitution; should be revised to provide for registration but not licensure of non-resident pharmacies serving consumers in the state of Kansas. He noted the Mail Service Pharmacy, including out-of-state pharmacies, offer consumers services of the highest quality. He urged Committee to consider the California legislation as a proper, constitutional alternative to HB 3064. He stated he would be available to answer questions, offer information, and work towards formulating different language. He noted HB 3064 in its present form is not acceptable. He answered questions.

Bill Sneed, (Attachment No. 6), represented Health Insurance Association of America. He noted his client agrees there should be reasonable registration on mail-service pharmacies to assure a safe, effective means of dispensing prescription drugs for chronic and long-term conditions consistent with legitimate objectives for Kansas. However, they also believe this legitimate concern must be balanced with benefits that are derived from mail-service pharmacies. A major benefit to the consumer is a reduction in costs. They are concerned HB 3064, in its present form, may inappropriately cause an increase in costs for the services to the consumer. He thanked the Kansas Pharmacists Association for providing a copy of proposed regulations for review, but as they did review, they have concerns. He detailed those concerns. He urged Committee to carefully construct a bill that would avoid potential constitutional issues; to look at California law which indicates a more balanced approach in lieu of utilizing rules and regulations to consider criteria that is considered by California law. He answered questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 423-S Statehouse, at 1:30 a.m./p.m. on March 3, 1992

Chair drew attention to (Attachment No. 7), fiscal note on HB 3064.

Chair noted a hand-out had been provided to members from Thrift Drug, Inc. as written testimony from Mr. Robert A. Waspe, (see Attachment No. 8).

HEARINGS CLOSED ON HB 3064.

Chair appointed a Sub-Committee on HB 3064. Rep. Wiard as Chair, Rep. Neufeld, and Rep. Carmody also serving. Chair requested they look into issues that were raised today during hearings.

DISCUSSION BEGAN ON HB 2882.

Chair read a letter from the Ks. Board of Nursing, the Division of Mental Health/Mental Retardation Services of the Ks. Department of SRS, the Kansas State Nurses' Association, and the Kansas Association of Rehabilitation Facilities supporting the passage of HB 2882 without amendment. The new (n) language allows the nursing profession, state agencies, community providers, and consumers of services to cooperate in the effective delivery of quality care in the least restrictive environment. This letter of agreement is recorded as (Attachment No. 9). It was noted this document contains the signatures of Patsy Johnson, State Board of Nursing; George D. Vega, Acting Commissioner, Mental Health/Retardation Services, Department of SRS; Terri Roberts, Kansas State Nurses' Association; Yolande Bestgen, Kansas Association of Rehabilitation Facilities.

Chairperson stated the letter further that indicates these groups do not believe any additional provision (that was suggested during testimony on HB 2882) is needed, and that the concerns of the parties involved believe all concerns have been adequately addressed.

At this point, Rep. Neufeld moved to pass HB 2882 out favorably and asked that it be placed on the Consent Calendar. Motion seconded by Rep. Scott. Vote taken. Motion carried. Rep. Flower recorded as (NO) vote, which caused the Committee not to request placement on the Consent Calendar.

DISCUSSION BEGAN ON HB 3045.

Commissioner Epps, Department of SRS answered questions of Chair and members. The kind of facility that Ms. Stutterheim spoke of the other day, the 1-5 bed facility, is very different from existing facilities. The language in HB 3045 does however, provide for some flexibility from a very defined model; this could offer another option for choice of care. Concerns were expressed with possible lack of proper care; lack of inspections. Technical changes in language were discussed in regard to "nursing facilities" being added to HB 3045 which is new terminology replacing "skilled nursing homes" and "intermediate care nursing homes".

It was noted a fiscal note had not been made available on HB 3045.

Rep. Neufeld moved to amend HB 3045 with technical change discussed regarding "nursing facilities" added where applicable to conform to the new terminology. Motion seconded by Rep. Amos. No discussion. Motion carried.

Rep. Bishop moved to pass HB 3045 out favorably as amended, seconded by Rep. Flower. Discussion held in regard to quarterly inspections. Vote taken. Motion carried.

Rep. Flower agreed to carry HB 3045. Rep. Wagle agreed to carry HB 2882.

Chair adjourned the meeting at 3:05 p.m.

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-3-92

| NAME | ORGANIZATION | ADDRESS |
|-------------------|---|---------------------|
| Bill Sneed | HIAA | Topeka |
| Steve Jones | Boeing | Wichita |
| Regie Jay | Board of Cosmetology | Hays |
| Lizette Butler | Board of Cosmetology | Augusta |
| Sherry Ruddy | Board of Cosmetology | Stilwell |
| Ava Sene | Board of Cosmetology | Wichita |
| Janet Jacobs | Ks. Fed. of LPNs | Wichita |
| Lois Wethington | Ks. Fed of LPNs | Haysville, Ks. |
| Kelly Hedlund | St. Francis Hospital. | Topeka |
| David Szyg | SRS | Topeka |
| David Hanzlick | KS Dental Ass'n | Topeka |
| John Baumgardner | Ks Pharmacists Assoc. | Lawrence, Ks |
| Robert W Williams | Ks. Pharmacists Assoc | Topeka |
| Jo Bestgen | KARF | Topeka |
| John Baker | Ks. Hospital Assn. | Topeka |
| DEL KENNOR | AMCPA | ARLINGTON, VIRGINIA |
| BILL FRANCO | AMCPA | ARLINGTON, VIRGINIA |
| Martha Jenkins | AIA | Topeka |
| Nicholas Willard | RPS - AARP Pharmacy Senior | Alexandria, VA |
| Linda Lubensky | KS Home Care Assoc | Lawrence |
| Marilyn Bradt | WIWH | Lawrence |
| KEITH R LANDIS | CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS | TOPEKA |
| BOB GEERS | ARC/KS | TOPEKA |
| George Goebel | AARP-SLC-CCTF | Topeka |
| Donna Taylor | KFLPN | Emporia |
| VERLENE LECLEAR | KFLPN | Emporia Ks 66801 |
| Marti Brooke | KFLPN | Emporia |

Letter of Clarification
HB# 2796

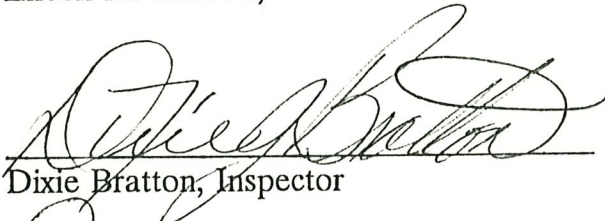
After further examination and discussion of HB# 2796 we would like to have the certification and inspection of tanning facilities provided by the State Board of Cosmetology.

A large percentage of tanning facilities are located in beauty shops currently inspected by the State Board of Cosmetology. Placing these facilities under the State Board of Cosmetology would eliminate the need for inspectors from two separate agencies duplicating efforts by going into the same establishment. State Board of Cosmetology inspectors are qualified to carry out the duties required in this bill. Tanning facilities not located in beauty salons could easily be inspected by State Board of Cosmetology inspectors while they are in the area.

The end result would be to save State resources through the more efficient use of time, equipment and personnel.



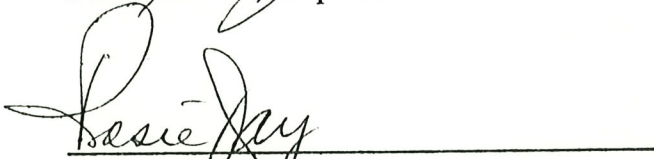
Eileen M. Hassett, Executive Director



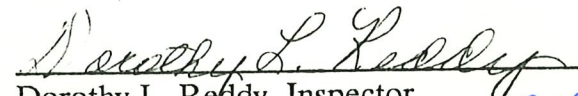
Dixie Bratton, Inspector



Ava Fiene, Inspector

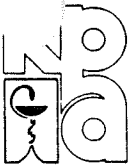


Rosie Jay, Inspector



Dorothy L. Reddy, Inspector

P.H.W.
3-3-92
Attn #1



THE KANSAS PHARMACISTS ASSOCIATION
1308 SW 10TH STREET
TOPEKA, KANSAS 66604
PHONE (913) 232-0439
FAX (913) 232-3764

ROBERT R. (BOB) WILLIAMS, M.S., C.A.E.
EXECUTIVE DIRECTOR

TESTIMONY
HOUSE PUBLIC HEALTH & WELFARE COMMITTEE
HB 3064

My name is Bob Williams, I am Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the committee regarding House Bill 3064.

In your consideration of House Bill 3064 it is important for you to keep in mind that pharmacy is a health care profession, not a commodity. Unfortunately, in our society we have come to take prescription medication, and the benefits of prescription medication, for granted. Long gone are the days when prescription medication could only be purchased at a local drug store. Medication can now be purchased via "mail order" from pharmacies not located in the State of Kansas. In some cases these mail order pharmacies dearly love the fact that many in the third party benefits community have accepted their miscasting that pharmacy is nothing more than a commodity, so many widgets moving in interstate commerce.

The truth is, drugs are unique among all products. Not only are they injury producing, they are injury reducing as well. Oftentimes harm from a prescription medication is unforeseeable and unpreventable, and for that reason the law has recognized that drugs are to be afforded special status as unavoidably unsafe products.

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The United States is the only country in the world that allows prescription drugs to be mailed to the ultimate consumer. In other countries, prescription drugs are regulated in a manner analogous to poisons. Acknowledging the enormous capacity of potent medications not only to help, but also to harm. This peculiarity of the United States approach is best illustrated in the example of Warfarin Sodium. Warfarin is the active ingredient in several common household pesticides. As such, it is illegal to mail Warfarin to the ultimate consumer. But warfarin is also Coumadin, a blood thinner, and as such, it is routinely mailed to mail order drug consumers.

For a number of years, in the interest of public health, the Kansas Board of Pharmacy has attempted to gain some regulatory control over the increased number of nonresident pharmacies mailing prescription medication to Kansas residents. Attached to my testimony is a paper trail which was begun in 1984 between the Board of Pharmacy and the Kansas Attorney General in an attempt to clarify the Board's authority to regulate nonresident pharmacies. In May of 1991 the Kansas Pharmacists Association sent a letter to the attorney general requesting he take action concerning the refusal by some nonresident pharmacies to register with the Kansas Board of Pharmacy. His response, dated June 19, 1991, indicated there is "a potential ambiguity in the application of registration requirements." The provisions outlined in HB 3064 are to eliminate the ambiguity of KSA 65-1643.

At the request of Chairman Carol Sader, the Kansas Pharmacists Association and the Kansas Board of Pharmacy, have been in touch with the American Association of Retired Persons (AARP) regarding their concerns with HB 3064. As a result of our meeting and subsequent phone conversations, AARP is in support of HB 3064.

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Non-resident pharmacies which oppose registering with the Board of Pharmacy indicate such legislation violates the Commerce Clause and Supremacy Clause of the United States Constitution. Attached to my testimony is a letter from the Attorney General to the Kansas Board of Pharmacy dated March 2, 1990 which states "In summary, a state law requiring pharmacies which sell or deliver prescription-only drugs to be registered with the state board, whether those pharmacies are located within or outside the state's borders, is not invalidated by the Commerce Clause or Supremacy Clause of the United States Constitution so long as the regulation does not create an undue burden on commerce." The Kansas Pharmacists Association does not believe that requiring non-resident pharmacies to register with the Kansas Board of Pharmacy and requiring them to comply with regulations established by the Board is an "undue burden" any more than those laws, rules and regulations which apply to all other professionals who provide services to Kansas residents be they barbers or brain surgeons.

Additionally, I would like to call the committee's attention to a memo the Kansas Board of Pharmacy received February 10, 1991 from the FDA regarding unapproved mail order drugs. As the attached memo indicates, six overseas companies are illegally advertising "foreign versions" of approved prescription drugs. In some cases the drugs are counterfeit--lacking any real similarity to the approved drug. While the attached certainly represents the bottom of the barrel, it is an indication of the growing concern and need for regulatory control of nonresident pharmacies by the Kansas Board of Pharmacy.

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P. Hall
3-3-92
Attn #2

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The Kansas Pharmacy Practice Act is in place to protect Kansas residents. To permit nonresident pharmacies to flout the Kansas Pharmacy Practice Act is tantamount to saying we might as well repeal all such laws. Kansas residents need the security in knowing that they are afforded appropriate protection under the law regardless of where they purchase their drugs.

The Kansas Pharmacists Association urges the committee to support HB 3064.

Thank you.

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P. Hall
3-3-92
Attn. #2
Pg. 4-26



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE 191-2196-2215
CONSUMER PROTECTION 296-3751
ANTITRUST 296-5299

July 20, 1984

ATTORNEY GENERAL OPINION NO. 84- 71

Lynn E. Ebel
Attorney, Kansas Board of Pharmacy
Davis, Davis, McGuire & Thompson
P.O. Box 69
400 Shawnee Street
Leavenworth, Kansas 66048

Re: Public Health -- Examination and Registration of
Pharmacists -- Registration of Out of State Pharmacists
Doing Business in Kansas

Synopsis: The requirements of the Kansas Pharmacy Act, K.S.A.
65-1601 et seq extend to all persons within or without
the state who deliver prescription drugs in Kansas.
Cited herein: K.S.A. 65-1636, K.S.A. 1983 Supp.
65-1626, 65-1631, 65-1643.

* * *

Dear Ms. Ebel:

As counsel for the Kansas Board of Pharmacy, you request our opinion regarding the authority of the board to require out of state pharmacies doing business in Kansas to hold Kansas pharmacy licenses and be subject to the board's regulations.

K.S.A. 65-1626 is contained in the Kansas Pharmacy Act, K.S.A. 65-1625 et seq., and provides:

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Lynn E. Ebel

Page Two

"Except as otherwise provided in this act, the sale and distribution of drugs shall be limited to pharmacies operating under registrations as required by this act and the actual sale or distribution of drugs shall be made by a registered pharmacist or other person acting under his or her immediate personal direction and supervision."

K.S.A. 1983 Supp. 65-1626(i) states that to "distribute means to deliver . . . any drug." Subsection (g) states that to "dispense means to deliver prescription medication to the ultimate user pursuant to the lawful order of a practitioner."

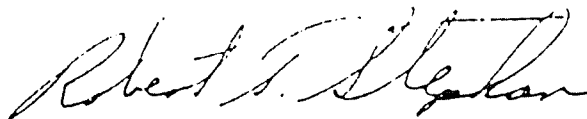
The term pharmacy is defined at K.S.A. 1983 Supp. 65-1626(s) as "premises, laboratory, area or other place (1) where drugs are offered for sale, where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed . . ."

As noted above, only pharmacies operating under the direction of a registered pharmacist may distribute drugs in Kansas under K.S.A. 65-1636. K.S.A. 1983 Supp. 65-1643(f) provides that it is unlawful for "any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board . . ."

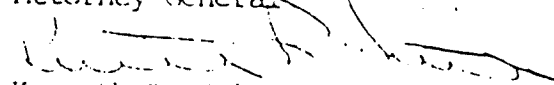
In none of the foregoing statutes is there any language of limitation which suggests that only Kansas residents are subject to the board's control. Rather, Kansas statutes provide for the registration on a reciprocal basis of out of state pharmacists without examination. K.S.A. 1983 Supp. 65-1631(d). We therefore conclude that the language of the Kansas Pharmacy Act does not suggest that its provisions are limited to pharmacies within this state.

A consideration of the purpose of the act also suggests that there was no intent to limit the application of the act. The state's interest in establishing and maintaining high standards in the dispensation of prescription drugs is clear. See, e.g., *State ex rel. v. Fudely*, 180 Kan. 652, 665 (1957). We therefore conclude that both the language and purpose of the Kansas Pharmacy Act require that out of state pharmacies doing business in Kansas hold a Kansas pharmacy license and be subject to all Kansas regulations.

Very truly yours,



ROBERT T. STEPDIAN
Attorney General



Kenneth R. Smith
Assistant Attorney General

PH+UW
MAR 03, 1992
att #2

RIS:JEF:KRS:mwy

pg. 6-26

Kansas State Board of Pharmacy

LONDON STATE OFFICE BUILDING
900 JACKSON AVENUE, ROOM 513
TOPEKA, KANSAS 66612-1220
PHONE (913) 296-4056

STATE OF KANSAS



MIKE HAYDEN
GOVERNOR

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KATHLEEN M. MAHANNA, HOXIE
BARBARA A. RENICK, GARDEN CITY
EXECUTIVE SECRETARY
TOM C. HITCHCOCK
BOARD ATTORNEY
JOHN C. WHITAKER

TO: Robert Stephan
Attorney General

FROM: Tom C. Hitchcock
Executive Secretary

RE: Registration of Out-of-State Pharmacies

DATE: August 18, 1989

In a recent Attorney General opinion, it was stated that the Board of Pharmacy had adequate authority to require out-of-state pharmacies that routinely mail prescriptions into Kansas to become registered and abide by Kansas Pharmacy law. (Ref: AG Opinion 84-71)

The Board of Pharmacy has requested and received from the following companies their appropriate registration application:

1. Walgreens, 519 W. Lone Cactus, Phoenix, AZ
2. Butler Healthmart Pharmacy, 18 N. Delaware, Butler, MO
3. Preferred Prescriptions, 201 E. Armour Blvd., Kansas City, MO

The following companies have been requested by the Board of Pharmacy to comply with pharmacy registration but have refused to do so:

1. Feld Prescription Service, 5023 Grover, Omaha, NE 68106
2. AARP Pharmacy Service, 3823 Broadway, Kansas City, MO 64111
3. MEDCO Corporation, 700 W. 3rd Avenue, Columbus, OH 43212
4. MEDCO Corporation, 15001 Trinity Blvd, Suite 300, Fort Worth, TX 76155
5. MEDCO Corporation, 5373 S. Arville, Las Vegas, NV 89118

The Board requests the Attorney General's office to review the latter group and take appropriate intervention in order to reach compliance with Kansas law.

If you have any questions, please feel free to contact this office.

TCH:arh

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MAR 03, 1989
Att # 2
7-26

Kansas State Board of Pharmacy

LONDON STATE OFFICE BUILDING
900 JACKSON AVENUE, ROOM 513
TOPEKA, KANSAS 66612-1220
PHONE (913) 296-4056

STATE OF KANSAS

December 18, 1989

MEMBERS

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EXECUTIVE SECRETARY

TOM C. HITCHCOCK

BOARD ATTORNEY

~~JOHN C. HANSEN~~

DANA KILLINGER



MIKE HAYDEN
GOVERNOR

Mr. Robert T. Stephan
Attorney General
State of Kansas
Judicial Center
Topeka, KS 66612

BUILDING MAIL

Dear Mr. Stephan:

On behalf of the Kansas State Board of Pharmacy, I request your opinion with respect to mail-order prescription businesses not located in Kansas and their responsibilities under Kansas law.

Specifically, are mail-order prescription businesses not located in Kansas but which fill prescription orders by mail to Kansas residents, required to be registered under the Kansas Pharmacy Act? Also, if the above registration is required, would such be constitutional under the Commerce Clause and Supremacy Clause of the United States Constitution?

The Board of Pharmacy thanks you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom C. Hitchcock".

Tom C. Hitchcock
Executive Secretary

TCH:kmo

PHW.
MAR 3, 92
Att. # 2
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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 23, 1990

RECEIVED
FEB 23 1990
KANSAS STATE
BOARD OF PHARMACY
MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Tom Hitchcock, Executive Secretary
Kansas State Board of Pharmacy
Landon State Office Bldg., Room 513
Topeka, Kansas 66612-1220

Re: Public Health -- Regulation of Pharmacists -- Registration
or Permit Required; Out-of-State Mail Order Pharmacies

Dear Mr. Hitchcock:

I have reviewed your opinion request dated December 18, 1989 regarding registration of mail order pharmacies. I have also reviewed Attorney General Opinion No. 84-71 in which I stated that the requirements of the pharmacy act extend to all persons within or without the state who deliver prescription drugs in Kansas.

After considering the statutory mandate of K.S.A. 1989 Supp. 65-1636, I reach the same conclusion as I did in the 1984 Attorney General opinion. That statute provides a rule that, in order to sell or distribute prescription drugs, you must be a pharmacy with a licensed pharmacist responsible for the sale. While there may be some areas which need guidelines for administration, such as the mechanics for registering out-of-state mail order pharmacies, such guidelines might be appropriately set out in rules and regulations.

If we may be of further assistance, please feel free to contact us.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

RTS:MWS:bas

PH&W
MAR 3, 1992
Att #2
9-26

Kansas State Board of Pharmacy

LONDON STATE OFFICE BUILDING
900 JACKSON AVENUE ROOM 513
TOPEKA, KANSAS 66612-1220
PHONE (913) 296-4056

Bob Williams
FYI

*for BOB T
March Meeting*

STATE OF KANSAS

March 6, 1990

MEMBERS

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EXECUTIVE SECRETARY

TOM C. HITCHCOCK
BOARD ATTORNEY
DANA W. KILLINGER



MIKE HAYDEN
GOVERNOR

MEMO TO: Board Members
Board Inspectors
Board Attorney

FROM: Tom Hitchcock *Tom Hitchcock*

SUBJECT: Out-of-State Pharmacies

About a year ago I was directed to pursue licensing out-of-state pharmacies that are sending prescriptions to Kansas residents. The office communicated with several mail-order pharmacy companies and a few complied. As a result, the letter of August 18, 1989 was generated and sent to the office of the Attorney General. Following such letter was a great deal of research assigned to Daniel Kolditz, Assistant Attorney General.

As a result of the work by Mr. Kolditz, which included several meetings between us, the recommendation was another letter to request an A.G. opinion. The new request would include the question of constitutionality of requirement for out-of-state pharmacies, that fill prescriptions by mail to Kansas residents, become licensed in Kansas and comply with Kansas Pharmacy Statutes.

Such request was sent to the Attorney General by the letter of December 18, 1989. The reply did not come as an Attorney General Opinion, but in a response letter over the signature of the Attorney General as enclosed.

The response will be discussed further at the April meeting of the Board. I need guidance as what direction to proceed.

Enclosures
TCH:tch

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MAR 05 1990
KANSAS STATE
BOARD OF PHARMACY



STATE OF KANSAS

RECEIVED

MAR 05 1990
KANSAS STATE
BOARD OF PHARMACY

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 2, 1990

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751
TELECOPIER 296-6296

Tom C. Hitchcock, Executive Secretary
Kansas State Board of Pharmacy
Landon State Office Building, Room 513
Topeka, Kansas 66612

Dear Mr. Hitchcock:

As Attorney General I recently stated in a letter addressed to you and dated February 23, 1990 that, in order to sell or distribute prescription-only drugs in Kansas, you must be a pharmacy with a licensed pharmacist responsible for the sale. You ask whether the statutes imposing this requirement are constitutional under the Commerce Clause and Supremacy Clause of the United States Constitution.

States may not impose an undue burden on interstate commerce, neither may state law discriminate against interstate commerce. If the state law works evenhandedly against both interstate and intrastate commerce, the test to apply is whether there is an undue hardship on interstate commerce. To determine this, a balancing test is applied to weigh the burden imposed on commerce against the benefit received by the law or regulation. The state has a legitimate interest in protecting the public health, safety and welfare through laws regulating pharmacies. As long as the licensing requirements and regulatory mechanisms do not become too onerous, the state law is legitimate. Insofar as additional legislation is needed, either by the legislature's enactment of statutes or the board's promulgation of rules, such additional legislation should be written to create the least restrictive means of achieving the desired goals. If this is accomplished, the state's exercise of authority should withstand a challenge based on the Commerce Clause.

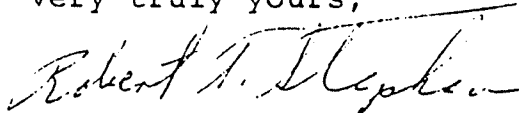
Regarding the Supremacy Clause, there are three ways the preemption doctrine is invoked. Congress may intend to appropriate the entire field of a phase of commerce so that

PANGL
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there is no room for supplementary state action. Secondly, state law which directly conflicts with an act of Congress is preempted. Finally, state law which conflicts with a manifest intent of a congressional act is preempted. We are not aware of federal law which preempts state regulation of out-of-state pharmacies.

In summary, a state law requiring pharmacies which sell or deliver prescription-only drugs to be registered with the state board, whether those pharmacies are located within or outside the state's borders, is not invalidated by the Commerce Clause or Supremacy Clause of the United States Constitution so long as the regulation does not create an undue burden on commerce.

Very truly yours,



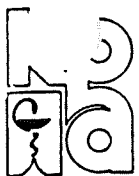
ROBERT T. STEPHAN
Attorney General of Kansas

RTS:MWS:bas

PHW
MAR 03 1992

Act #2

pg. 12-26



THE KANSAS PHARMACISTS ASSOCIATION

1308 WEST 10TH

PHONE (813) 232-0439

TOPEKA, KANSAS 66604

ROBERT R. (BOB) WILLIAMS, M.S., C.A.E.
EXECUTIVE DIRECTOR

May 31, 1991

The Honorable Robert T. Stephan
Kansas Judicial Center
Topeka, KS 66612

RE: Mail Order Pharmacies

Dear Attorney General Stephan:

As president of the Kansas Pharmacists Association, I am requesting that you, as the chief law enforcement officer in this state, investigate the practices of mail-order pharmacies in Kansas. The pharmacy profession has been deeply concerned for several years that certain mail-order pharmacies are providing services illegally within the state of Kansas by virtue of not complying with statutory requirements for dispensing pharmaceuticals.

You have addressed the issue of the application of Kansas pharmacy laws to all persons who deliver prescription drugs in Kansas. You stated in A.G. Opinion No. 84-71 and in a subsequent letter dated February 23, 1990 that "the requirements of the pharmacy act extend to all persons within or without the state who deliver prescription drugs in Kansas." You went on to state that K.S.A. 1989 Supp. 65-1636 provides the rule that, "in order to sell or distribute prescription drugs, you must be a pharmacy with a licensed pharmacist responsible for this sale."

In a letter dated March 2, 1990, you addressed the issue of whether the aforesaid requirement is constitutional under the Commerce Clause and Supremacy Clause of the U.S. Constitution. Your summarization was that such requirement is constitutional so long as the regulation does not create an undue burden on commerce. You do not venture an opinion as to whether such requirement would in fact be an undue burden which would, of course, be a question for the judiciary.

In a letter dated August 18, 1989, Tom Hitchcock, Executive Secretary of the Board of Pharmacy, requested that your office require compliance with the pharmacy laws by the following companies:

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Page Two
May 31, 1991

1. Feld Prescription Service, 5023 Grover, Omaha, NE 68106
2. AARP Pharmacy Service, 3823 Broadway, Kansas City, MO 64111
3. MEDCO Corporation, 700 W. 3rd Ave., Columbus, OH 43212
4. MEDCO Corporation, 15001 Trinity Blvd., Ste. 300, Ft. Worth, TX 76155
5. MEDCO Corporation, 5373 S. Arville, Las Vegas, NV 89118

No report was made to the Board of Pharmacy as to this request and the above noted companies did not subsequently register with the Board. On behalf of the Kansas Pharmacists Association, I am renewing the request that you investigate and enforce the Kansas pharmacy laws pertaining to any pharmacy mailing prescription medication into the state of Kansas. To assist you in this effort, I have provided the following preliminary information about mail-order pharmacies:

Out-of-state pharmacies currently registered with the Kansas Board of Pharmacy:

1. Walgreen Arizona Drug, registration #7126, 519 W. Lone Cactus Dr., Phoenix, AZ 85027.
2. Butler Pharmacy, Inc., registration #7074, 18 N. Delaware St., Butler, MO 64730
3. LTC Health Services, registration #7628, (Value Rx, Inc.), 11724 E. 23rd, Independence, MO 64050
4. Visiting Nurse Infusion Therapy, registration #7627, 611 B. West 39th, Kansas City, MO 64111
5. American Drug, registration #7666, Rx America, Inc., 369 Billy Mitchell Way, Salt Lake City, UT 84116

I provided the above information for the purpose of demonstrating that it is possible to operate within the legal requirements of this state without undue burden.

According to our information, the following companies are mailing prescription medication into the state of Kansas but are not licensed nor registered with the Kansas Board of Pharmacy.

1. Flex Rx, operated by Eagle, Inc., Pittsburg, PA, on contract with Frito-Lay Corp.
2. Baxter Health Care Corporation, PO Box 95010, Albuquerque, NM 87199, contracting with UFCW Local 576 (meat cutters) 1305 E. 27th, Kansas City, MO; St. Francis Hospital, Topeka, KS; Coast Corporation, Coastal Twr., 9 Greenway Plaza, Houston, TX 77046
3. Prudential, contracting with Southwestern Bell
4. Feld Corporation (address listed previously) does not contract with an employer group but operates "free lance."

The information we are able to provide on these four companies is limited due to the very fact by which we are making this request — that they appear to be operating illegally and outside the system where information would be available.

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MAR 03, 1992
act #2

Pg 14-26

Page Three
May 31, 1991

We would be happy to assist in any investigation which your office will be conducting. This is a problem for many states and information about this problem should be readily available from other state pharmacy boards as to how their state has forced compliance.

Because the proper dispensing of prescription drugs is so important to the health and welfare of Kansas citizens, we believe it is absolutely imperative that the Board of Pharmacy be given assistance by your office to insure that proper procedures are followed by all pharmacies. We are certain you can understand the danger which would be possible if in-state pharmacists were not licensed and regulated. Therefore, it is illogical to not require licensure and subsequent regulation of out-of-state mail-order pharmacies.

In essence, by allowing the continued illegal operation of mail order pharmacies, the citizens of Kansas are being subjected to the possibility that prescription drugs are being incorrectly and dangerously dispensed by non-trained personnel over whom the regulating authority has no jurisdiction due to its lack of statutory authority to force compliance. A situation could arise in Kansas, as it did in Idaho, in which a woman died due to an out-of-state, mail order pharmacy dispensing the wrong medication. The purpose of requiring compliance is to lessen the possibility that such an unfortunate and unnecessary death would occur in Kansas due to the Board's inability to regulate.

We believe that due to the serious consequences which can occur if prescription drugs are not properly dispensed, this violation of the law deserves the attention and authority granted to you.

We would like to hear from you by June 14. Thank you for your attention to this matter.

Sincerely,

Hugh Snell
President

HS/bt
cc: Tom Hitchcock, Kansas Board of Pharmacy

PHW
MAR 03, 1992
Att #2 ✓
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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 19, 1991

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Hugh Snell, President
The Kansas Pharmacists Association
1308 West 10th
Topeka, Kansas 66604

Dear Mr. Snell:

Attorney General Stephan asked that I respond to your letter dated May 31, 1991, requesting investigation and action by this office with regard to out-of-state mail order pharmacies. As you are aware, this issue has been previously addressed by this office and you note several letters in your correspondence. A review of this office's past statements and position with regard to this issue indicates that if the registration of an out-of-state pharmacy is not required by K.S.A. 65-1643, then such pharmacy is not constrained by K.S.A. 65-1636. Because of a potential ambiguity in the application of registration requirements, it was suggested to your counsel that legislative amendments were necessary in order to clarify whether the complained of actions were clearly prohibited by Kansas law. Thus far, such legislative clarifications have not been forthcoming. Therefore, based upon previous legal research and consideration of the facts you present, and because it does not appear that the situation has in any way changed since our last review of this matter, we hereby decline your request for an investigation by this office.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Theresa Marcel Nuckolls
Assistant Attorney General

TMN:bas

cc: John Campbell, Deputy AG, Litigation
Dan Kolditz, Deputy AG, Consumer
cc: Tom Hitchcock, Exec. Secretary
Board of Pharmacy

RECEIVED

JUN 20 '91

K. PH. A.

DMW
MAR 03, 92
Att # 2
09-16-26

RECEIVED

FEB 10 1992

KANSAS STATE
BOARD OF PHARMACY

From: ORA-DFSR (FDA500) Delivered: Fri 31-Jan-92 10:02 EST Sys 157
Subject: PRESS RELEASE
Mail Id: IPM-157-920131-090400154

TO: NR-1 (STATE HEALTH OFFICERS)
NR-2 (BOARDS OF PHARMACY)
NR-3 (DIRECTORS OF AGRICULTURE)
NR-4 THRU NR-16, NR-39 THRU NR-43 (STATE DRUG OFFICIALS)

INFO: ASTHO -- JOY EPSTEIN
NABP -- CARMEN CATIZONE
AFDO -- WHITNEY ALMQUIST
NASDA -- BOB AMATO

FROM: HEINZ G. WILMS, DIRECTOR, DIVISION OF FEDERAL-STATE RELATIONS,
ORO/FDA

DATE: JANUARY 31, 1992

SUBJECT: PRESS RELEASE - IMPORT ALERT - UNAPPROVED MAIL-ORDER DRUGS

THE FOOD AND DRUG ADMINISTRATION ANNOUNCED TODAY IT HAS ISSUED AN IMPORT ALERT AGAINST UNAPPROVED MAIL-ORDER DRUGS PROMOTED BY SIX OVERSEAS COMPANIES.

MANY OF THESE DRUGS ARE ILLEGALLY ADVERTISED IN PERIODICALS AND THROUGH DIRECT MAIL, AS FOREIGN VERSIONS OF APPROVED PRESCRIPTION DRUGS. THE PROMOTION AND DISTRIBUTION OF UNAPPROVED DRUG PRODUCTS WITHIN THE UNITED STATES IS ILLEGAL.

"IN SOME CASES, THE DRUGS ARE COUNTERFEIT -- LACKING ANY REAL SIMILARITY TO THE APPROVED DRUG. THE UNCERTAIN CHARACTER AND QUALITY OF THESE DRUGS CONSTITUTE AN UNREASONABLE RISK TO THE PUBLIC HEALTH," FDA COMMISSIONER DAVID A. KESSLER, M.D., SAID.

THE IMPORT ALERT INSTRUCTS FDA FIELD OFFICES TO AUTOMATICALLY DETAIN ALL IMPORTED UNAPPROVED PRESCRIPTION PRODUCTS MANUFACTURED BY SIX OVERSEAS COMPANIES WHICH HAVE PROMOTED THEIR PRODUCTS IN THIS COUNTRY. THE COMPANIES CITED ARE INTERPHARM, INC., OF NASSAU, BAHAMAS; NORTHAM MEDICATION SERVICE INTERNATIONAL PHARMACY OF NASSAU, BAHAMAS; INHOME SERVICES OF DELEMONT, SWITZERLAND; INTERNATIONAL PRODUCTS OF HANNOVER, GERMANY; AZTECA TRIO INTERNACIONAL, S.A. DE C.V., OF ZONA RIO TIJUANA, MEXICO; AND INTERLAB OF LONDON, ENGLAND.

THESE COMPANIES HAVE BEEN PROMOTING A WIDE VARIETY OF PRODUCTS PURPORTED TO TREAT VARIOUS CONDITIONS, INCLUDING DEPRESSION, HIGH BLOOD PRESSURE, FUNGAL INFECTIONS, FATIGUE, CHRONIC BRONCHITIS AND HAIR LOSS.

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A RISK TO THE PATIENT'S HEALTH. DR. KESSLER SAID SO-CALLED "FOREIGN VERSIONS" OF PRESCRIPTION DRUGS ARE OFTEN OF UNKNOWN QUALITY WITH INADEQUATE DIRECTIONS FOR USE.

FOR MANY YEARS FDA HAS PERMITTED -- AND WILL CONTINUE TO PERMIT -- ITS FIELD OFFICES TO EXERCISE DISCRETION REGARDING THE RELEASE FOR ENTRY INTO THE UNITED STATES OF SMALL "PERSONAL-USE" QUANTITIES OF DRUGS SOLD ABROAD BUT NOT APPROVED IN THE UNITED STATES -- PROVIDED THAT THE DRUGS DO NOT POSE UNREASONABLE SAFETY RISKS, THAT THEIR USE IS NOT PROMOTED IN THE UNITED STATES AND THAT THEY ARE FOR A SERIOUS CONDITION FOR WHICH THERE IS NO SATISFACTORY TREATMENT AVAILABLE IN THIS COUNTRY. THE POLICY WAS DESIGNED TO GIVE FDA FIELD OFFICES DISCRETION TO RELEASE SMALL QUANTITIES OF MEDICINES WITH WHICH INDIVIDUALS RETURNING TO THE UNITED STATES MAY HAVE BEEN TREATED WHILE TRAVELING ABROAD AND TO ALLOW INDIVIDUALS WITH SERIOUS CONDITIONS THE ABILITY TO IMPORT, UNDER CERTAIN LIMITED CONDITIONS, PERSONAL-USE QUANTITIES OF UNAPPROVED DRUGS THAT THEY BELIEVE MIGHT BE HELPFUL IN TREATING THEIR CONDITIONS.

PERSONAL-USE QUANTITIES ARE GENERALLY CONSIDERED TO BE AMOUNTS FOR A PATIENT'S TREATMENT FOR THREE MONTHS OR LESS. IMPORTS INVOLVING LARGER QUANTITIES ARE NOT PERMITTED AS THEY LEND THEMSELVES TO COMMERCIALIZATION.

FDA APPROVES DRUGS ON THE BASIS OF SCIENTIFIC DATA PROVING THEM TO BE SAFE AND EFFECTIVE. FDA-APPROVED LABELING PROVIDES INFORMATION ON HOW AND WHEN THE DRUGS CAN BE USED TO MAXIMIZE THEIR EFFECTIVENESS AND MINIMIZE THEIR HARMFUL SIDE EFFECTS. THE MANUFACTURING FACILITIES AND PROCEDURES FOR APPROVED PRODUCTS ARE ALSO CAREFULLY REGULATED BY FDA TO ENSURE PRODUCT INTEGRITY.

THE UNAPPROVED DRUGS PROMOTED BY THESE OVERSEAS OPERATIONS LACK THESE SAFEGUARDS AND QUALITY ASSURANCE STANDARDS.

CONSUMERS SHOULD ALSO BE AWARE THAT THE ACQUISITION AND USE OF PRESCRIPTION DRUGS WITHOUT THE VALID PRESCRIPTION OF A PHYSICIAN OR OTHER LICENSED HEALTH PROFESSIONAL MAY VIOLATE STATE OR LOCAL LAWS. FDA WARNS THAT SEVERE ADVERSE REACTIONS, INCLUDING DEATH, CAN RESULT FROM THE IMPROPER USE OF PRESCRIPTION DRUGS.

PERSONS WITH QUESTIONS ABOUT IMPORTATION OF DRUGS FOR PERSONAL USE SHOULD CONSULT WITH THEIR LOCAL FDA DISTRICT OFFICE OR THE FDA IMPORTS OPERATIONS BRANCH IN ROCKVILLE, MD., AT (301) 443-6553.

THE FOOD AND DRUG ADMINISTRATION IS ONE OF THE EIGHT PUBLIC HEALTH SERVICE AGENCIES WITHIN HHS.

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MAR 03, 92
Att #2
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RECEIVED

FEB 10 1992

KANSAS STATE
BOARD OF PHARMACY

From: ORA-DFSR (FDA500) Delivered: Tue 28-Jan-92 14:35 EST Sys 157
Subject: IMPORT ALERT
Mail Id: IPM-157-920128-131340224

TO: ~~NR-1~~ (STATE HEALTH OFFICERS)
~~NR-3~~ (BOARDS OF PHARMACY)
NR-4 THRU NR-16, NR-39 THRU NR-43 (STATE DRUG OFFICIALS)

INFO: AFDO -- WHITNEY ALMQUIST
ASTHO -- JOY EPSTEIN
NABP -- CARMEN CATIZONE
NAAG -- EMMITT CARLTON
MEXICO -- DRA. MERCEDES JUAN
REGIONAL FOOD AND DRUG DIRECTORS
DISTRICT DIRECTORS
STATE CO-OP PROGRAM MANAGERS

FROM: ACTING DIRECTOR, DIVISION OF FEDERAL-STATE RELATIONS, OFFICE OF
REGIONAL OPERATIONS, ORA

DATE: JANUARY 28, 1992

SUBJECT: FDA IMPORT ALERT #66-57 -- "AUTOMATIC DETENTION OF FOREIGN
MANUFACTURED UNAPPROVED PRESCRIPTION DRUGS PROMOTED TO INDIVIDUALS
IN THE U.S."

On January 27, the Food and Drug Administration issued the subject Import Alert as one means of dealing with illegal promotion and importation of unapproved prescription drugs of foreign origin.

Unapproved prescription drugs, promoted and shipped into the U.S. by the distributors named in the alert, present serious safety and effectiveness concerns. In addition, approved U.S. versions of the drugs being promoted and distributed by these firms are available.

FDA has alerted all Import Program Managers that prescription drugs shipped by the named firms are to be automatically detained. Drugs covered by a current approved NDA or IND are unaffected.

FDA has concluded that shipments of these foreign manufactured unapproved prescription drugs are inappropriate for release under the personal importation policy, contrary to what the distributors claim in their promotional materials.

If you have any comments, questions, etc. regarding Import Alert #66-57, please contact me at (301)443-3360.

/s/
Jon R. May, Ph.D., R.Ph.

PHW
Mar 3, 92
Att #2
09.19-26

ATTACHMENT

Date: January 27, 1992

From: Acting Director, Import Operations Branch (HFC-131)

Subject: Import Alert #66-57 "Automatic Detention of Foreign Manufactured Unapproved Prescription Drugs Promoted to Individuals in the U.S."

To: Import Program Managers

Info: All Major Field Offices
Resident Posts

TYPE OF ALERT: AUTOMATIC DETENTION

PRODUCT : FOREIGN MANUFACTURED UNAPPROVED PRESCRIPTION DRUGS

PRODUCT CODE : 66 [] [] [] [] []

HARMONIZED
CODE :

PROBLEM : New drug without an approved New Drug Application (NDA)
(DRND)

PAC : 56008H

COUNTRY : ALL

MANUFACTURER/
SHIPPER : See Attachment

MANUFACTURER
SHIPPER I.D.#: N/A

IMPORTER'S
I.D.# : N/A

CHARGE : "The article is subject to refusal of admission pursuant to Section 801(a)(3) in that it appears to be a new drug within the meaning of Section 201(p) without an approved new drug application [Unapproved New Drug, Section 505(a)]."

RECOMMENDING
OFFICE : HFC-131

REASON FOR
ALERT : FDA has observed an increase in the promotion and importation of unapproved prescription drugs of foreign origin. Unapproved prescription drugs present serious safety and effectiveness concerns. Moreover, approved U.S. versions of these drugs are available. Therefore, this import alert is being established to provide a listing of known distributors.

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MAR 03, 92
Attn # 2
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INSTRUCTIONS : Automatically detain all dosage forms and shipments, commercial and personal, of foreign manufactured unapproved prescription drugs from distributors listed in the attachment. Districts should determine whether the drugs are covered by a current approved NDA or IND.

FDA has concluded that shipments of these foreign manufactured unapproved prescription drugs are inappropriate for release under the personal importation policy.

FOI : No purging is required

KEYWORDS : NEW DRUG (NDA), Prescription Drugs

/s/
John W. Browne

ATTACHMENT IMPORT ALERT #66-57 DISTRIBUTORS OF FOREIGN MANUFACTURED UNAPPROVED PRESCRIPTION DRUGS PROMOTED TO INDIVIDUALS IN THE U.S.

| PRODUCT | SOURCE | COUNTRY |
|------------------------|--|-----------------------------|
| ALL PRESCRIPTION DRUGS | INTERPHARM, INC. INTERNATIONAL PHARMACY | NASSAU, BAHAMAS |
| ALL PRESCRIPTION DRUGS | NORTHAM Medication Service International Pharmacy | NASSAU, BAHAMAS |
| ALL PRESCRIPTION DRUGS | INHOME HEALTH SERVICES | DELEMONT, SWITZERLAND |
| ALL PRESCRIPTION DRUGS | International Products | HANOVER, GERMANY |
| ALL PRESCRIPTION DRUGS | AZTECA TRIO INTERNACIONAL S.A. de C.V. | ZONA RIO TIJUANA, MEXICO |
| ALL PRESCRIPTION DRUGS | INTERLAB | LONDON, ENGLAND |

P. H. H. H.
Mar 3, 92
Att #2
09 21-26

SAVE 30%-60%

on your prescription
medications with
NORTHAM equivalents

Hismanal 10 mg
\$83.50/100

Prozac 20 mg
\$99.00/100

Zantac 150 mg
\$89.00/100

Zovirax 200 mg
\$48.00/100

Cipro 500 mg
\$198.00/100

Seldane 60 mg
\$45.00/100

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KANSAS STATE
BOARD OF PHARMACY



NORTHAM

Medication Service

JHW
March 3, 92
Attn #2
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NORTHAM
Medication Service

**Buy quality prescription medications
identical to U.S. standards
and low low prices**

**SAVE 30% to 60% over U.S. prices
Call now toll free**

1-800-363-0436

Retrovir (AZT) 100 mg
\$89.00/100

Zantac 300 mg
\$129.00/100

| | |
|----------------|--------------------|
| Premarin .3 mg | \$17.00/100 |
| .625 mg | \$22.50/100 |
| 1.25 mg | \$29.00/100 |

Vasotec 5 mg
\$55.00/100

Nizoral 200 mg
\$148.00/100

*PHAC
MAR 03, 92
ATT # 21
29.23-26*

For Sale: Black metal tool box for small truck, no trays. \$75.00. 321-5031 after 4:30.

SAVE 30% TO 60% on your prescription medications. Prozac \$99/100, Seldane \$45/100, Hismanal \$83.50/100, Eldepryl \$120/100, Premarin .625 mg. \$22.50/100, and Zantac equivalents and most other drugs available. Northam Medication 1-800-363-0436. 11/20

Car Batteries as low as \$29.99 at Janney NAPA Auto Parts. c

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NOV 8 1991

KANSAS STATE
BOARD OF PHARMACY

PH&W.

MAR 03, 92

att #2

09-24-26

Why Pay High Drug Prices?

Save 30% to 60% on medications through
NORTHAM Medication Service.

U.S. drug prices are the world's highest ...
because patents prevent competition.

Some countries do not permit patents on pharmaceuticals; others regulate prices. The U.S. stands virtually alone in allowing drug manufacturers to charge high prices. This means that you could be paying nearly twice as much as needed for costly medication!

NORTHAM Medication Service.

NORTHAM is an international pharmacy, importing from Europe and Canada, where quality is identical to U.S. standards, but prices are lower due to competition.

NORTHAM cannot supply all medication, but we try to supply those most widely used and most expensive. All **NORTHAM** products are packed in 100-count packages. A partial list is on the order form. If you are using a drug on the list, order today and we will supply promptly by airmail.

Your rights

- FDA rules allow you to import drugs for your use.
- You have a right to save money!
- NORTHAM enables you to import to save 30% to 60% over U.S. prices.
- If a drug you use is on our list, order today. Reduce the drug price burden!

**COMPLETE FORM ON REVERSE SIDE AND BELOW AND SEND WITH PAYMENT
OR ORDER BY PHONE TOLL FREE 1-800-363-0436**

PAYMENT METHOD

VISA

MasterCard

Cashiers Check

Money Order

Card #

Expiration

Remember to enclose payment unless this is a VISA or MASTERCARD order.

NAME _____

ADDRESS _____

CITY _____ STATE _____

TEL. (____) _____ ZIP _____

DOCTOR'S INFORMATION

DR'S NAME _____

TEL. _____

NORTHAM Medication Service

International Pharmacy

P.O. Box N-7108, Nassau, Bahamas

or order by phone

Toll Free

1-800-363-0436

The medications are for my personal use and I will use only as directed by my physician.

Signature: _____

Date: _____

PHW
MAR 03, 92

Att #2

PA-25-26

ORDER TOLL FREE • 1-800-363-0436

Order #

Credit Auth.

Auth. Date

| Brand Name | Northam Equiv. | Strength | Quantity | Price /100 | Total \$ U.S. |
|------------------------|------------------|--------------|----------|------------|---------------|
| Aldomet | Methyldopa | 125 mg tab | x100 | \$ 11.50 | |
| | | 250 mg tab | x100 | \$ 16.00 | |
| | | 500 mg tab | x100 | \$ 25.00 | |
| Anaprox | Naproxen Sodium | 275 mg tab | x100 | \$ 45.00 | |
| Anaprox-DS | Naproxen Sodium | 500 mg tab | x100 | \$ 69.00 | |
| Anasaid | Flubiprofen | 50 mg tab | x100 | \$ 40.50 | |
| | | 100 mg tab | x100 | \$ 59.50 | |
| Buspar | Buspirone | 5 mg tab | x100 | \$ 33.50 | |
| | | 10 mg tab | x100 | \$ 57.50 | |
| Calan-Sr or Isoptin-SR | Verapamil-Sr | 180 mg tab | x100 | \$ 49.00 | |
| | | 240 mg tab | x100 | \$ 62.00 | |
| Capoten | Captopril | 12.5 mg tab | x100 | \$ 33.50 | |
| | | 25 mg tab | x100 | \$ 36.50 | |
| | | 50 mg tab | x100 | \$ 57.00 | |
| | | 100 mg tab | x100 | \$ 77.00 | |
| Carafate | Sucralfate | 1 gm tab | x100 | \$ 40.50 | |
| Cardizem | Diltiazem | 30 mg tab | x100 | \$ 28.00 | |
| | | 60 mg tab | x100 | \$ 39.00 | |
| | | 90 mg tab | x100 | \$ 54.00 | |
| Catapres | Clonidine | .1 mg tab | x100 | \$ 9.00 | |
| | | .2 mg tab | x100 | \$ 12.00 | |
| Cipro | Ciprofloxacin | 250 mg tab | x100 | \$145.00 | |
| | | 500 mg tab | x100 | \$198.00 | |
| | | 750 mg tab | x100 | \$285.00 | |
| Clinoril | Sulindac | 150 mg tab | x100 | \$ 62.50 | |
| | | 200 mg tab | x100 | \$ 75.50 | |
| Corgard | Nadolol | 40 mg tab | x100 | \$ 49.50 | |
| | | 80 mg tab | x100 | \$ 66.50 | |
| Diabeta or Micronase | Glyburide | 2.5 mg tab | x100 | \$ 22.50 | |
| | | 5 mg tab | x100 | \$ 33.50 | |
| Dolobid | Diflunisal | 500 mg tab | x100 | \$ 69.00 | |
| Dyazide | Triamterene/HCTZ | 50-25 mg cap | x100 | \$ 28.00 | |
| Elavil | Amitriptyline | 10 mg tab | x100 | \$ 12.00 | |
| | | 25 mg tab | x100 | \$ 23.00 | |
| | | 50 mg tab | x100 | \$ 38.50 | |
| | | 75 mg tab | x100 | \$ 51.50 | |
| Eldepryl | Selegiline | 5 mg tab | x100 | \$120.00 | |
| Feldene | Piroxicam | 10 mg cap | x100 | \$ 69.00 | |
| | | 20 mg cap | x100 | \$ 99.00 | |
| Flexeril | Cyclobenzaprine | 10 mg tab | x100 | \$ 58.00 | |
| Hismanal | Astemizole | 10 mg tab | x100 | \$ 83.50 | |
| Indocin | Indometacin | 25 mg tab | x100 | \$ 35.00 | |
| | | 50 mg tab | x100 | \$ 53.00 | |
| Imuran | Azathioprine | 50 mg tab | x100 | \$ 57.50 | |
| Lasix | Furosemide | 40 mg tab | x100 | \$ 13.50 | |
| Lopid | Gemfibrozil | 300 mg tab | x100 | \$ 34.00 | |
| | | 600 mg tab | x100 | \$ 62.00 | |
| Lopressor | Metoprolol | 50 mg tab | x100 | \$ 32.50 | |
| | | 100 mg tab | x100 | \$ 47.00 | |
| Mestinon | Pyridostigmine | 60 mg tab | x100 | \$ 12.00 | |
| Moduretic | Amiloride/HCTZ | 5/50 mg tab | x100 | \$ 29.00 | |
| Motrin | Ibuprofen | 300 mg tab | x100 | \$ 8.00 | |
| | | 400 mg tab | x100 | \$ 12.00 | |
| | | 600 mg tab | x100 | \$ 16.00 | |
| Naprosyn | Naproxen | 250 mg tab | x100 | \$ 39.00 | |
| | | 375 mg tab | x100 | \$ 59.00 | |
| | | 500 mg tab | x100 | \$ 69.00 | |
| Nizoral | Ketoconazole | 200 mg tab | x100 | \$148.00 | |
| Nolvadex | Tamoxifen | 10 mg tab | x100 | \$ 85.00 | |

| Brand Name | Northam Equiv. | Strength | Quantity | Price /100 | Total \$ U.S. |
|-----------------------|----------------|---------------|----------|------------|---------------|
| Parlodel | Bromocriptine | 2.5 mg tab | x100 | \$ 69.00 | |
| | | 5 mg tab | x100 | \$130.00 | |
| Pepcid | Famotidine | 20 mg tab | x100 | \$ 87.50 | |
| | | 40 mg tab | x100 | \$139.00 | |
| Persantin | Dipyridamole | 25 mg tab | x100 | \$ 19.00 | |
| | | 50 mg tab | x100 | \$ 28.00 | |
| | | 75 mg tab | x100 | \$ 36.00 | |
| Premarin | Conj Estrogens | .3 mg tab | x100 | \$ 17.00 | |
| | | .625 mg tab | x100 | \$ 22.50 | |
| | | 1.25 mg tab | x100 | \$ 29.00 | |
| Prinivil or Zestril | Lisinopril | 5 mg tab | x100 | \$ 40.50 | |
| | | 10 mg tab | x100 | \$ 46.50 | |
| | | 20 mg tab | x100 | \$ 54.50 | |
| Procardia or Adalat | Nifedipine | 10 mg cap | x100 | \$ 24.00 | |
| Proventil or Ventolin | Salbutamol | 2 mg tab | x100 | \$ 21.00 | |
| | | 4 mg cap | x100 | \$ 29.00 | |
| | | Inhaler 16 ml | x100 | \$ 13.50 | |
| Prozac | Fluoxetine | 20 mg cap | x100 | \$ 99.00 | |
| Reglan | Metoclopramide | 5 mg tab | x100 | \$ 22.00 | |
| | | 10 mg tab | x100 | \$ 30.00 | |
| Retrovir | Zidovudine/AZT | 100 mg tab | x100 | \$ 89.00 | |
| Seldane | Terfenadine | 60 mg tab | x100 | \$ 45.00 | |
| Tagamet | Cimetidine | 200 mg tab | x100 | \$ 39.00 | |
| | | 300 mg tab | x100 | \$ 45.50 | |
| | | 400 mg tab | x100 | \$ 69.00 | |
| | | 800 mg tab | x100 | \$119.00 | |
| Tegretol | Carbamazepine | 200 mg tab | x100 | \$ 20.50 | |
| Tenormin | Atenolol | 50 mg tab | x100 | \$ 49.50 | |
| | | 100 mg tab | x100 | \$ 71.50 | |
| Theo-Dur | Theophyline SR | 200 mg tab | x100 | \$ 14.00 | |
| | | 300 mg tab | x100 | \$ 18.00 | |
| Timoptic | Timol Maleate | .25% 5 ml | x100 | \$ 11.00 | |
| | | .25% 10 ml | x100 | \$ 17.50 | |
| | | .50% 5 ml | x100 | \$ 13.50 | |
| | | .50% 10 ml | x100 | \$ 20.00 | |
| Vasotec | Enalapril | 5 mg tab | x100 | \$ 55.00 | |
| | | 10 mg tab | x100 | \$ 57.50 | |
| | | 20 mg tab | x100 | \$ 79.00 | |
| Visken | Pindolol | 5 mg tab | x100 | \$ 36.00 | |
| | | 10 mg tab | x100 | \$ 45.00 | |
| Voltaren | Diclofenac | 25 mg tab | x100 | \$ 27.50 | |
| | | 50 mg tab | x100 | \$ 52.50 | |
| | | 75 mg tab | x100 | \$ 62.50 | |
| Zantac | Ranitidine | 150 mg tab | x100 | \$ 89.00 | |
| | | 300 mg tab | x100 | \$129.00 | |
| Zovirax | Acyclovir | 200 mg cap | x100 | \$ 48.00 | |
| Zyloprim | Allopurinol | 100 mg tab | x100 | \$ 12.00 | |
| | | 300 mg tab | x100 | \$ 28.00 | |

PHARM
MAR 03
RET # 2
09-26-2006

Shipping/Handling \$6.00
TOTAL \$ U.S.

NORTHAM MEDICATIONS ARE PACKAGED IN 100's Take all medications only as directed by your physician.

Bob Williams

XVII. LICENSURE REQUIREMENTS FOR DRUG DISTRIBUTION

| State | Permits/ Licenses Required | New Permit Fee- Pharmacies | Annual Fee- Pharmacies | Annual Inspections | Pharmacist- In-Charge Required | Other Outlets Licensed to Sell Packaged Drugs | | | |
|-------------------|----------------------------------|-------------------------------------|------------------------------|-----------------------|--------------------------------------|--|---------------|-------|----------------------------|
| | | | | | | Saleable Drugs | Annual Fee | | |
| Alabama | 4 | \$100.00 | A, Q | \$ 25.00 | Q | Yes | Yes | G | None |
| Alaska | 2, 4 | \$210.00 | | \$180.00 | M | If possible | Yes | No | None |
| Arizona | 1, 2, 4 | \$300.00 | M | \$300.00 | M | Yes | Yes**** | H | |
| Arkansas | 1, 2, 3, 4, 5, 6, 9 | \$200.00 | A | \$100.00 | | Yes | Yes | | |
| California | 1, 2, 3, 4 | \$340.00 | A | \$175.00 | | No | Yes | | |
| Colorado | 1, 2, 4 | \$225.00 | | \$125.00 | | Yes O | Yes | No | |
| Connecticut | 1, 2, 4 | \$600.00 | | \$150.00 | | Yes | Yes**** | OTC | \$70.00/\$50.00 |
| Delaware | 1, 2, 3, 4 | \$100.00 | | \$100.00 | M | Yes | Yes | R, S | \$200.00/ \$200.00 M |
| Dist. of Columbia | 1, 2, 6 | \$100.00 | A | \$100.00 | | Yes | Yes | OTC S | \$65.00 |
| Florida | 4 | \$220.00 | | \$175.00 | M | Yes | Yes V | | No |
| Georgia | 1, 2, 3, 4 | \$100.00 | A | \$ 85.00 | M | Yes | Yes | | None** |
| Hawaii | 1, 4 | \$165.00 | | \$165.00 | M | Yes M | Yes | | \$165.00 M |
| Idaho | 1, 2, 3, 4 | \$100.00 | A | \$100.00 | A | Yes | Yes | H | \$5.00/\$15.00/ \$40.00 |
| Illinois | 4 | \$100.00 | | \$100.00 | L, M | Yes | Yes | S | \$50.00 |
| Indiana | 4 | \$ 25.00 | B | \$ 25.00 | | Yes | Yes | G | None |
| Iowa | 1, 2, 3, 4, 8 | \$100.00 | L, P | \$100.00 | L, P | Yes | Yes | S | \$100.00 |
| Kansas | 1, 2, 3, 4 | \$125.00 | N | \$105.00 | N | Yes | Yes | E | \$12.00 |
| Kentucky | 1, 2, 4, 10 | \$100.00 | A | \$ 75.00 | A | Yes O | Yes | None | None |
| Louisiana | 4 | \$100.00 | A, F, P | \$100.00 | A, P | Yes | Yes | I | None |
| Maine | 1, 2, 3, 4 | \$200.00 | | \$200.00 | | Yes | Yes | G, S | \$200.00 |
| Maryland | 1, 2, 4 | \$ 40.00 | | \$ 25.00 | | Yes | No | | None |
| Massachusetts | 2, 4 | \$175.00 | B, P | \$175.00 | B, L, M | Yes | Yes**** | | None |
| Michigan | 1, 2, 3, 4 | \$ 60.00 | B, L | \$ 50.00 | L, M | Yes | No | | None |
| Minnesota | 1, 2, 3, 4 | \$100.00 | A | \$100.00 | | Yes | Yes | | None |
| Mississippi | 4 | \$150.00 | A | \$150.00 | M | Yes | Yes | | |
| Missouri | 1, 2, 3, 4 | \$200.00 | A | \$150.00 | | Yes U | Yes | S | None |
| Montana | 1, 2, 3, 4 | \$200.00 | A | \$100.00 | L | No | Yes | | S |
| Nebraska | 4 | \$200.00 | B, L | \$100.00 | L | Yes | Yes | | None |
| Nevada | 1, 2, 3, 4 | \$300.00 | A | \$300.00 | M | Yes | Yes**** | S | \$200.00 M |
| New Hampshire | 1, 2, 4, 9 | \$300.00 | A | \$150.00 | A | Yes | Yes | S | \$250.00 |
| New Jersey | 1, 2, 4 | \$200.00 | B, L | \$ 85.00 | | Yes | Yes | G | None |
| New Mexico | 1, 2, 3, 4, 6, 8, 9 | \$150.00 | A, L | \$150.00 | A, L | Yes | Yes | G | Yes |
| New York | 1, 2, 4, 6 | \$345.00 | D | \$260.00 | K | Yes | Yes | H | \$80.00 K |
| North Carolina | 4 | \$250.00 | B | \$125.00 | | Yes | Yes | | None |
| North Dakota | 1, 2, 3, 4 | \$150.00 | A | \$150.00 | | Yes | Yes | H | \$3.00 |
| Ohio | 1, 2, 3, 4 | \$ 70.00 | | \$ 70.00 | | Yes M | Yes | | None |
| Oklahoma | 1, 2, 3, 4 | \$100.00 | A | \$100.00 | | Yes O | Yes**** | G | None |
| Oregon | 1, 2, 3, 4 | \$ 75.00 | A, N | \$ 75.00 | A, N | Yes | Yes | H | \$15.00-\$25.00 |
| Pennsylvania | 1, 2, 4 | \$145.00 | C | \$ 75.00 | M | Yes | Yes | G | None |
| Puerto Rico | 4 | \$ 3.00 | A | \$100.00 | | Yes | Yes | G | |
| Rhode Island | 1, 2, 3, 4 | \$100.00 | A, L | \$ 50.00 | | Yes | Yes | G | None |
| South Carolina | 4 | \$100.00 | A, L | \$ 50.00 | L | Yes | Yes | ' | \$50.00 |
| South Dakota | 1, 2, 3, 4 | \$160.00 | | \$160.00 | | Yes | Yes W | G, H | \$10.00 |
| Tennessee | 1, 2, 3, 4 | \$ 84.00 | A, L | \$ 84.00 | A, L | Yes | Yes | | None |
| Texas | 1, 2, 4 | \$132.00 | A | \$132.00 | A | Yes M | Yes | U | Varies |
| Utah | 1, 2, 3, 4 | \$100.00 | | \$ 40.00 | M | Yes | Yes | G | None |
| Vermont | 4 | \$ 90.00 | M | \$ 90.00 | M | Yes | Yes | R | \$90.00 M |
| Virginia | 1, 2, 4 | \$200.00*** | A | \$200.00*** | | Yes | Yes | | None |
| Washington | 1, 2, 4, 5, 6, 7, 8 | \$275.00 | A, J, L | \$200.00 | J, L | Yes | Yes | | \$25.00 |
| West Virginia | 1, 2, 3, 4 | \$150.00 | D, N | \$ 75.00 | L | Yes | Yes | | None |
| Wisconsin | 1, 2, 3, 4 | \$ 50.00 | A | \$ 50.00 | M | | Yes | | |
| Wyoming | 1, 2, 3, 4, 6 | \$ 50.00 | L | \$ 50.00 | L | Yes O | Yes | None | \$100.00/ \$150.00 T |

PH 3-3-92

Attm #2-A

XVII. LICENSURE REQUIREMENTS FOR DRUG DISTRIBUTION - (cont.)

LEGEND

- * Licensing manufacturers, distributors, and wholesalers located in SC. Also, pharmacies located outside SC whose primary business is mail order prescription service must have a permit to ship, mail, or deliver a controlled substance or dangerous drug or device in SC pursuant to a prescription of a licensed practitioner.
- ** The \$100.00 permit fee is for retail pharmacies and hospitals. The permit fee for wholesalers and manufacturers is \$250.00 with a \$150.00 renewal fee.
- *** Virginia - \$300.00 for manufacturers and wholesalers.
- **** Alternate terms used by the states: AZ - "responsible pharmacist;" CT, MA, OK - "pharmacy manager;" NV - "managing pharmacist."
- 1 --- License required to manufacture (MT-controlled substances only; WY-legend drugs and controlled substances).
- 2 --- License required to wholesale (MT-controlled substances only; WY-legend drugs and controlled substances).
- 3 --- License required to ship into state (MT-controlled substances only; WY-legend drugs and controlled substances).
- 4 --- Pharmacy permit or license required (VA-\$75.00).
- 5 --- Legend Drug Samples Distributors (AR-would require licensure of the company manufacturing the product, but not a separate license).
- 6 --- Distributors of controlled substances into state (AR-would also be licensed as either a manufacturer or wholesaler, but not a separate license; WA-legend drug sample distribution fee: \$275.00 for original certificate, \$200.00 for renewal).
- 7 --- Poison Distributors.
- 8 --- Precursor Chemical Distributors.
- 9 --- Public Health Clinics (AR-licensed as a charity pharmacy if they distribute legend drugs).
- 10 --- Out-of-state pharmacy permit.
- A --- Not transferable.
- B --- Transfer fee: same.
- C --- Transfer fee: \$15.00.
- D --- Transfer fee: \$25.00 (NY-\$345.00).
- E --- Only "retail dealers" selling more than 12 different non-prescription drug products are licensed; those selling 12 or less are exempt from licensure.
- F --- Administrative fee: \$25.00.
- G --- Dangerous drugs saleable designated by law, including vet clinics, rural health center clinics, public health, and outpatient hospitals.
- H --- Drugs saleable designated by Board. (AZ-Saleable OTC drug preparations as designated by Board. Up to 15 items, \$100.00 biennial. Over 15 items, \$200.00 biennial).
- I --- Louisiana Board of Health license products of manufacturer.
- J --- Pharmacy assistant utilization fee (WA-\$60.00).
- K --- Triennial.
- L --- Additional fee. Controlled Substances Act (IL-\$5.00/yr.; MA-\$75.00; NE-\$10.00; MI-\$60.00 for new C.S. license and \$50.00 for annual renewal; MT-\$35.00 annual C.S. registration fee for pharmacies; NE-\$10.00; RI-\$50.00; WA-\$50.00; WY-\$10.00).
- M --- Biennial.
- N --- Registration under Controlled Substances Act included.
- O --- Twice a year.
- P --- Controlled substances permit: \$25.00 (MA-\$75.00).
- Q --- Controlled substances permit: \$100.00.
- R --- Manufacturing, wholesale, and research outlets.
- S --- Wholesalers, manufacturers, and distributors must be licensed (MT-\$100.00 annual C.S. fee for wholesalers, manufacturers, and distributors; WY-has two separate registrations for manufacturers and distributors, and one for prescription drugs and devices only - not for OTC).
- T --- In Wyoming - \$150.00 for manufacturers of controlled substances and \$100.00 for distribution of prescription drugs and devices.
- U --- Manufacturers and wholesalers licensed by Texas Department of Health.
- V --- Prescription Department Manager or Consultant Pharmacist as required.
- W --- If pharmacy is not owned by a pharmacist.

Average Annual Fee--Pharmacies \$118.38.

PH/ell
3-3-92
Attn # 2-A
09/23

Patient Communication. Every out-of-state mail service pharmacy shall, during its regular hours of operation, but not less than six days per week, and for a minimum of forty hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

Maine: (The only mention I could find that pertained to telephoning is as follows;)

(USP - 39)

Explanation by pharmacist. With each new prescription dispensed, the pharmacist, in addition to labeling the prescription in accordance with the requirements of the State, must orally explain to the patient or the patient's agent the directions for use; and any additional information, in writing if necessary, to assure the proper utilization of the medication or delivered prescribed. For those prescriptions delivered outside the confines of the pharmacy, the explanation shall be by telephone or in writing. The section does not apply to those prescriptions for patients in hospitals or institutions where the medication is to be administered by a nurse or other individual licensed to administer medications or to those prescriptions for patients who are to be discharged from a hospital or institution.

North Dakota

(USP - 58)

Out-of-state pharmacies shall provide accessible telephone counseling service for patients' drug inquiries with a registered pharmacist during regular working hours. Available telephone counseling service must be provided that is consistent with the standard of due care. The pharmacies' telephone number will be prominently identified and affixed on the prescription container label.

Oregon

(USP - 47)

On all new prescriptions, where a danger may exist to the public safety, health and welfare, the pharmacist shall advise the patient or the patient's agent in person as to the possible dangers of taking the medication with alcohol or taking the medication and then operating a motor vehicle or other hazardous machinery. If the medication is delivered or mailed, this information shall be provided the patient in writing.

Utah

(USP - 18)

The only information regarding patient counseling for mail order pharmacies is as follows:)

Each-out-of-state mail service pharmacy shall be licensed by the division if the out-of-state mail service pharmacy provides information to a resident of this state of drugs or devices, including, but not limited to, advice relating to therapeutic values, potential hazards, and use or counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

Arkansas

(USP - 71)

The pharmacy shall maintain an incoming toll free telephone number for use by Arkansas customers to be answered by a pharmacist with access to patient records. This service shall be available a minimum of 40 hours a week, six days per week during normal business hours. This telephone number plus others available for use shall be printed on each container of drugs dispensed into Arkansas. The toll free number shall have sufficient extensions to provide reasonable access to incoming callers.

PHW
3-3-92
Attn # 2-A
OR 373

Kansas State Board of Pharmacy

LONDON STATE OFFICE BUILDING
900 JACKSON AVENUE, ROOM 513
TOPEKA, KANSAS 66612-1220
PHONE (913) 296-4056

STATE OF KANSAS



JOAN FINNEY
GOVERNOR

HB 3064

HOUSE PUBLIC HEALTH
AND WELFARE COMMITTEE

MEMBERS

CHARLOTTE R. BROCK, STERLING
DANA L. CREITZ, JR., PARSONS
HOYT A. KERR, TOPEKA
KATHLEEN M. MAHANNA, HOXIE
BARBARA A. RENICK, GARDEN CITY
MARGARET YOUNG, EMPORIA
EXECUTIVE SECRETARY
TOM C. HITCHCOCK
BOARD ATTORNEY
DANA W. KILLINGER

MADAM CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS TOM HITCHCOCK AND I SERVE AS EXECUTIVE SECRETARY OF THE BOARD OF PHARMACY. I APPEAR BEFORE YOU TODAY ON BEHALF OF THE BOARD IN SUPPORT OF HB 3064.

THIS BILL ALLOWS, IN SUBSECTION (j), PAGE 3, LINES 10 THROUGH 15, THE BOARD OF PHARMACY TO REQUIRE REGISTRATION OF A PHARMACY OUTSIDE THE STATE, IN A LIKE MANNER AS A PHARMACY INSIDE THE STATE, IF SUCH PHARMACY DISPENSES AND SENDS PRESCRIPTIONS TO RESIDENTS OF THIS STATE. ALSO, IT WILL ALLOW THE BOARD TO PROMULGATE REGULATIONS WHICH WILL BE SPECIFIC TO OUT-OF-STATE PHARMACIES AS KAR 68-7-11 IS SPECIFIC TO A HOSPITAL PHARMACY AND KAR 67-7-12 IS SPECIFIC TO A COMMUNITY PHARMACY. THE ENTIRE PURPOSE FOR THE PHARMACY ACT AND REGULATIONS UNDER THE ACT IS TO PROTECT YOU, ME AND THE CITIZENS OF KANSAS FROM THE DISPENSING PHARMACIES, BE THEY ACROSS THE STREET OR ACROSS THE NATION.

THE BOARD OF PHARMACY RESPECTFULLY REQUESTS THE FAVORABLE PASSAGE OUT OF COMMITTEE OF HB 3064.

THANK YOU.

Approved
3-3-92
Attm #3

STATEMENT

of

RETIRED PERSONS SERVICES, INC.--THE AARP PHARMACY SERVICE

on

HOUSE BILL 3064

TO REQUIRE THE LICENSURE AND REGULATION OF
OUT-OF-STATE MAIL SERVICE PHARMACIES

before the

COMMITTEE ON PUBLIC HEALTH AND WELFARE

of the

KANSAS HOUSE OF REPRESENTATIVES

Topeka, Kansas
March 3, 1992

PHW

MAR 03 1992

Att #4

1-9

Good afternoon, Madam Chairman, members of the Committee. My name is Nicholas Willard and I'm pleased to have the opportunity to present the views of Retired Persons Services, Inc. (RPS), on HB.3067. RPS is the owner and operator of the pharmacy service endorsed by the American Association of Retired Persons (AARP) for its national membership. By virtue of its licensing agreement with AARP, Retired Persons Services does business as the AARP Pharmacy Service (hereinafter, "the Pharmacy Service").

The Pharmacy Service is a not-for-profit, membership services corporation, organized under the laws of the District of Columbia and headquartered in Alexandria, Virginia. While the Pharmacy Service operates on a not-for-profit basis (i.e., net income is reinvested rather than distributed), it is not tax-exempt: we are not a 501(c)(3) organization and therefore pay all appropriate and applicable federal, state and local taxes. Accordingly, the Pharmacy Service has not sought preferential buying status under either the Robinson-Patman or Nonprofit Institutions Acts. Its product costs are functions simply of volume and prudent purchasing.

The Pharmacy Service has helped to meet the health care needs of AARP members for more than 32 years. We provide community pharmacy services at all of our thirteen (13) stores while twelve of the thirteen also provide home delivery services by the

PHW
MAR 03 1992
att #4
29-2-9

U.S. Postal Service or common carrier. Our pharmacies are licensed, regulated and fully approved by the states in which they are located. Our pharmacists are licensed and regulated by the states in which they practice their profession and only licensed pharmacists fill prescriptions for the Pharmacy Service. Today, the Pharmacy Service serves more than 3,000,000 AARP members nationally, of whom some 25,000 are Kansas residents and are served by our Missouri subsidiary, the Retired Persons Pharmacy of Kansas City. I should also add, for the record, that every single one of our customers and patients chose our package of price, convenience and service over the services offered by their local retail druggists.

HB.3064 would enable the Kansas Board of Pharmacy to establish a regulatory framework for nonresident pharmacies which serve Kansas residents. It is based on the premise that the health and safety of consumers are compromised when those consumers use the services of a pharmacy which is not located in the state where the consumers reside. The Pharmacy Service believes that this premise has no factual foundation and would add that every official investigation which has addressed the allegations that mail service pharmacies pose a threat to the public health and safety has reached the same conclusion: there is no credible evidence that such a threat exists. Nevertheless, the Pharmacy Service has committed itself to complying with all reasonable and constitutionally sound regulatory demands from the licensing

PHVCW

MAR 03 1992

Att #4

pg. 3-9

authorities of the states into which we have delivered dispensed prescription medications. The AARP Pharmacy Service supports the passage of HB.3064 for three specific reasons.

First, you may recall that last year we opposed HB.3064's predecessor bill because it failed to specify the elements of Kansas pharmacy law and rules with which nonresident pharmacies were to be obligated to comply. Happily, this year the Pharmacy Service, the Kansas Pharmacists Association and the Kansas Board of Pharmacy met to discuss these issues before returning to the legislative process. We have agreed to a set of rules which the Board will promulgate once the enabling statute is enacted. These agreed-to rules set forward clearly the extent to which Kansas pharmacy law and rules will govern nonresident pharmacies when serving Kansas residents. I've attached a copy of these rules for your review.

Second, we support HB.3064 because the agreed-to rules neither add to the regulatory burden under which we operate in Missouri nor provide for conflicts between Kansas and Missouri law. Had the Pharmacy Service dispensed to Kansas residents from a state other than Missouri, our analysis could have turned out differently and we consequently would have appeared today to oppose HB.3064. However, within the context of the respective pharmacy laws and rules of Missouri and Kansas, we believe the rules proposed and agreed-to are both reasonable and constitutionally sound.

PHAW

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pg. 4-9

Third, we support HB.3064 because the agreement reached between ourselves, the Board and the Pharmacists Association represent a consensus on what constitutes an equitable balance between our respective interests. I believe that I can safely say that the rules on which our agreement is based constitutes a compromise in the truest and most practical sense of the word. Believe me, had I been handed the pen to write the rules and the statute, I would have come up with something quite different. The agreed-to rules are derived from the model nonresident pharmacy rules of the National Association of Boards of Pharmacy and portions of the regulatory frameworks for nonresident pharmacies of Arkansas, California, South Carolina and Texas. They constitute a blend and a balance within the context to which I have previously referred.

In closing, Madam Chairman, I would ask our friends at the Kansas Pharmacists Association and the Kansas Board of Pharmacy to take steps, in a spirit of fairplay, to ensure that those Kansas pharmacies which serve Missouri and Nebraska residents register under those states' respective nonresident pharmacy laws. Thank you very much for your time.

PHAW
MAR 03 1992
Att #4
09. 5-9

PROPOSED AGREED-TO RULES
KANSAS STATE BOARD OF PHARMACY

Article .--REGISTRATION OF OUT OF STATE PHARMACIES

Out of State pharmacies shall comply with the following regulations to be and remain registered in Kansas by the Board.

68- -1. The pharmacy holds a current license or registration in good standing in the state in which it is located.

68- -2. The out-of-state pharmacy shall apply for registration and renewal on forms approved by the Board. The Board may require such information as reasonably necessary to carry out the provisions of K.S.A. 65-1643(a), including the location, names and titles of all principal corporate officers and all pharmacists dispensing prescription drugs to residents of this state and the state of the pharmacists' original licensure.

A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer or pharmacist. Any change in ownership, cessation of business or change of pharmacist in charge shall be reported within 5 days of such event.

68- -3. Each pharmacist dispensing drugs into Kansas need not be licensed as a pharmacist in Kansas if he is currently licensed in the state where he practices and if that state has standards of licensure at least equivalent to those of Kansas.

68- -4. The licensee or registrant shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is located as well as with all requests for information made by the Board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite of registering with the Board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

68- -5. The registrant shall maintain its records of prescription drugs dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

PHAW
MAR 03 1992
Att #4
09.6-9

68- -6. The pharmacy shall maintain an incoming toll free telephone number for use by Kansas customers to be answered by a pharmacist with access to patient records. This service shall be available as minimum of 40 hours a week, six days a week during normal business hours. This telephone number plus others available for use shall be printed on each container of prescription drugs dispensed in Kansas. The toll free number shall have sufficient extensions to provide reasonable access to incoming callers.

68- -7. If the State in which the pharmacy is located does not establish, by statute or regulation, a ratio describing the number of support personnel that a pharmacist may supervise, or otherwise define the role of a pharmacist in the compounding and dispensing of prescription drugs, then that pharmacy must not allow a pharmacist to supervise more than one supportive personnel at any one time in the compounding and dispensing of prescription drugs to Kansas.

68- -8. Each nonresident pharmacy shall comply with the following: all statutory and regulatory requirements of the state of Kansas for controlled substances, including those that are different from federal law. All the statutory and regulatory requirements of the state of Kansas regarding drug product selection. Labeling of all prescriptions dispensed, to include but not limited to the identification of the product.

69- -9. Each nonresident pharmacy shall develop and make available to the Board a policy and procedure manual that sets forth: normal delivery protocols and times; the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time; the procedure to be followed upon the receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the nonresident pharmacy at the earliest possible time (i.e., courier delivery), or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time; the procedure to be followed when the nonresident pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available.

68- -10. A pharmacy subject to this section shall comply with Kansas law K.S.A. 65-1642(c)(1)(2) and (3) regarding the maintenance and use of patient medication profile record systems.

PMW
MAR 03 1992
Att #4
Pg. 7-9

68- -11. A pharmacy must maintain a record of any civil litigation commenced against the pharmacy by a resident of the state of Kansas arising from a complaint within the Board's jurisdiction for a period not less than five (5) years or a complaint that arises out of a prescription for a Kansas resident lost during delivery.

68- -12. To qualify for a nonresident registration, an applicant, in addition to meeting the other requirements of this section, must provide to the Board: evidence that the applicant holds a pharmacy license, registration or permit issued by the state in which the pharmacy is located, that is valid and in good standing; the name of the owner and pharmacist-in-charge of the pharmacy; evidence of the applicant's ability to provide to the Board a record of a prescription drug ordered and dispensed by the applicant to a resident of this state not later than 72 hours after a request for the record by the Board; and an affidavit by the pharmacist-in-charge which states that such pharmacist had read and understands the laws and rules regulating a nonresident pharmacy.

68- -13. A nonresident pharmacy shall be under the continuous on site supervision of a pharmacist and shall designate one pharmacist licensed to practice pharmacy by the regulatory or licensing agency of the state in which the nonresident pharmacy is located to serve as the pharmacist-in-charge of the nonresident pharmacy.

68- -14. The license number of the pharmacist-in-charge, who shall have the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy; and any other information the Board determines necessary.

68- -15. Disciplinary Action. Except in emergencies that constitute an immediate threat to the public health and require prompt action by the Board, the Kansas Board of Pharmacy may file a complaint against any nonresident pharmacy that violates any provision of this section. This complaint shall be filed with the Board in which the nonresident pharmacy is located. If the Board of the state in which the nonresident pharmacy is based fails to resolve the violation complained of within a reasonable time, not less than _____ days from the date that the complaint is filed, or to the satisfaction of the Kansas Board, disciplinary proceedings may be initiated in Kansas before the Board. The Kansas Board of Pharmacy may also initiate disciplinary actions against a nonresident pharmacy if the regulatory or licensing agency of the state in which the pharmacy is located lacks or fails to exercise jurisdiction.

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68- -16. It is unlawful for any nonresident pharmacy which is not registered to advertise its services in this state, or for any person who is a resident of this state to advertise the services of a nonresident pharmacy which has not registered with the Board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

68- -17. The facilities and records of the pharmacy shall be subject to inspection by the Board; provided, however, the Board may accept in lieu thereof satisfactory inspection reports by the licensing entity using similar standards of the state where the pharmacy is located.

68- -18. Each nonresident pharmacy doing business in Kansas by dispensing and delivering or causing to be delivered prescription drugs to Kansas consumers shall designate a resident agent in Kansas for service of process.

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STATEMENT

regarding

KANSAS

House Bill No. 3064

“An act requiring licensure of out-of-state mail order pharmacies”

before the

**PUBLIC HEALTH AND WELFARE COMMITTEE
HOUSE OF REPRESENTATIVES
STATE OF KANSAS**

presented by

DELBERT D. KONNOR, PHARMMS

Executive Vice President

on

March 3, 1992

Madame Chairwoman, Members of the Public Health and Welfare Committee, thank you for the opportunity to present this statement in opposition to H.B. 3064 on behalf of the members of the American Managed Care Pharmacy Association (AMCPA). My name is Delbert D. Konnor.¹ I serve as Executive Vice President of AMCPA, the trade association representing the major companies providing home-delivered pharmacy services to consumers enrolled in funded health plans which offer prescription medicines as a benefit.

AMCPA's position on H.B. 3064 and state licensure of nonresident pharmacies can be summarized as follows:

■ Mail Service Pharmacy: The Highest Quality — First, home-delivered pharmacy services, including services provided by out-of-state pharmacies, are of the highest quality.

■ H.B. 3064 Anti-Consumer and Anti-Competitive — Second, H.B. 3064 is anti-consumer and anti-competitive legislation. Its proponents have failed to demonstrate that imposition of multiple licensure requirements on out-of-state pharmacies will improve the quality of pharmacy services for Kansas consumers. Rather, H.B. 3064 would increase the cost of prescription medicines to Kansas consumers and this increase could discourage Kansas

¹ The credentials of Mr. Konnor, AMCPA Executive Vice President, are attached. See ATTACHMENT A

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employers and health plan administrators from offering pharmacy services as a part of the health benefits plans for their employees.

■ H.B. 3064: Unconstitutional — Third, H.B. 3064 is constitutionally suspect under the Commerce Clause of the U.S. Constitution because of the discriminatory burdens it would impose on out-of-state pharmacy services without providing compensating benefits for Kansas consumers.

■ Pharmacy Registration: Pro-Consumer, Pro-Competitive, and Constitutional — Fourth and finally, the AMCPA would be pleased to work with this Committee and the Kansas Legislature to fashion a constitutionally sound, pro-consumer, and pro-competitive piece of legislation which would require registration of nonresident pharmacies providing home-delivered pharmacy services to consumers in the State of Kansas.

The remainder of these comments will examine these four issues.

I. HOME-DELIVERED PHARMACY SERVICES, INCLUDING OUT-OF-STATE PHARMACIES, OFFER CONSUMERS SERVICES OF THE HIGHEST QUALITY.

In state after state, as healthy competition erodes their exceptionally high share (approximately 70%² of the prescription drug market, retail pharmacists respond, seeking government protection of their long enjoyed market domination, by alleging that out-of-state home-delivered pharmacy services somehow lack the quality of services provided by a local pharmacy. However, when independent, objective observers examine these allegations and anecdotes, they reject them. The following four recent examples are typical:

■ American Medical Association (1987) — In 1987, the House of Delegates of the American Medical Association found:

“. . . MSPs [mail service pharmacies] are less vulnerable to drug diversion than retail pharmacies Presently the practice of obtaining drugs from mail service pharmacies appears to be relatively safe.” [Resolution adopted by the House of Delegates, American Medical Association, 1987]

²[R]etail drug stores still represent about 70% of drug dollar sales” From a statistical study released November 2, 1990, by FIND/SVP (“a leading market research and information-services consulting firm”), Dept. S6, 625 Avenue of the Americas, New York, New York 10011. The study estimated that retail drugstores share of the \$28 billion prescription drug market in 1988 was 65%.

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■ Brandeis University (1989) — The Health Care Financing Administration (HCFA) commissioned a study by researchers at Brandeis University. That study concluded:

“The quality of drug products dispensed by mail service firms is very good”;

dispensing procedures at mail service pharmacies “certainly compare favorably with community pharmacy operations whose size generally precludes checking by two or more pharmacists”;

“concerns expressed by community pharmacies [sic] have generally reflected their apprehension of a new competitor.... Evidence offered in support of these allegations and any subsequent deterioration of patient care is anecdotal.”

■ Maine State Legislature (1989) — In 1989, a Joint Committee of the Maine State Legislature reported:

“The Committee found no evidence that there was any difference in safety between having a prescription filled by mail and through an in-state pharmacy.” [Joint Standing Committee Report, December 1989]

■ Michigan State Legislature (1988) — In 1988, a Joint Committee of the Michigan State Legislature reported:

“Mail order pharmacy appears to be a safe and convenient method of obtaining pharmaceuticals for millions of Americans and hundreds of thousands of Michigianians. . . . There is anecdotal information reciting problems with MOPs [mail order pharmacies] but little or no documentation to support alleged problems.” [Joint Study Report, Michigan State Legislature, 1988]

■ Tennessee College of Pharmacy (1986) — In 1986, the College of Pharmacy at the University of Tennessee conducted a study to determine the satisfaction of consumers using mail service pharmacies compared to consumers using retail pharmacy services. The report concluded:

“Most mail order users report few problems and the overall rating of the service was excellent or good. In fact, the rating for mail order services was slightly better than the rating for community pharmacy services.” [“Evaluation of Consumer Opinions of Prescription Drug Services from Community and Mail Order Pharmacies,” conducted by The Center for Pharmacy Management and Research, College of Pharmacy, The University of Tennessee, 1986]

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There is good reason for these findings. In contrast to the average retail drugstore, that derives only a quarter of its revenues from prescription drugs and merely uses pharmaceuticals "to lure customers into their stores,"³ the mail service pharmacy is dedicated exclusively to purchasing, storing, and dispensing prescription medicines. Mail service pharmacies use state-of-the-art technologies and ultra-modern facilities to assure high quality at each step of the dispensing process. Pharmacists are available to counsel patients privately and confidentially in their homes through the use of a toll-free (800) number. This confidential counseling service is available

- (1) before the patient sends the prescription order to the pharmacy;
- (2) after the patient receives the prescription medicine; and
- (3) any time during or after the entire course of medication therapy.

Our member pharmacies also provide written, consumer oriented information, for each prescription medicine dispensed, which patients need for compliance with their physician prescribed and monitored drug therapy.

II. H.B. 3064 IS ANTI-CONSUMER AND ANTI-COMPETITIVE.

The fundamental problem with H.B. 3064 is its anti-competitive nature. Some local pharmacists feel threatened by the growth of mail service pharmacies because of the increasing number of companies and organizations that offer mail service pharmacy benefits to their employees. The competitive threat many local pharmacists feel is evident in a recent advertisement which the Kansas Pharmacy Association circulated in local papers. The advertisement contended that mail service pharmacies pose a safety threat to their patients. The advertisement stated that, "Every day the danger becomes more apparent...[mail order pharmacies] don't know your medical history, or what other prescriptions you're taking. Dangerous mistakes can be made."⁴ A copy of this advertisement is attached to this testimony. Economic competition should not be substituted by scare tactics to economic protectionism. H.R. 3064 would permit the Kansas Board of Pharmacy to promulgate regulations which provide economic protection to pharmacies that are unwilling or unable to offer the best combination of high quality and low cost prescription medication to the citizens of Kansas. H.B. 3064 will permit the participation of inefficient pharmacy providers, and will drive up costs to Kansas' constituents who currently derive benefits from companies offering prescription drug benefits in their health plans.

³A copy of the source article ["Pharmacies Fight Off New Competition," The New York Times, November 5, 1989, page F-17] is attached to this statement. See ATTACHMENT B

⁴Don't let you community pharmacist disappear," The Topeka Capital-Journal, January 30, 1992. See ATTACHMENT C.

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The growth of such company-sponsored pharmacy benefits reflects the superior combination of quality, convenience, and cost savings that mail service pharmacies provide.

The retail price of prescription medicines has jumped by 88 percent since 1981 — twice as fast as the consumer price index. Given this steep price increase, it is not surprising that employers in Kansas and across the country have turned to mail service pharmacies for their employees. If left to the local drugstore to meet employee prescription medication needs, especially with regard to maintenance medicines, many of these employers and plan administrators might just drop prescription drug benefits from their healthcare plans altogether. The favorable prices offered by mail service pharmacies are especially attractive because they offer high quality as well and also provide convenient access and delivery to today's busy, sometimes harried, consumer.

**III. H.B. 3064 IS UNCONSTITUTIONAL AS A VIOLATION OF
THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION.**

H.B. 3064 would require pharmacies to be licensed in Kansas as well as in the states where they are located. Multi-state licensure is a burdensome and unworkable requirement. Each state board of pharmacy adopts licensure requirements that cover the important areas of pharmacy operations and assure the high quality of all pharmacies, including mail service pharmacies, domiciled in that state. However, within this common framework different jurisdictions vary their particular requirements according to local traditions and preferences.

It is not unfairly burdensome for a reputable pharmacy to comply with the requirements of any single state. The problem occurs when any pharmacy, including a mail service pharmacy, is required to comply with requirements of several states at once. State legal requirements, that must be met as a precondition for maintaining a valid pharmacy license, can and often do contradict one another from state to state on matters such as formularies, generic drug dispensing, and multiple copy prescription control programs for Schedule II controlled substances. The unworkability of a multi-state pharmacy licensure system can be appreciated when it is recognized that mail service pharmacies serve not just consumers in the State of Kansas; our members provide home delivery service to consumers in all states. The multiple licensing laws would be literally impossible to comply with if every state had H.B. 3064-type licensure requirements. The mail service pharmacy would be forced to choose between the requirements of one state and the sometimes flatly contradictory mandates of another state. Imposition of such a burden discriminates against out-of-state pharmacies providing services in interstate commerce compared to local retail pharmacies.

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Indeed, retail pharmacists in Kansas mail prescription medicines to patients in other states and they are not required to be licensed by those other states nor by any provision of H.B. 3064.⁵

The United States Supreme Court has articulated the test for whether a state statute unconstitutionally burdens interstate commerce. In the leading case of *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), the Court established the following two-part test:

■First, is the burden imposed on interstate commerce clearly excessive in relation to the local benefits?; and

■Second, could the same local interest be protected with a lesser impact on interstate activities?

For H.B. 3064, the answer to both questions is "yes." First, H.B. 3064 would impose the burdens of multiple licensure on mail service pharmacies without increasing the already high quality of the services they provide to Kansas consumers. Second, the same local interest has been, is now, and will be fully protected, without burdening interstate activities, by relying on the regulations and supervision of the board of pharmacy of the state where the mail service pharmacy, and its pharmacists, are located.

Given the recognized high quality of mail service pharmacies and the discriminatory effects of the licensing approach on out-of-state pharmacies, H.B. 3064 fails both tests of *Pike v. Bruce Church*. H.B. 3064 is merely an anti-competitive and anti-consumer piece of legislation designed to protect the economic interests of in-state retail drugstores rather than the well-being of Kansas consumers.

IV. H.B. 3064 SHOULD BE REVISED TO PROVIDE FOR REGISTRATION
— BUT NOT LICENSURE — OF NONRESIDENT PHARMACIES SERVING
CONSUMERS IN THE STATE OF KANSAS.

The AMCPA desires to work with this Committee and with the Kansas Legislature and Executive Branch to support constructive legislation that conforms to U.S. Constitutional requirements and meets the legitimate needs of Kansas consumers.

⁵In a 1987 national survey, approximately 84% of retail pharmacies in the United States stated they mailed prescription medicines to patients who are on vacation, homebound, etc. These pharmacies are not required to be licensed in any of the states into which they are mailing prescription medicines to their patients. "Is there Anything a Pharmacist Won't Do For a Patient?" Drug Topics, October 19, 1987, pages 19-21.

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In this spirit, we offer for your consideration the legislation recently enacted by the State of California, California *Senate Bill 2213* (1988). A copy of that bill, now law⁶ is attached to this testimony.⁷ California law now requires nonresident pharmacies to register with the state and to comply with requests for information by the California State Board of Pharmacy. In contrast to H.B. 3064, the California law recognizes the authority and responsibility of the boards of pharmacy in other states over their own resident retail pharmacies, and provides that the nonresident pharmacy must hold a valid license in its home state and comply with all laws, standards of practice, and other regulations and rules of that state. To assist you as you consider the registration approach, AMCPA has prepared a summary of the California nonresident pharmacy registration law; it is attached.⁸

Such legislation represents a minimally burdensome approach by a state to meet the needs of its consumers without erecting anti-competitive and anti-consumer barriers to the provision of mail pharmacy services from out-of-state. AMCPA urges you to consider the California legislation as a proper, constitutional alternative to H.B. 3064. We will be pleased to work with the Committee and others to meet this goal for the citizens of Kansas.

Attachments:

- A. Credentials of Delbert D. Konnor, PharmMS, Executive Vice President, AMCPA;
- B. "Pharmacies Fight Off New Competition," *The New York Times*, November 5, 1989, page F-17;
- C. "Don't let your community pharmacist disappear," *The Topeka Capital-Journal*, January 30, 1992;
- D. California *S.B. 2213* (1988); and
- E. AMCPA Summary of California *S.B. 2213* (1988) entitled "Nonresident Pharmacy Regulation — The California Registration Model"

⁶See California Business and Professions Code, 4040.1; 4084.6(b); 4350.6; and 4384; enacted by 2-6, California S.B. 2213

⁷See ATTACHMENT D.

⁸See ATTACHMENT E

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Background Information on Mr. Konnor

Delbert D. Konnor, PharmMS
Executive Vice President, AMCPA

- * Formerly Vice President for Professional Services of the AARP Pharmacy Service of the American Association of Retired Persons
- * Served earlier as Manager of the U.S. Drug Enforcement Administration's Voluntary Compliance Program
- * Formerly Assistant to the Executive Vice President of the National Association of Retail Druggists (NARD)
- * Has also served as Director of the first White House Conference on Prescription Drug Misuse, Abuse, and Diversion
- * Serves as Adjunct Professor of Pharmaceutical Administration at Duquesne University School of Pharmacy

Attachment A

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WHAT'S NEW IN PRESCRIPTION DRUGS/Echo Montgomery Garrett

Pharmacies Fight Off New Competition

THERE is a drug war in America today that has nothing to do with crack dens and money laundering. Pharmacies are fighting to keep what was once their exclusive domain: the retail market for prescription drugs. Since 1985, health maintenance organizations, doctors and mail-order houses have cornered a growing share of that business and last year sold 15 percent of the nation's \$28 billion in prescription drugs.

"Overall, it's not the best of times for the drug retailing industry," said Gary M. Giblen, an analyst at Paine Webber.

Pharmacies, which derive a quarter of their revenues from prescription drugs and use them to lure customers into their stores, have been under pressure for some time.

Over the last decade, as employers increasingly added drugs to their benefits plans, insurance programs have replaced up-front cash purchases as the dominant form of payment for prescriptions, burdening pharmacies. Now, druggists may wait up to 120 days to be paid.

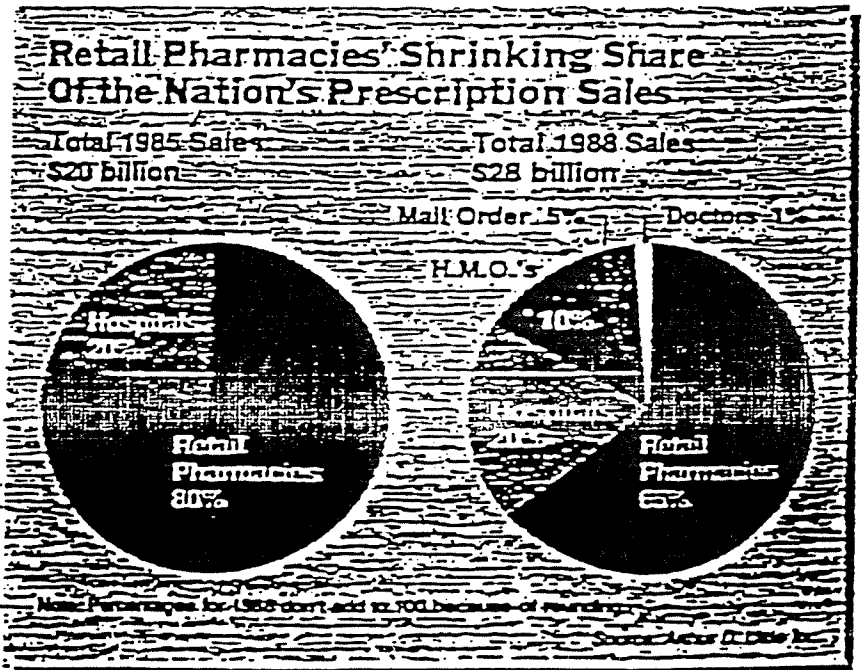
Growing competition only exacerbated their problems. Supermarkets and convenience stores have recently entered the business. And with the prices of prescription drugs escalating by 88 percent since 1981 — twice as fast as the Consumer Price Index — many employers have turned to discount mail-order houses or started their own in-house pharmacies to cut costs.

The latest threat comes from physicians. Faced with heavy competition rising costs for malpractice insurance and fees frozen by Medicare and Medicaid, many doctors have started to fill prescriptions they write as a way of generating revenues.

To cope, pharmacies have consolidated to

gain efficiencies. The number of stores has remained stable over the last decade at about 60,000. But many chains have merged, decreasing their number by about 20 percent, according to the National Association of Chain Drugstores, an industry trade group in Alexandria, Va. For instance, Fay's, a leading chain, with 163 units, established a new division last year to make acquisitions. It hopes to expand its stores by at least 10 percent a year over the next five years, said John A. Kogut, president of the new arm.

Many pharmacies also participate in prescription card programs that give employers discounts on drugs. And they have convinced Congress to investigate discriminatory pricing practices by manufacturers that they claim give mail order houses an advantage. They are pressing state legislatures to pass laws to restrict dispensing by doctors.

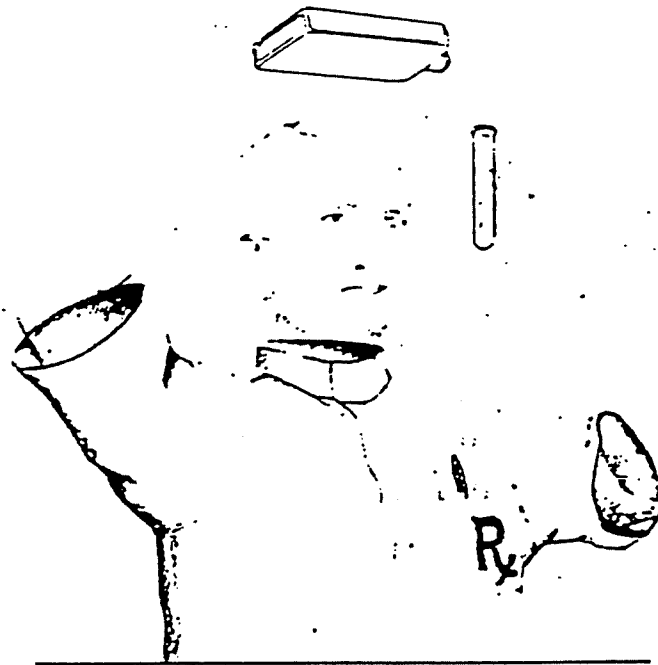


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Attachment B

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Don't let your community pharmacist disappear



Every day we see more insurance companies and health care plans encouraging people to buy their prescription drugs from mail order houses.

Every day the danger becomes more apparent. Mail order companies don't know you. They don't know your medical history, or what other prescriptions and non-prescription medications you're taking. Dangerous mistakes can be made.

See your local pharmacist...while you still can.

If you've made a mail order choice, please, for your safety, think again. If someone else chose for you, speak out. It's your right, and that hasn't disappeared. Not yet, anyway.

A message from the Kansas Pharmacists Association.

Attachment C

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CHAPTER 1424

An act to amend Section 4084.6 of, to add Sections 4050.1 and 4383 to, and to add and repeal Section 4350.6 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2213, Craven. Pharmacy.

Under existing law, it is unlawful for any person to, among other things, sell or dispense any prescription of a medical practitioner unless the person is a registered pharmacist under specified provisions of the Business and Professions Code. The law requires an out-of-state pharmacy which conducts the business of selling or distributing drugs in this state to be licensed by the Board of Pharmacy.

This bill would require any pharmacy, as specified, located outside this state which ships, mails, or delivers any controlled substances or dangerous drugs or devices into this state to register with the board, disclose specified information to the board, and meet other conditions.

The bill would authorize the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with specified provisions of California law and, until January 1, 1992, for conduct which causes serious bodily or psychological injury to a resident of this state if the regulatory agency in the state where the pharmacy is located fails to initiate an investigation into the matter within 45 days of being notified by the board.

The bill also would prohibit specified advertisements with regard to unregistered, nonresident pharmacies.

Existing provisions of the Business and Professions Code continuously appropriate the moneys in the Pharmacy Board Contingent Fund. Because this bill would increase the amount of moneys in the fund, it would constitute an appropriation.

A violation of those provisions of the Business and Professions Code constitutes a misdemeanor.

This bill would impose a state-mandated local program by creating or revising a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this

Attachment D

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act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug related therapy.

(b) The Legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail order pharmacies located outside the State of California.

(c) As a result, the Legislature finds and declares that to continue to protect the California consumer-patient, all out-of-state pharmacies that provide service to California residents shall be registered with the board, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

SEC. 2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs

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dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to

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serve as any evidence that such out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 4. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subdivision and any action taken thereon and shall report its findings to the Legislature on or before March 31, 1991.

This section shall be operative until January 1, 1992, and as of that date, is repealed unless a later enacted statute deletes or extends that date.

SEC. 5. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

This section shall become operative on January 1, 1992.

SEC. 6. Section 4383 is added to the Business and Professions Code, to read:

4383. It is unlawful for any nonresident pharmacy which is not registered pursuant to Section 4050.1 to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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NONRESIDENT PHARMACY REGULATION —

THE CALIFORNIA REGISTRATION MODEL

CALIFORNIA REGISTRATION

In 1988, the State of California addressed the need to protect California consumers from delivery of pharmaceuticals by unlicensed or otherwise unregulated nonresident pharmacies. This California law [§§ 4040.1., 4084.6., 4350.6.(a) & (b), 4350.6., and 4384, *California Business and Professions Code* ; enacted by §§ 2-6, California AB 2213, 1988, copy attached] requires the following actions to be taken by a nonresident pharmacy:

- register with the California Board of Pharmacy when it ships medicines into the state;
- disclose the location, names and titles of both its corporate officers and its pharmacists who dispense drugs to California residents;
- maintain California residents' controlled substances' records so that they are readily retrievable;
- provide a toll-free telephone service to facilitate communications between California patients and a pharmacist at the pharmacy who has access to the patient's records; and
- comply with all requests for information by the California State Board of Pharmacy.

RESIDENT STATE LICENSURE

The California law clearly recognizes the authority and responsibility of the boards of pharmacy in other states over their own resident pharmacies. California's statute specifies that a nonresident pharmacy is responsible to the board of pharmacy in its residential state for the following licensure requirements:

- the requirement to qualify and hold a valid pharmacy license;
- the requirement to submit to all required inspections;
- the requirement to comply with the pharmacy law, standards of practice, and other regulations; and
- the requirement to assure that its pharmacists are properly licensed in the state in which they practice.

CALIFORNIA DISCIPLINARY ACTION

The California law additionally provides that the nonresident dispensing pharmacy also is subject to disciplinary action by the California State Board of Pharmacy for the following actions:

- failure to comply with California conditions of registration;
- failure to register in California, but advertising services to California patients; or
- causing serious bodily or psychological harm to a California patient, if the matter has been referred to the board of pharmacy of the state where the pharmacy is located and no action has been taken within 45 days of the referral.

Attachment E

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MEMORANDUM

TO: Representative Carol Sader
Chairman, House Public Health & Welfare Committee

FROM: William W. Sneed
Legislative Counsel
Health Insurance Association of America

DATE: March 3, 1992

RE: House Bill 3064

Madam Chairman, Members of the Committee: My name is Bill Sneed and I am legislative counsel for the Health Insurance Association of America ("HIAA"). HIAA is a health insurance trade association consisting of over 325 insurance companies that write over 85% of the health insurance in the United States today. Please accept this memorandum as our testimony regarding H.B. 3064.

Initially, my client keenly aware of the concerns that can be generated relative to the regulation of out-of-state pharmacies. My client agrees that there should be reasonable registration on mail-service pharmacies to assure a safe, effective means of dispensing prescription drugs for chronic and long-term conditions consistent with the legitimate objectives for the citizens of Kansas. However, we believe that this legitimate concern must be balanced with the benefits that are derived from mail-service pharmacies. Needless to say, the major benefit is a reduction in overall pharmaceutical costs to the consumers. We are concerned that H.B. 3064, in its present form, may inappropriately cause an increase in costs for these services in relation to the requirements that will be implemented under H.B. 3064.

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My client wishes to thank the Kansas Pharmacists Association for providing us a copy of the proposed regulations that would be potentially implemented under this bill. However, in reviewing the proposed regulations, we are concerned that the regulations may in fact be overreaching, and in balance, create unneeded regulation in this area.

Specifically, in reviewing the proposed bill and the proposed regulations and comparing those documents to the requirements of in-state pharmacies, it would appear that the proposed regulations provide substantially more regulation for out-of-state pharmacies as compared to in-state pharmacies when you consider that the out-of-state pharmacy has its own regulations to follow. Although we acknowledge that by its very nature (in-state versus out-of-state) there will be some differences, we are concerned that such requirements may impact the cost of these services disproportionately. Specifically, we are concerned about proposed regulations 68-3, 68-7, 68-8, 68-9, 68-10, 68-11, 68-12, 68-15 adn 68-17.

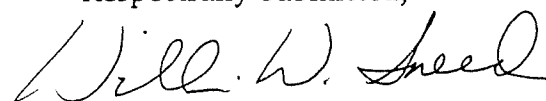
My client is also in receipt of a copy of a letter sent to the Chairman and your Committee from the Regulatory Counsel for Medco Containment Services, Inc. We concur with Medco's concerns relative to the potential commerce clause argument relative to the constitutionality of this particular issue. Thus, we urge the Committee to carefully construct such a bill to avoid any potential constitutional issues, particularly the above-mentioned regulations.

Secondly, we concur that legislation similar to that which was enacted in California (and made a part of Medco's letter) seems to indicate a more balanced approach in this type of legislation. Further, we would suggest that in lieu of utilizing rules and regulations, this Committee should consider inserting the types of criteria as was done in California to be included in the statute to specifically identify the particular requirements that an out-of-state pharmacy must comply with in order to do business in this state.

In this time of legitimate concern pertaining to health care costs, we urge this Committee to carefully construct any registration requirements for out-of-state pharmacies. We believe out-of-state pharmacies provide a genuine and legitimate service to the citizens of not only the United States, but in particular, the State of Kansas. We believe that reasonable registration requirements should be reviewed by the legislature, and by utilizing laws similar to California's, a more practical and beneficial result can be derived that will benefit not only the interests that appear in front of this Committee, but also the ultimate interests of Kansas citizens.

Again, we appreciate the opportunity to appear before this Committee, and if there are any questions or comments we will be happy to discuss them with you.

Respectfully submitted,



William W. Sneed
Legislative Counsel
Health Insurance Association of America

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1578

(913) 296-2436

FAX (913) 296-0231

JOAN FINNEY, GOVERNOR

GLORIA M. TIMMER, Director

February 26, 1992

The Honorable Carol Sader, Chairperson
Committee on Public Health and Welfare
House of Representatives
Third Floor, Statehouse

Dear Representative Sader:

SUBJECT: Fiscal Note for HB 3064 by Committee on Public
Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 3064 is respectfully submitted to your committee.

The registration of out-of-state pharmacies that ship, mail
or deliver dispensed prescriptions in Kansas would be required
by this bill. The bill would also require that the part of the
out-of-state pharmacy which pertains to Kansas operations must
comply with Kansas law and rules and regulations adopted by the
Board of Pharmacy.

The bill would have a relatively minor fiscal impact on
state revenues. Most out-of-state pharmacies that conduct
business in the state are already licensed by the Board of
Pharmacy. The board estimates that an additional 12 pharmacies
would register, resulting in receipts of \$1,500 in the first
year (\$1,200 to the board's fee fund and \$300 to the State
General Fund). Because renewal fees are less than original
licensure fees, subsequent years would see increased income
totaling \$1,260 (\$1,008 to the board's fee fund and \$252 to the
State General Fund).

The bill would also have a relatively minor fiscal impact
on state expenditures in the amount of \$500 to \$750 to cover
the costs of printing and administrative processing.

Sincerely,

Gloria M. Timmer

Gloria M. Timmer
Director of the Budget

cc: Tom Hitchcock, Pharmacy

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Att #7



THRIFT DRUG, INC.

615 Alpha Drive • Pittsburgh, PA 15238-2876

ROBERT A. WASPE
VICE PRESIDENT AND COUNSEL

February 28, 1992

Committee

The Honorable Tom Love
Kansas House Public Health and Welfare Committee
State House, Room 281 W
Topeka, KS 66612

Dear Representative Love:

I submit the following comments on House Bill 3064 in my capacity as Vice-President and Counsel of Thrift Drug, Inc., which operates 12 Treasury Drug Stores in Kansas.

House Bill 3064 proposes to implement Kansas Board of Pharmacy Administrative Regulations 68-1---68-18 which would require out-of-state pharmacies to register with the Board. Thrift opposes passage of this bill because, in requiring mail service pharmacies to follow the pharmacy and controlled substance laws of the State of Kansas, it places unreasonably duplicative burdens on Thrift's ability to continue to serve Kansas citizens.

Aside from being burdensome, the legislation is unnecessary. It is unnecessary because mail service pharmacies are already extensively regulated. Like every operating community pharmacy in the United States, mail service pharmacies are fully licensed and approved by the Boards of Pharmacy of the states in which they are located. Like all pharmacies, they must fully comply with the state pharmacy laws and regulations of their resident states. Additionally, they must fully comply with the statutes and regulations of the Food and Drug Administration and the Drug Enforcement Administration.

In short, mail service pharmacies must comply with the same regulations governing security, inventory, storage, record keeping, the proper use of licensed and support personnel, generic substitution, and the dispensing of controlled substances, as any other pharmacy located in the state in which it is licensed.

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Mail service pharmacies employ only fully licensed and approved pharmacists in their facilities and, of course, like any other pharmacy, mail service pharmacies are subject to inspections and disciplinary actions by their respective State Boards of Pharmacy and the DEA.

Keeping abreast of and complying with the intricate and ever-changing laws of one's resident state is a full-time task in itself. If this task were multiplied by 50 states, the burden placed upon pharmacies such as EPS, which practices nationwide, would be overwhelming.

The State of Kansas may provide its citizens with the highest quality pharmacy services by knowing the identity of mail service pharmacies serving their citizens, having a means of monitoring the practice of those pharmacies, and being able to follow through with the appropriate agencies of the pharmacy's resident state in the event practices potentially harmful to citizens of Kansas occur.

We feel these goals can be met through provisions of a statute comparable to the licensure statute of California. That law commonly referred to as the "California Disclosure Law": 1) requires disclosure of the location of the pharmacy and the identity of corporate officers and pharmacists, 2) provides for access to necessary information by the California patient (through toll-free telephone services) and by the California Board of Pharmacy (through record availability), 3) subjects the pharmacy to disciplinary action by the California Board of Pharmacy for failure to register, or in the case of harm to a California patient if the matter is referred to the resident State Board of Pharmacy and that Board fails to take timely action.

California achieved its objectives while still recognizing the ultimate authority over the pharmacy by the pharmacy's resident Board of Pharmacy and resident state pharmacy laws. The pharmacy is not required to follow California's pharmacy law. California's Disclosure Law has served as a model for similar legislation or rules in numerous states across the nation, including Minnesota, Missouri, Kentucky, Virginia, and Maine to name a few.

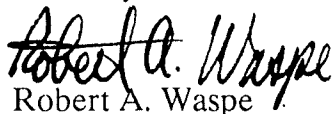
In order for mail service pharmacies to be able to continue offering their services to Kansas citizens, we urge the Kansas Legislative Assembly to defeat House Bill 3064 and adopt the California Disclosure Law. In this regard, it is important to realize that mail service pharmacies have been serving the citizens of Kansas for decades, with no requirement that they follow the laws of Kansas and with no demonstrable threat to the safety of Kansas citizens. Rather than going

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from present situation of no regulation to the most burdensome form of regulation in one fell swoop, I urge this Committee to consider the middle-ground approach typified by the California Disclosure Law. It is only in this manner that Kansas will truly achieve its underlying goal of knowing who the mail service pharmacies are and being able to monitor their practice.

Should this disclosure-type legislation prove undesirable in practice, the legislature may amend it at a later date. We are confident this will never be necessary. I will also be pleased to work with the Kansas State Board of Pharmacy and others to meet the goals surrounding the regulation of nonresident pharmacies for the citizens of Kansas. If you would like to discuss the issue, please contact me at (412) 967-8746.

Sincerely,



Robert A. Waspe
Vice President and Counsel

/acs

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JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

Mental Health & Retardation Services
Fifth Floor North
(913) 296-3773

February 27, 1992

The Honorable Carol H. Sader, Chairperson
House Public Health & Welfare Committee
Kansas State Representative
State Capitol, Room 115-S
Topeka, Kansas 66612

Re: HB 2882 - An ACT concerning the board of nursing; amending
K.S.A. 1991 Supp. 65-1124 AND REPEALING THE EXISTING SECTIONS.

Dear Representative Sader,

The Kansas State Board of Nursing, the Division of Mental Health and Mental Retardation Services of the Kansas Department of Social and Rehabilitation Services, the Kansas State Nurses' Association and the Kansas Association of Rehabilitation Facilities support the passage of HB 2882 without amendment. The new (n) language allows the nursing profession, state agencies, community providers, and consumers of services to cooperate in the effective delivery of quality care in the least restrictive environment.

This letter reflects the understanding of the above parties that the proposed legislative change in HB 2882, which creates section (n) of K.S.A. 65-1124, codifies the responsibility of the licensed nursing professional to:

- I. Within the reasonable exercise of independent nursing judgment, **"delegate"** the performance of a nursing task. Independent nursing judgment permits and authorizes the licensed nurse to make the decision whether or not to delegate a particular activity.

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The Honorable Carol H. Sader
February 27, 1992
Page Two

- II. Exercise the responsibility of supervision. The responsibility for supervision requires that the registered professional nurse or the licensed practical nurse delineate, educate, and supervise the nursing tasks that unlicensed personnel may perform. The signatories of this letter concur that the following definition of supervision developed by the National Council of State Boards of Nursing and printed in the 1989 Concept Paper on Delegation, is the operational definition for the use of the word supervision in this proposed statutory change.

Provision of guidance by a qualified nurse for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity. Total nursing care of an individual remains the responsibility and accountability of the nurse.

- III. Allow the performance of a nursing task with reasonable skill and safety by a person under the supervision of a nurse. **Performance of a nursing task may include the administration of medications.** Education and demonstrated competency would be the basis for assuring reasonable skill and safety.

Past legislative efforts to create exceptions for the delegation and delivery of nursing services resulted in sections (k), (l), and (m) of the K.S.A. 65-1124. Review of companion regulations and statutes to those sections (see attachments 1 and 2) reflects the framework of tasks subject to delegation to unlicensed personnel. **The administration of medications is specifically listed as a task that can be delegated under the existing guidelines specific to (k), (l), and (m).**

In the future, as the support systems for persons with disabilities grows in the community setting, the scope of nursing tasks which may be delegated will also continue to expand. The present legislative and regulatory framework provides direction to nursing professionals in the exercise of their professional nursing judgment and guidance to others as to the scope of tasks deemed appropriate for delegation.

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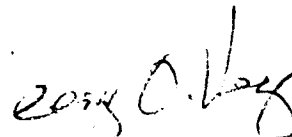
The Honorable Carol H. Sader
February 27, 1992
Page Three

The signatories concur that the exception to the Nurse Practice Act conferred in Section (n) is an essential component in the implementation of public policy that supports the efforts of persons with disabilities to live in their communities.

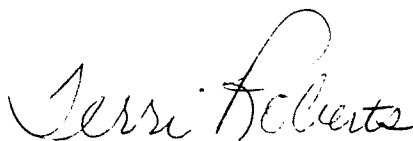
Sincerely,



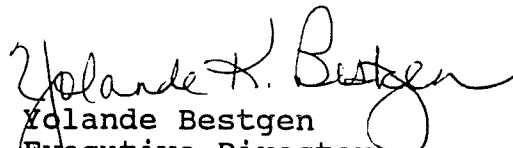
Patsy Johnson, R.N. M.S.N.
Executive Administrator,
Kansas State Board of
Nursing



George D. Vega,
Acting Commissioner,
Mental Health and
Retardation Services
Department of Social and
Rehabilitation Services



Terri Roberts, J.D. R.N.
Executive Director,
Kansas State Nurses' Association



Yolande Bestgen
Executive Director,
Kansas Association of
Rehabilitation Facilities

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Article 15.—PERFORMANCE OF
SELECTED NURSING PROCEDURES IN
SCHOOL SETTINGS

60-15-101. Definitions. (a) Each registered nurse in the school setting shall be responsible for the nature and quality of all nursing care that a student is given under the direction of the nurse in the school setting. Assessment of the nursing needs of a student, the plan of nursing action, implementation of the plan, and evaluation of the plan are essential components of professional nursing practice and are the responsibility of the registered nurse.

(b) When used in this article, the following definitions shall apply:

(1) "Unlicensed persons" includes, but is not limited to, the following school personnel: teachers, secretaries, administrators, and paraprofessionals.

(2) "Delegation" means authorizing an unlicensed person to perform selected nursing tasks in the school setting under the direction of a registered nurse.

(3) "Activities of daily living" means basic caretaking or specialized caretaking.

(4) "Basic caretaking" means bathing, dressing, grooming, routine dental, hair and skin care, preparation of food for oral feeding, exercise excluding occupational therapy and physical therapy procedures, toileting including diapering and toilet training, hand-washing, and transfer and ambulation.

(5) "Specialized caretaking" means catheterization, ostomy care, preparation of food and tube feedings, care of skin with damaged integrity, administering medications and performing other procedures requiring nursing judgment.

(6) "Anticipated health crisis" means a previously diagnosed condition which under predictable circumstances may lead to an imminent risk to the student's health.

(7) "Handicapped student" means a person who is enrolled in any accredited public or non-public school education program who requires nursing procedures during regular school attendance hours. Handicapped student also includes exceptional children as defined in K.S.A. 1987 Supp. 72-962.

(8) "Nursing judgment" means the exercise of knowledge and discretion derived from the biological, physical and behavioral sciences.

(9) "School setting" means any accredited public or non-public school environment during regular school attendance hours.

(10) "Supervision" means the registered nurse shall oversee the delegated task.

(11) "Medication" means any drug required by the federal or state food, drug and cosmetic acts to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription."

(c) In fulfilling the responsibilities for nursing care, each school nurse shall:

- (1) serve as a health advocate for students;
- (2) counsel and teach individuals, families and groups about health, illness and promote health maintenance;
- (3) serve as a health consultant and a resource to

teachers and administrators who are serving students with health services during school attendance hours, and

(4) utilize nursing theories, skills of communication and the teaching-learning process to increase the knowledge and functioning of the multi-disciplinary education evaluation team as the strengths and weaknesses of students are assessed. The recommendations for appropriate educational placement shall be made from the team evaluation.

(d) The full utilization of the services of a registered nurse may be supplemented by the delegation and supervision of selected nursing tasks to unlicensed personnel. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1113 and K.S.A. 1990 Supp. 65-1124; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991.)

60-15-102. Delegation Procedures. Delegation of nursing tasks to a designated unlicensed person in the school setting shall comply with the following recommendations:

(a) Each registered nurse shall assess the student's nursing care needs and formulate a written nursing plan of care before delegating any nursing task to an unlicensed person.

(b) The selected nursing task to be delegated shall be one that a reasonable and prudent registered nurse determines to be within the scope of sound nursing judgment and which can be performed properly and safely by an unlicensed person.

(c) Basic caretaking as defined in K.A.R. 60-15-101(b) may be performed without delegation. Specialized caretaking as defined in K.A.R. 60-15-101(b) shall be assessed and delegated as appropriate.

(d) The selected nursing task shall not require the designated unlicensed person to exercise nursing judgment or intervention.

(e) In an anticipated health crisis identified in a nursing care plan, the unlicensed person may provide care for which instruction has been provided.

(f) The designated unlicensed person to whom the nursing task is delegated shall be adequately identified by name in writing for each delegated task.

(g) The registered nurse shall orient and instruct unlicensed persons in the performance of the nursing task. The unlicensed person's demonstration of the competency necessary to perform the delegated task shall be documented in writing. The designated unlicensed person shall co-sign the documentation indicating the person's concurrence with this competency evaluation.

(h) The registered nurse shall:

- (1) be accountable and responsible for the delegated nursing task;
- (2) participate in periodic and joint evaluations of the services rendered;
- (3) record and monitor recorded services; and
- (4) adequately supervise the performance of the delegated nursing task in accordance with the requirements of K.A.R. 60-15-103 of this regulation.

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(A. ized by K.S.A. 65-1129; implementing K.S.A. 1990 Supp. 65-1124; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991.)

60-15-103. Supervision of Delegated Tasks. All nursing tasks delegated to a designated unlicensed person in the school setting shall be supervised in accordance with the following conditions:

(a) The degree of supervision required shall be determined by the registered nurse after an assessment of appropriate factors including:

(1) The health status and mental and physical stability of the student;

(2) the complexity of the task to be delegated;

(3) the training and competency of the unlicensed person to whom the task is to be delegated; and

(4) the proximity and availability of the registered nurse to the designated unlicensed person when the selected nursing task will be performed.

(b) The delegating registered nurse may designate whether the nursing task is one which may be supervised by a licensed practical nurse.

(c) Each delegating registered nurse shall designate an alternate supervising, registered nurse or licensed practical nurse. The delegating nurse or designated alternate shall be readily available either in person or by telecommunication. (Authorized by K.S.A. 65-1129; implementing K.S.A. 1990 Supp. 65-1124; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991.)

60-15-104. Administration of Medications in the School Setting. The administration of medications shall be delegated only in accordance with this regulation.

(a) A registered nurse may delegate the administration of medications to unlicensed persons if:

(1) The administration of the initial dose of a medication has been previously administered to the student. No subsequent administration shall require medication dosage calculation. Measuring a prescribed amount of liquid medication or breaking a tablet for administration is not calculation of medication dosage;

(2) the nursing care plan requires administration by subcutaneous route; or

(3) an anticipated health crisis requires administration by intramuscular route.

(b) The following acts shall not be delegated to unlicensed persons:

(1) The administration of intravenous medications;

(2) the administration of medications through intermittent positive pressure breathing machines; or

(3) the administration of drugs, as defined by K.S.A. 1990 Supp. 65-1626, through any tube inserted into the body except through an established feeding tube directly inserted into the abdomen. (Authorized by K.S.A. 1990 Supp. 65-1124; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991.)

Patsy Johnson, R.N., M.S.N.
Executive Administrator

Doc. No. 010848

State of Kansas

Department of Education

Permanent Administrative Regulations

Article 1.—CERTIFICATE REGULATIONS

91-1-68. (Authorized by Article 6, Section 2(a) of the Kansas Constitution; effective May 1, 1982; revoked Sept. 2, 1991.)

91-1-68a. Institutional accreditation and program approval definitions. As used in S.B.R. 91-1-68b, 91-1-68c and 91-1-68d:

(a) "Academic year" means July 1 through June 30.

(b) "Accredited" means the status assigned to a teacher education institution which meets the accreditation standards prescribed in regulations adopted by the state board.

(c) "Approved" means the status assigned to a teacher education program which meets the program standards prescribed in regulations adopted by the state board.

(d) "Combined on-site review team" means an on-site review team which has members who represent NCATE and the state board.

(e) "Commissioner" means the state commissioner of education or the commissioner's designee.

(f) "Evaluation review committee" means the standing committee of the teaching and school administration professional standards board, or its successor, which is responsible for recommending accreditation and program approval actions to the state board.

(g) "NCATE" means the national council for accreditation of teacher education.

(h) "Not accredited" means the status assigned to a teacher education institution which fails substantially to meet accreditation standards prescribed in regulations adopted by the state board.

(i) "Not approved" means the status assigned to a teacher education program which fails substantially to meet program standards prescribed in regulations adopted by the state board.

(j) "On-site review team" means a group of persons appointed by the commissioner to review and analyze an institutional self-study report, conduct an on-site review of the teacher education institution or a program or programs of such institution, and prepare a report concerning the matter.

(k) "Provisionally accredited" means the status assigned to a teacher education institution which substantially meets the accreditation standards prescribed in regulations adopted by the state board.

(l) "Provisionally approved" means the status assigned to a teacher education program which substantially meets the program standards prescribed in regulations adopted by the state board.

(m) "State board" means the state board of education.

(n) "Teacher education institution" or "institution" means a college or university which offers at least a four-year program of study in higher education and

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(d) "Board" means the emergency medical services board established under K.S.A. 1988 Supp. 65-6102 and amendments thereto.

History: L. 1988, ch. 226, § 1; L. 1988, ch. 253, § 2; July 1.

Cross References to Related Sections:

Emergency medical technician-defibrillator, authorized activities, see 65-6123.

65-6149. Same; certification in use of automated defibrillators; requirements; medical protocols; certificate; renewal; limitation of liability. (a) Any certified first responder or attendant in this state may be certified in the use of automated defibrillators for cardiac defibrillation in accordance with the provisions of this act. The board shall adopt rules and regulations establishing minimum, basic standards governing training in the use of automated defibrillators in accordance with this act. This training shall be conducted by instructors who are qualified to conduct such training in accordance with the rules and regulations adopted by the board. The minimum course of training shall be not less than four clock hours in length and the maximum course of training shall be not more than six clock hours in length.

(b) Each local service provider shall develop medical protocols consistent with the criteria established by the board and approved by the local component medical society if available.

(c) Upon the satisfactory completion of training in the use of automated defibrillators for cardiac defibrillation as authorized under this section, the certified first responder or attendant who has satisfactorily completed such training shall be issued a certificate indicating that such person has satisfactorily completed such training. The certificate shall be issued in a form prescribed by the board by rules and regulations. The certificate shall be valid through December 31 of the year following the date of initial issuance and may be renewed thereafter for a period of one year by retaking and satisfactorily completing the training in the use of automated defibrillators for cardiac defibrillation authorized under this section. An individual who holds a valid certificate under subsection (c) may perform cardiac defibrillation with an automated defibrillator on a conscious, nonbreathing patient.

No individual who holds a valid certificate under subsection (c) for the satisfactory completion of training in the use of automated

defibrillators for cardiac defibrillation shall be liable for civil damages as a result of the use by such individual of an automated defibrillator to provide cardiac defibrillation during an emergency, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of such individual.

History: L. 1988, ch. 226, § 2; L. 1988, ch. 253, § 3; L. 1990, ch. 235, § 10; July 1.

Cross References to Related Sections:

Emergency medical technician-defibrillator, authorized activities, see 65-6123.

65-6150. Unlawful acts. (a) It shall be unlawful for any individual to represent oneself as an attendant or instructor-coordinator unless such individual holds a valid certificate as such under this act.

(b) Any violation of subsection (a) shall constitute a class B misdemeanor.

History: L. 1990, ch. 235, § 8; July 1.

Article 62.—MISCELLANEOUS PROVISIONS

65-6201. Individuals in need of in-home care; definitions. As used in this act:

(a) "Attendant care services" means those basic and ancillary services which enable an individual in need of in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care and mobility.

(b) "Basic services" shall include, but not be limited to:

- (1) Getting in and out of bed, wheelchair or motor vehicle, or both;
- (2) assistance with routine bodily functions including, but not limited to:
 - (A) Health maintenance activities;
 - (B) bathing and personal hygiene;
 - (C) dressing and grooming; and
 - (D) feeding, including preparation and cleanup.

(c) "Ancillary services" means services ancillary to the basic services provided to an individual in need of in-home care who needs one or more of the basic services, and include the following:

- (1) Homemaker-type services, including but not limited to, shopping, laundry, cleaning and seasonal chores;
- (2) companion-type services including but not limited to, transportation, letter writing, reading mail and escort; and

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(3) assistance with cognitive tasks including, but not limited to, managing finances, planning activities and making decisions.

(d) "Health maintenance activities" include, but are not limited to, catheter irrigation; administration of medications, enemas and suppositories; and wound care, if such activities in the opinion of the attending physician or licensed professional nurse may be performed by the individual if the individual were physically capable, and the procedure may be safely performed in the home.

(e) "Individual in need of in-home care" means any functionally disabled individual in need of attendant care services because of impairment who requires assistance to complete functions of daily living, self-care and mobility, including, but not limited to, those functions included in the definition of attendant care services.

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

History: L. 1989, ch. 191, § 1; L. 1990, ch. 233, § 5; April 26.

Revisor's Note:

For sections included in this act, see Comparative Table of Sections in Constitutions Volume.

Article 63.—SOCIAL WORKERS

Cross References to Related Sections:

Behavioral sciences regulatory board, see art. 75, ch. 74.

Masters level psychologists, see 74-5361 et seq.

Professional counselors, see 65-5801 et seq.

Psychologists, see 74-5301 et seq.

Marriage and family therapists, see 65-6401 et seq.

Attorney General's Opinions:

Behavioral science regulatory board; committees. 80-219.

65-6301. Purpose. Since the profession of social work profoundly affects the lives of the people of this state, it is the purpose of this act to protect the public by setting standards of qualification, training and experience for those who seek to engage in the practice of social work and by promoting high standards of professional performance for those engaged in the profession of social work.

History: L. 1974, ch. 372, § 1; July 1.

Attorney General's Opinions:

Social workers not licensed as licensed specialist clinical social workers may engage in private practice if supervised by LSCSW. 87-112.

65-6302. Definitions. As used in this act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Board" means the behavioral sciences regulatory board created by K.S.A. 74-7501.

(b) "Social work practice" means the professional activity of helping individuals, groups or communities enhance or restore their capacity for physical, social and economic functioning and the professional application of social work values, principles and techniques in areas such as psychotherapy, social service administration, social planning, social work consultation and social work research to one or more of the following ends: Helping people obtain tangible services; counseling with individuals, families and groups; helping communities or groups provide or improve social and health services; and participating in relevant social action. The practice of social work requires knowledge of human development and behavior; of social, economic and cultural institutions and forces; and of the interaction of all these factors. Social work practice includes the teaching of practicum courses in social work.

(c) "Psychotherapy" means the use of psychological and social methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation to acquire greater human realization of psychosocial potential and adaptation; to modify internal and external conditions which affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intra-personal and inter-personal processes. Forms of psychotherapy include but are not restricted to individual psychotherapy, conjoint marital therapy, family therapy and group psychotherapy.

History: L. 1974, ch. 372, § 2; L. 1980, ch. 242, § 15; L. 1982, ch. 371, § 1; July 1.

Attorney General's Opinions:

Practice of counseling family life consultation and education not unlawful practice of psychology or social work. 80-253.

Licensing requirements for social workers who are federal employees. 83-15.

Licensing of social workers; limitations on private practice of social work. 85-78.

Masters level psychologists; supervision; limitations on practice. 87-184.

65-6303. Prohibited acts; penalty. (a) No person shall engage in the practice of social work for compensation or hold forth as performing the services of a social worker unless such person is licensed in accordance with the provisions of this act, nor may any person participate in the delivery of social work services unless under the supervision of a person