

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans, at 1:30 p.m. on March 11, 1998 in Room 423-S-of the State Capitol.

All members were present except: Representative Deena Horst - excused
Representative Tony Powell - excused

Committee staff present: Robin Kempf, Legislative Research Department
Norman Furse, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Vicki Schmidt, Member, Kansas State Board of Pharmacy
Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation

Others attending: See Guest List (Attachment 1)

Chairperson Mayans opened the hearing on **SB 198** (prescription requirements) and introduced Vicki Schmidt, Kansas State Board of Pharmacy.

Ms. Schmidt presented testimony in support of the bill stating that it makes clarifying technical amendments to existing law (see Attachment 2). Mr. Furse advised that a balloon amendment has been prepared to make other technical amendments (see Attachment 3), and noted that the suggested amendment by the Pharmacy Board to lines 26 and 27 strikes the lines before the quote marks and is not meant to be an equal sign.

No others were present to testify, and the hearing on **HB 198** was closed.

Representative Morrison moved that the balloon amendments as presented in Attachment 3 be adopted. Representative Long seconded the motion. The motion carried.

Representative Morrison moved that **HB 198** be passed as amended. Representative Horst seconded the motion. The motion carried. Representative Geringer will carry the bill on the floor of the House.

The hearing on **SB 485** (Schedule IV controlled substances) was opened. Vicki Schmidt presented testimony in support of the bill which places two drugs into the controlled substances act (see Attachment 4). She noted that the two drugs are now scheduled by the federal Drug Enforcement Agency and Kansas violations would need to be litigated under federal law; with this bill becoming law, litigation could be under Kansas law.

Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation, offered an amendment to **SB 485** to include as controlled drugs commonly used drugs to surreptitiously sedate and sexually assault women. He explained that because of job related reasons, he missed the re-scheduled hearing of **SB 595** (adding certain drugs to prohibited substances under uniform controlled substances act); so consequently, he requests the suggested amendment to **SB 485**. (See his testimony, Attachment 5, and note that on page 2, "copy of a program" relates to a video tape that he lent to the Chairperson for viewing. Also included in Attachment 5 is the testimony he had prepared for **SB 585**.) Some questions were raised, including that possession of these drugs would be a felony under Kansas law if the bill is passed.

Representative Morrison stated that date rape is a very serious problem and politics aside, the Legislature needs to include them in the controlled substances act. He then offered an amendment. Representative Morrison moved that gamma hydroxybutyric acid and butyrolactone be added to **SB 485** after line 28 on page 2. Representative Showalter seconded the motion. Representative Geringer, seconded by Representative Haley, made a substitute motion that **SB 485** be considered as originally written. Chairperson Mayans stated that the substitute motion is being denied since it is not germane to the original motion. After discussion, a call of the first motion was made; and the motion carried. After further discussion, on motion of Representative Morrison, seconded by Representative Hutchins, the committee passed **SB 485**, as amended. Representative Morrison will carry the bill on the floor of the House.

Chairperson Mayans noted that the fiscal note for **HB 2969** (quality enhancement wage pass-through program for nursing homes) was received after yesterday's meeting. It has been copied and distributed to each committee member. He asked members to study the bill and the fiscal note and be prepared to take action at a meeting next week.

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for March 16, 1998.

Kansas State Board of Pharmacy

LONDON STATE OFFICE BUILDING
900 S.W. JACKSON STREET, ROOM 513
TOPEKA, KANSAS 66612-1231
PHONE (785) 296-4056
FAX (785) 296-8420

STATE OF KANSAS



BILL GRAVES
GOVERNOR

EXECUTIVE DIRECTOR
LARRY C. FROELICH
BOARD ATTORNEY
DANA W. KILLINGER

1998 KANSAS LEGISLATIVE SESSION Senate Bill 198

PHARMACY PRACTICE ACT

House Committee on Health and Human Services

Wednesday, March 11, 1998

Representative Carlos Mayans, Chairperson
Representative Jim Morrison, Vice Chairperson

Mr. Chairperson and Members of the Committee:

My name is Vicki Schmidt and I am a pharmacist member of the Kansas State Board of Pharmacy. Thank you for the opportunity to address you today about Senate Bill 198. This bill comes to you from the Board of Pharmacy.

There are several requested changes of K.S.A. 65-1637 entitled "Pharmacist required to be in charge of pharmacy; compounding and filling of prescriptions; brand exchange; refilling prescription".

The first change strikes the verbiage "putting up". The term "putting up" does not have a pharmaceutical connotation, and this cleans up the language of the statute.

The second change adds electronic transmission as an additional means of conveying prescription orders and provides the Board of Pharmacy with the authority to write regulations by which electronic transmission may be performed.

The third change restates the current language that is too confusing. The enumeration of first and second lines with regard to blank forms for written prescriptions does not declare if this is from the top, the bottom, the right or the left.

Under Section 1, subsection (a), the language is added to mirror the Federal language.

The Board of Pharmacy respectfully requests favorable passage of Senate Bill 198. Thank you again. I am happy to answer any questions or concerns that you may have.

HOUSE HHS COMMITTEE
Attachment 2
3 - 11 - 98

SENATE BILL No. 198

By Committee on Public Health and Welfare

2-4

10 AN ACT relating to pharmacists and pharmacies; prescription require-
11 ments; amending K.S.A. ~~1996~~ 1997 Supp. 65-1637 and repealing the
12 existing section.
13

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

15 Section 1. K.S.A. ~~1996~~ Supp. 65-1637 is hereby amended to read as
16 follows: 65-1637. In every store, shop or other place defined in this act
17 as a "pharmacy" there shall be a pharmacist in charge and the compound-
18 ing and putting up of prescriptions shall be limited to pharmacists only
19 and ~~the compounding and dispensing of prescriptions shall be lim-~~
20 ~~ited to pharmacists only.~~ Except as otherwise provided by the pharmacy
21 act of this state, when a pharmacist is not in attendance at a pharmacy,
22 the premises shall be enclosed and secured. Prescription orders may be
23 written, oral ~~or~~, telephonic ~~or by electronic transmission unless prohibited~~
24 ~~by statute or rules and regulations law.~~ Blank forms for written prescrip-
25 tion orders may have two signature lines. ~~The first~~ If there are two lines,
26 one signature line shall state: "Dispense as written _____" and the
27 ~~second~~ other signature line shall state: "Brand exchange permissible =
28 ." Prescriptions shall only be filled or refilled in accordance with the
29 following requirements:

30 (a) ~~A prescription to be effective must be issued for a legitimate med-~~
31 ~~ical purpose by an individual practitioner acting in the course of the~~
32 ~~practitioner's profession. The All All~~ prescriptions shall be filled in strict
33 conformity with any directions of the prescriber, except that a pharmacist
34 who receives a prescription order for a brand name drug product may
35 exercise brand exchange with a view toward achieving a lesser cost to the
36 purchaser unless:

37 (1) The prescriber, in the case of a prescription signed by the pre-
38 scriber and written on a blank form containing two signature lines, signs
39 the ~~first~~ signature line following the statement "dispense as written
40 _____," or

41 (2) the prescriber, in the case of a prescription signed by the pre-
42 scriber, writes in the prescriber's own handwriting "dispense as written"
43 on the prescription, or

1997

, except as otherwise provided by law,

HOUSE HHS COMMITTEE
Attachment 3-1
3 - 11 - 98

1 (3) the prescriber, in the case of a prescription other than one in
2 writing signed by the prescriber, expressly indicates the prescription is to
3 be dispensed as communicated, or

4 (4) the federal food and drug administration has determined that a
5 drug product of the same generic name is not bioequivalent to the pre-
6 scribed brand name prescription medication.

7 (b) Prescription orders shall be recorded in writing by the pharmacist
8 and the record so made by the pharmacist shall constitute the original
9 prescription to be dispensed by the pharmacist. This record, if telephoned
10 by other than the physician shall bear the name of the person so tele-
11 phoning. Nothing in this paragraph shall be construed as altering or af-
12 fecting in any way laws of this state or any federal act requiring a written
13 prescription order.

14 (c) No prescription shall be refilled unless authorized by the pre-
15 scriber either in the original prescription or by oral order which is reduced
16 promptly to writing and filled by the pharmacist.

17 (d) If any prescription order contains a provision that the prescription
18 may be refilled a specific number of times within or during any particular
19 period, such prescription shall not be refilled except in strict conformity
20 with such requirements.

21 (e) If a prescription order contains a statement that during any par-
22 ticular time the prescription may be refilled at will, there shall be no
23 limitation as to the number of times that such prescription may be refilled
24 except that it may not be refilled after the expiration of the time specified
25 or one year after the prescription was originally issued, whichever occurs
26 first; ~~except that a prescription may be refilled after such a one-year pe-
27 riod if in the opinion of the prescriber continued renewal of the prescrip-
28 tion does not present a medical risk to the patient, except that a pre-
29 scription may be refilled after such a one-year period if in the
30 opinion of the prescriber continued renewal of the prescription does
31 not present a medical risk to the patient.~~

32 (f) Any pharmacist who exercises brand exchange and dispenses a less
33 expensive drug product shall not charge the purchaser more than the
34 regular and customary retail price for the dispensed drug.

35 Nothing contained in this section shall be construed as preventing a
36 pharmacist from refusing to fill or refill any prescription if in the phar-
37 macist's professional judgment and discretion such pharmacist is of the
38 opinion that it should not be filled or refilled.

39 Sec. 2. K.S.A. 1996 1997 Supp. 65-1637 is hereby repealed.

40 Sec. 3. This act shall take effect and be in force from and after its
41 publication in the statute book.

3-2

Kansas State Board of Pharmacy

LONDON STATE OFFICE BUILDING
900 S.W. JACKSON STREET, ROOM 513
TOPEKA, KANSAS 66612-1231
PHONE (785) 296-4056
FAX (785) 296-8420

STATE OF KANSAS



BILL GRAVES
GOVERNOR

EXECUTIVE DIRECTOR
LARRY C. FROELICH

BOARD ATTORNEY
DANA W. KILLINGER

1998 KANSAS LEGISLATIVE SESSION Senate Bill 485

CONTROLLED SUBSTANCES ACT

House Committee on Health and Human Services

Wednesday, March 11, 1998

Representative Carlos Mayans, Chairperson
Representative Jim Morrison, Vice Chairperson

Mr. Chairperson and Members of the Committee:

My name is Vicki Schmidt and I am a pharmacist member of the Kansas State Board of Pharmacy. Thank you for the opportunity to address you today about Senate Bill 485. This bill comes to you from the Board of Pharmacy.

The Board of Pharmacy is proposing to place two drugs into the uniform controlled substances act. These two drugs are **Butorphanol (Stadol®)**, **Torbugesic®** or **Torbutrol®** and **Sibutramine (Meridia®)**. The Drug Enforcement Administration (DEA) has reviewed the information available on these products and has determined that both products warrant being listed as Schedule IV controlled substances. When a product is placed into the Schedule IV category, it is subject to a new prescription every six months and/or five refills, whichever comes first.

Attached please find copies of the letters to the President of the Senate and the Speaker of the House discussing the intent of this bill as required by K.S.A. 65-4102.

Thank you again and I am happy to answer any questions or concerns that you may have.

HOUSE HHS COMMITTEE
Attachment 4
3 - 11 - 98



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

March 5, 1998

Chairman Carlos Mayans
Health and Human Services
State Capitol Building
Room 115-S
Topeka, Kansas 66612

RE: Date Rape Drugs

Dear Chairman Mayans:

I am seeking your help in dealing with a serious threat to public safety in Kansas. We have several reported incidents of young girls being given, without their knowledge, the drug GHB (gamma hydroxybutyrate acid), which resulted in their rape. Ingestion of sufficient amounts of this drug leaves the girl semi-conscious and further complicates prosecution by causing amnesia in the victim. This is not a matter of a legally produced drug being abused. As noted in a recent Food and Drug Administration warning, GHB is an unapproved and potentially dangerous drug and cannot be legally marketed in the United States. Controlling this drug will not affect any drug or pharmaceutical company.

While it is illegal to manufacture GHB under federal law, there is no penalty for its possession. Further, the process to manufacture GHB is extremely simple and the chemicals necessary readily available, resulting in numerous clandestine laboratories. In addition to the risk of "date rape", when mixed with alcohol, the depressant effect can cause serious injury and has been responsible in other states for several deaths. While there have been cases reported elsewhere in Kansas, the center of GHB activity appears to be in Manhattan, Kansas. Howard Haile of the Riley County Police Department informs me that they have had six incidents involving GHB, including one where the girl was hospitalized for three days.

The frustration for law enforcement is that since this is not an illegal substance to possess, if an individual is caught with GHB in their possession there is nothing that can be done. There is no deterrence to obtaining the drug as there is no consequence. In fact, the drug would have to be returned to the potential rapist.

While I understand and recognize the important role of the Board of Pharmacy in making changes to the Controlled Substances Act, I would like you and your committee to consider an extraordinary action given the danger this drug poses to the people of Kansas. The traditional

HOUSE HHS COMMITTEE
Attachment 5-1
3 - 11 - 98

criteria the Board of Pharmacy is to use in making additions to the drug schedules just do not fit. The situation where a drug is surreptitiously given to a third party for the purpose of committing a sexual assault doesn't fit the situation where the drug is not legally manufactured and no legitimate use exists. Statutory criteria under K.S.A. 65-4102, such as the potential for dependence makes no sense when the drug is not knowingly ingested.

I have enclosed a copy of a program which aired on television that graphically demonstrates the problem with GHB. I would ask that you view it as soon as possible because if we cannot act this legislative session to control this drug, more women and girls will be brutalized and raped, and may be killed. While I realize it would not be in keeping with passed practices, the solution that would at least give us a misdemeanor criminal penalty for possessing or manufacturing this drug would be to add it to schedule IV which already contains similar depressants. Eight other states have scheduled GHB.

SB 485 is before your committee and set for hearing on Wednesday and a simple amendment adding a subparagraph to subsection (b) to include (49) gamma hydroxybutyrate acid, could prevent the rape, degradation and possible death of Kansas girls and women. Without action this session, the problem will not only continue, but spread. I hope that might be sufficient reason for your committee to bend the rules this one time. I have spoke with the Executive Director of the Board of Pharmacy and he, with the chair of his board, and they are in agreement that something needs to be done to control GHB and it needs to be done quickly.

Please contact me if you have any questions.

Sincerely,

Kyle G. Smith
Assistant Attorney General

KGS:ld



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

BILL REQUEST
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
JANUARY 21, 1998

Mr. Chairman and Members of the Committee:

I appear today on behalf of Attorney General Stovall and Director Larry Welch to request three amendments to the Kansas Controlled Substances Act.

First, is a response to the use of "date rape" drugs, by making possession of these substances a felony. This would be accomplished by adding gamma hydroxybutyric acid (GHB) to the list of controlled substances in schedule IV, K.S.A. 65-4111, and then referencing GHB, rohypnol (flumitrazepam), and versed (midazolam hydrochloride), in K.S.A. 65-4160 and 4161. Currently, rohypnol and versed are controlled substances, but unauthorized possession is only a class A misdemeanor. Unlike other controlled substances which are normally a danger only to the person abusing them, these date rape drugs are directly endangering innocent persons.

The second suggestion is also schedule IV, K.S.A. 65-4111(f)(2), is a technical clean-up, adding propoxyphene to the drug dextropropoxyphene.

Third, we would recommend an amendment to the definition of ephedrine found in K.S.A. 65-4113(e), as the current language is so narrowly drawn that illegal manufacturers of methamphetamine have had no problem in obtaining ephedrine which is the principal ingredient in the manufacture of methamphetamine.

Thank you for your consideration.