

Approved \_\_\_\_\_  
Date 4-7-92

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at  
Chairperson

10:00 a.m./p.m. on April 1, 1992 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research  
Bill Wolff, Legislative Research  
Norman Furse, Revisor's Office  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Nicholas Willard, Retired Persons Services, Inc.  
Delbert D. Konnor, American Managed Care Pharmacy Association

Chairman Ehrlich called the meeting to order at 10:00 a.m.

The Chairman asked for wishes of the Committee on the following:

**Action on HB 2913** - Enacting the Kansas healthy kids program.

Senator Walker made a motion to recommend **HB 2913** favorably for passage, seconded by Senator Ward. Discussion related to the need for a universal health plan and this bill would address only part of the problem. The motion carried. Senator Langworthy will carry the bill.

**Action on HB 3045** - Establishing category of one to five bed adult care home.

Staff read an amendment recommended by the Department of Health and Environment that would change definition of boarding care home from six to three individuals. Senator Walker made a motion to adopt the amendment to change "six" to "three", page 3, line 1, seconded by Senator Kanan. No discussion followed. The motion carried. Senator Kanan made a motion to recommend **HB 3045 as amended** favorably for passage, seconded by Senator Walker. No discussion followed. The motion carried.

**Action on HB 2695** - Health assessment required for admission to school.

Staff explained balloon copy of the bill with the definition of public monies and access to such funds, and a means test for eligibility to be established for low income children that was requested in a conceptual motion made by Senator Ward on March 25, 1992. Senator Ward made a motion to adopt the amendments in the balloon copy of the bill, seconded by Senator Hayden. No discussion followed. The motion carried. It was the consensus of the Committee this language be put in the report. (Attachment 1)

**Action on HB 2882** - Exemptions from licensure requirements for nurses and mental health technicians.

Senator Hayden made a motion to recommend **HB 2882** favorably for passage, seconded by Senator Walker. No discussion followed. The motion carried. Senator Hayden will carry the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526-S Statehouse, at 10:00 a.m./~~p.m.~~ on April 1, 1992

**Action on HB 2883** - Board of nursing fees and temporary authorizations to practice nurse anesthesia.

Senator Walker made a motion to recommend **HB 2883** favorably for passage, seconded by Senator Kanan. No discussion followed. The motion carried. Senator Walker will carry the bill.

**Action on HB 3070** - Licensing of and proceedings against nurses and mental health technicians.

Committee discussion related to an amendment offered by the Board of Nursing requesting the bill become effective in the Kansas Register. Senator Langworthy made a motion to adopt the amendment that **HB 3070** become effective upon publication in the Kansas Register, seconded by Senator Kanan. No discussion followed. The motion carried. Senator Ward made a motion to recommend **HB 3070 as amended** favorably for passage, seconded by Senator Langworthy. No discussion followed. The motion carried. Senator Ward will carry the bill.

**Action of HB 3071** - Grounds for disciplinary actions by board of nursing.

The Chairman stated that after careful consideration, decision was made not to take action on **HB 3071** at this time and the bill be recommended for further study in an interim committee. It was the consensus of the Committee to recommend **HB 3071** for further study in an interim committee, and a letter written to the Chairman of the Coordinating Council requesting same.

**Hearing on HB 3064** - Out-of-state pharmacy registration.

Nicholas Willard, Retired Persons Services, Inc. -- the AARP pharmacy service, appeared before the Committee and submitted written testimony on **HB 3064**. The bill would enable the Kansas Board of Pharmacy to establish a regulatory framework for pharmacies located in other states which serve Kansas residents. Under the new statute, it would be unlawful for an out-of-state pharmacy to ship, mail, or deliver prescription drugs to a Kansas consumer unless such pharmacy was first registered annually with the Board of Pharmacy. Mr. Willard stated they have some concerns with the bill and requested several amendments to address those concerns. (Attachment 2) During Committee discussion, Mr. Willard stated they dispense what the practitioner prescribes, however, there are other out-of-state pharmacies that may require a minimum amount. AARP deals with individual consumers, and approximately 12% of the members use this service.

Delbert D. Konner, American Managed Care Pharmacy Association, submitted written testimony and appeared in opposition to **HB 3064**. Mr. Konner stated the bill is anti-consumer and anti-competitive legislation, would increase the cost of prescription medicines to Kansas consumers, and could discourage Kansas employers and health plan administrators from offering pharmacy services as a part of the health benefits plan for their employees. He also pointed out that the bill is unconstitutional because of the discriminatory burdens it would impose on out-of-state pharmacy services without providing compensating benefits for Kansas consumers. (Attachment 3) During Committee discussion, Mr. Konner made the following statements: 20% of the population of the United States is on the move, and providing better prescription service to a populous on the move is a problem. Drugs are in transit the majority of the time from the pharmaceutical manufacturer to the drug wholesalers, and most of those drugs are not under any temperature control and may remain in a truck longer than they remain in the mail. People that patronize their local pharmacy and leave the medication in a hot car in the summer may do greater damage to the drug than perhaps in the mail. There are many problems regarding mail order drugs, and as of now, there are no real answers. An educated consumer has the final responsible as to how they take and store their drugs and if they are complying with their physician's regiment. The big issue with their company is they have no face to face counseling with their customers. There are 23 states that have "tinkered" with

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526-S, Statehouse, at 10:00 a.m./p.m. on April 1, 1992.

the California disclosure legislation. AMCPA accepts the language in the California legislation as referenced in Attachment 3. In conclusion, Mr. Konner stated in 1985 many major companies added prescription drugs to their medical benefits program, which resulted in a big growth of AMCPA. Their service is not mandatory and usually cost-saving to the employee.

Because of the time element, the Chairman announced hearings on HB 3064 and SB 775 would be continued at a later date.

Pages assisting at the Committee meeting were sponsored by Senator Strick.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for April 6, 1992, 10:00 a.m., Room 526-S.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 4-1-92

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

|                                  |   |
|----------------------------------|---|
| Steve Jones - Wichita, Ks        | Boeing  |
| Bill Sneed - Topeka              | HIAA  |
| Bill Henry - Topeka              | PMA   |
| Margot Lenzi - Columbia, MO      | Boehringer Ingelheim                              |
| FRANK LAWLER, LEAWOOD, Ks        |   |
| Clarence Arndt O.P. Ks.          | AARP  |
| Ira Arndt O.P. Ks.               | VISITOR   |
| Dick Ross Topeka                 | Supers & Drugs                                    |
| Mary Holmgren Topeka             | Super D   |
| <del>Shelley Smith</del> Wichita | Wesley FOUNDATION                                 |
| Martha - Jenkins                 | Ks. Gov. Consulting                               |
| Michelle Lester                  | Ks. Gov. Consulting                               |
| Terri Roberts                    | KSNA  |
| Steve Burghart                   | Ks. Pharmacist Assoc <sup>Topeka</sup> Pharmacist |
| Anita Kolusch                    | KPhA <sup>a</sup>                                 |
| John Pin                         | KPhA  |
| Bob Williams                     | KPhA  |
| John Peterson                    | Glaxo   |

the health of the pupil; (2) if a medical emergency exists, the information contained in the health assessment may be disclosed to medical personnel to the extent necessary to protect the health of the pupil; (3) if the parent or guardian of a pupil under 18 years of age consents to the disclosure of the information contained in the health assessment or, if the pupil is 18 years of age or older, if the pupil consents to the disclosure of the information; and (4) if no person can be identified in the information to be disclosed and the disclosure is for statistical purposes.]

(c) As an alternative to the health assessment required under subsection (b), a pupil shall present:

(1) A written statement signed by one parent or guardian that the child is an adherent of a religious denomination whose religious teachings are opposed to such assessments, or

(2) a written statement signed by one parent or guardian that such assessments are in the process of being received and will be completed within 90 days after admission to school.

(d) Every pupil enrolling or enrolled in any school in this state who is subject to the requirements of subsection (b) and who has not complied with the requirements of subsections (b) or (c), shall present evidence of compliance with either subsection (b) or (c) to the school board upon admission to school.

(e) Prior to the commencement of each school year, the school board of every school affected by this section shall give to all known pupils who are enrolled or who will be enrolling in the school and who are subject to the requirements of subsection (b), a copy of this section and any policy regarding the implementation of the provisions of this section adopted by the school board.

(f) If a pupil transfers from one school to another, the school board of the school from which the pupil transfers shall forward with the pupil's transcript, upon request of the parent or guardian of the pupil therefor, the certification or statement showing evidence of compliance with the requirements of this section to the school board of the school to which the pupil transfers.

(g) The county, city-county or multicounty health department, upon application of the school board of any school affected by this section, at public ~~state~~ expense (to the extent that funds are available) and without delay, shall provide the health assessments required by this section to such pupils as are not provided with them by their parents or guardians and who have not been exempted under subsection (c). The local health officer shall counsel and advise school boards concerning the administration of this section.

(h) The secretary shall prescribe the content of forms and cer-

local  
federal, state, county, municipal, local health department or school district, or any combination thereof,  
for this purpose  
Local health departments may charge a fee for providing such health assessments based on ability to pay except that no pupil eligible to participate in the school lunch program under K.S.A. 75-5112 et seq., and amendments thereto, shall be charged a fee by the local health department for a health assessment required by this section.

*Senate P. Head*  
*Attachment*  
*4-1-92*

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 SENATE

Topeka, Kansas  
April 1, 1992

*Sen. R. H. ...*  
*Back. #2*  
*4-1-92*

Good morning, Mr. Chairman, members of the Committee. My name is Nicholas Willard and I am pleased to have the opportunity to present the views of Retired Persons Services, Inc., on HB.3064. 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, RPS 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 is operated 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 therefor pay all applicable federal state and local taxes. Accordingly, the Pharmacy Service has not sought preferential buying status under either the Robinson-Patman Act or the Nonprofit Institutions Act: its product costs are functions solely of prudent purchasing and volume.

The Pharmacy Service has helped to meet the health care needs of AARP members for more than 32 years. We provides community pharmacy services at all of our thirteen (13) stores while twelve of the thirteen also provide home delivery services by the United States 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 2,600,000 AARP members nationally, of whom some 25,000 are Kansas residents. Our Kansas patients are served by our Missouri Retired Persons Pharmacy in Kansas City. I should also add, for the record, that every single one of our customers freely chose our package of price, convenience and service over what was offered by local retail druggists.

HB.3064 would enable the Kansas Board of Pharmacy to establish a regulatory framework for pharmacies located in other states 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. This premise is without factual foundation. 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 authorities of the states into which we have delivered dispensed prescription medications.

When HB.3064 was heard by the House Public Health and Welfare Committee, the Pharmacy Service supported its passage for three specific and reasons. First, you should be aware that we opposed HB.3064's predecessor bill in 1991 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 Board of Pharmacy and the Kansas Pharmacists Association met to discuss these issues before returning to the legislative process. We agreed to a set of rules, subject to some housekeeping amendments, which the Board agreed to promulgate once the enabling statute was enacted.

Second, we supported 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 very well have turned out differently and we consequently would have opposed HB.3064. However, within the very limited context of the respective pharmacy laws and rules of Missouri and Kansas, we believe--again subject to some housekeeping amendments which I will come to shortly--the rules proposed and agreed-to were both reasonable and constitutionally sound.

Third, we supported HB.3064 because the agreement reached between the Pharmacy Service, the Pharmacists Association and the Board of Pharmacy represented a consensus on what constitutes an equitable balance between our respective interests. The agreed-to rules were 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.

HB.3064 was amended by the House Public Health and Welfare to codify, rather than to leave to rule making, the agreement to which the Pharmacy Service was party. The bill before you today compares

X favorably in form and content to the rules my principal had previously agreed to support. However, review by our General Counsel has revealed that the current bill has not yet incorporated the the housekeeping amendments to which I referred earlier. Further, the current bill has incorporated new language which raises questions of intent.

X Accordingly, we would respectfully request the Committee to adopt the following amendments:

1. On p.4, line 14, after the word "...patients...", insert a "." and strike the remainder of subsection (5).
2. On p.4, line 17, strike subsection (6) in its entirety and substitute the following:

"(6) provide a toll-free telephone service during its regular hours of operation to enable patients in this state, when they have questions about their medications, to have reasonable access to communication with a pharmacist at the pharmacy with access to the patients' records. This service shall be provided not less than six days a week and for a minimum of 40 hours per week and the toll-free number(s) shall be placed upon the label affixed to each container of prescription drugs dispensed to a Kansas patient."

3. On p.5, line 19, after the words, "...less than...", strike the word "...90..." and insert the word "...180...".

4. On p.5, line 19-21, after the word, "...filed,..." strike the words, "...or fails to resolve the violation complained of to the satisfaction of the board,..."

Amendments 1 and 2 clarify the intent of the statute by (a) placing the relevant language within one subsection and (b) providing a baseline for what constitutes reasonable hours of operation.

Amendment 3 and 4 serve to protect the nonresident pharmacy from being subjected to, in the case of Amendment 3, simultaneous administrative proceedings in different jurisdictions over the same incident or, in the case of Amendment 4, double jeopardy

Subject to the adoption of these recommended amendments, the AARP Pharmacy Service fully supports HB.3064. Thank you for your time and I will be happy to answer any questions.

**STATEMENT**  
regarding  
**KANSAS**  
**House Bill No. 3064, as amended**  
before the  
**SENATE PUBLIC HEALTH AND WELFARE COMMITTEE**  
**STATE OF KANSAS**

presented by  
**DELBERT D. KONNOR, PHARMMS**  
Executive Vice President  
on  
April 1, 1992

Mr. Chairman, Members of the Public Health and Welfare Committee, thank you for the opportunity to present this statement in opposition to HB 3064, as amended, on behalf of the members of the American Managed Care Pharmacy Association (AMCPA). My name is Delbert D. Konnor.<sup>1</sup> 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 HB 3064, as amended, 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, as amended, Anti-Consumer and Anti-Competitive — Second, HB 3064, as amended, 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, HB 3064, as amended, would increase the cost of prescription medicines to Kansas consumers and this increase could discourage Kansas employers and health plan administrators from offering pharmacy services as a part of the health benefits plans for their employees.

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

*Senate P. H&W*  
*Attach. # 3*  
*4-1-92*

■ H.B. 3064, as amended: Unconstitutional — Third, HB 3064, as amended, 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%<sup>2</sup>) 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 five 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]

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<sup>2</sup>[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%.

■ 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]

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,"<sup>3</sup> 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. HB 3064, AS AMENDED, IS ANTI-CONSUMER AND ANTI-COMPETITIVE.**

The fundamental problem with HB 3064, as amended, 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."<sup>4</sup> A copy of this advertisement is attached to this testimony. Economic competition should not be substituted by scare tactics to promote economic protectionism. HB 3064, as amended, 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. HB 3064, as amended, 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.

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<sup>3</sup>A 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

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



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. HB 3064, AS AMENDED, IS UNCONSTITUTIONAL AS A VIOLATION OF THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION.**

HB 3064, as amended, 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 HB 3064, as amended-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.

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 HB 3064, as amended.<sup>5</sup>

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 HB 3064, as amended, the answer to both questions is "yes." First, HB 3064, as amended, 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, HB 3064, as amended, fails both tests of *Pike v. Bruce Church*. HB 3064, as amended, is merely an anti-competitive and anti-consumer legislation designed to protect the economic interests of in-state retail drugstores rather than the well-being of Kansas consumers.

**IV. HB 3064, AS AMENDED, SHOULD BE REVISED TO BE CONSISTENT WITH THE MODEL REGISTRATION DISCLOSURE LEGISLATION FOR NONRESIDENT PHARMACIES TO SERVE THE CITIZENS OF 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.

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<sup>5</sup>In 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.

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 law<sup>6</sup> is attached to this testimony.<sup>7</sup> 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 HB 3064, as amended, 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.<sup>8</sup>

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 HB 3064, as amended. 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"

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

<sup>7</sup>See ATTACHMENT D.

<sup>8</sup>See ATTACHMENT E

## **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**

# WHAT'S NEW IN PRESCRIPTION DRUGS/Echo Montgomery Gate Pharmacies Fight Off New Competition

**T**HERE 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.

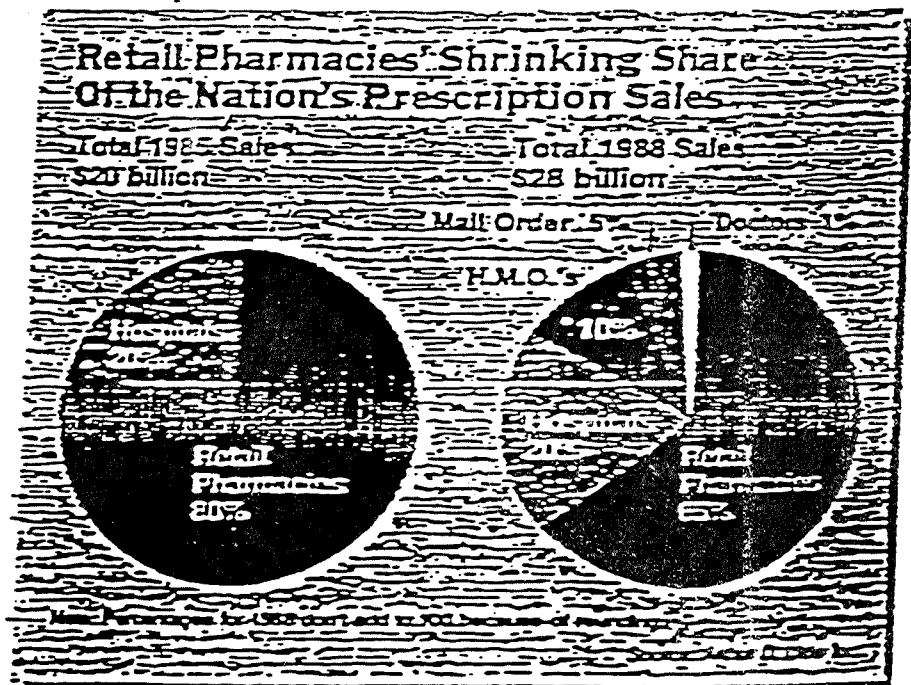
Growing competition only exacerbated their problems. Supermarkets and convenience stores have recently entered the business. And with the prices of prescription drugs escalating by 88 percent since 1981 — twice as fast as the Consumer Price Index — many employers have turned to discount mail-order houses 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 from by Medicare and Medicaid, many doctors have started to fill prescriptions they write as a way of generating revenue.

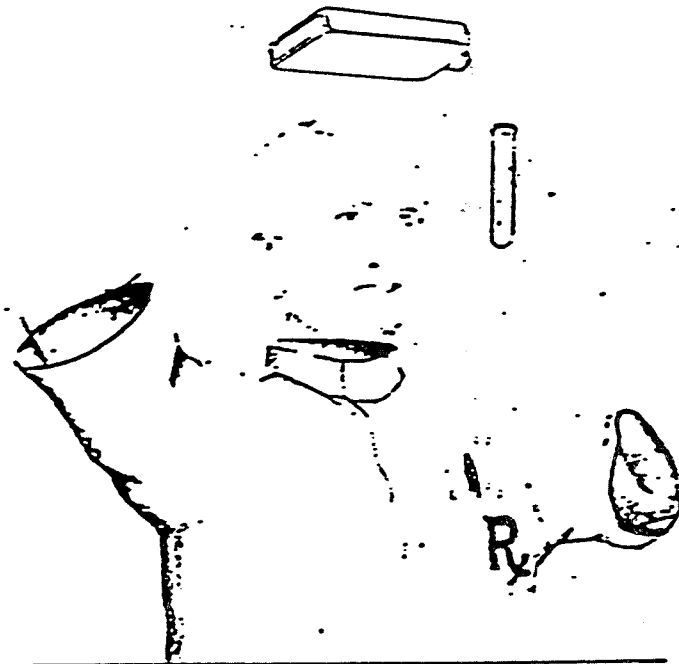
To cope, pharmacies have consolidated to

gain efficiencies. The number of stores has remained stable over the last decade at about 50,000. 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.



## 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

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 25, 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

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



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

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.

**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.