-Approved: 3-8-99
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Sandy Praeger at 10:00 a.m. on March 4, 1999 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department
Norman Furse, Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:
State Representative Larry Campbell
Patsy Johnson, Kansas Board of Nursing
George Thompson, M.D., Menninger Clinic, Topeka
Jerry Slaughter, Executive Director, Kansas Medical Society
Larry Buening, Executive Director, Kansas Board of Healing Art
Terri Roberts, Kansas State Nurses Association

Others attending: See attached list

Hearing and Action on: HB 2086 - Cosmetologists; qualifications for licensure by examination

Representative Larry Campbell, sponsor of **HB 2086,** testified in support of the bill which would amend existing law regarding qualifications for licensure as a cosmetologist. Representative Campbell noted that the bill would permit persons who were at least 25 years of age and licensed as an apprentice cosmetologist on May 21, 1998, but who have not graduated from high school or earned a GED, to take the licensing examination. The bill would not change the education requirement for any other applicants for licensure. (Attachment 1)

Written testimony in support of the bill was submitted by Mary Lou Davis, Kansas Board of Cosmetology. (Attachment 2)

After Committee discussion, Senator Becker made a motion the Committee recommend **HB 2086** favorably for passage, and the bill be placed on the consent calendar, seconded by Senator Hardenburger. The motion carried.

Hearing on: HB 2168 - Advanced registered nurse practitioner and mid-level practitioner

Patsy Johnson, Board of Nursing, testified before the Committee in support of **HB 2168** which would amend the statute that concerns the authority of advanced registered nurse practitioners, pursuant to written protocols, to prescribe drugs and controlled substances and to request, receive, and distribute professional drug samples to patients. Ms. Johnson also pointed out that a new definition for mid-level practitioners has been added to the pharmacy and controlled substances acts to allow for the written prescription under state law. The ARNP will obtain a DEA number that can be used at the pharmacy as a means of identification if any tracking is needed. The reason for changing language from "transmitting" to "prescribing" is to meet federal requirements to get a DEA number. She noted that the actual practice is no different whether it be transmit or prescribe. It is still based on protocol with a physician. (Attachment 3) It was noted that this bill is similar to **SB 193 - Prescribing drugs by physicians' assistance** which had a hearing on February 16th.

George S. Thompson, Jr., M.D., Menninger Clinic, testified in support of **HB 2168** noting that they employ four ARNPs at the Community Service Office who are professional, ethical and provide quality treatment to their clients. Dr. Thompson encouraged the Committee to expand the prescriptive authority for ARNP's. (Attachment 4)

Jerry Slaughter, Executive Director, Kansas Medical Society, expressed support for the intent of this legislation, however, he did express concern that there may be an unintended consequence of expansion of scope of practice for mid-level practitioners and physicians' assistants which KMS would not support.

Larry Buening, Executive Director, Kansas Board of Healing Arts, noted that the Board does not regulate ARNP's, but would have interest in the bill if provisions of **SB 193** concerning physicians' assistants are incorporated into the bill. He pointed out that the Board is supportive of the proposed amendments and balloon of the bill as prepared by the Revisor, and the incorporation of this language into the bill. Mr. Buening also provided a copy of a letter from the Drug Enforcement Administration relating to the authority of California physicians' assistants to handle controlled substances under federal law. (Attachment 5)

Terri Roberts, Kansas State Nurses Association, expressed her support for **HB 2168**. Ms. Roberts also noted that proposed language in the bill makes it clear ARNP's are authorized to receive medication samples from pharmaceutical companies which would permit patients living in rural areas without full-time pharmacies to begin treatment with sample medications as well as sample medications be given to those persons who cannot afford them. (Attachment 6)

The Chair called upon the Revisor to brief the Committee on a balloon of **HB 2168** with language incorporated from **SB 193**. (Attachment 7) Action on the bill would be considered at a later date.

There were no opponents to **HB 2168**.

Adjournment

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for March 8, 1999.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 3-4-99

NAME	REPRESENTING
Doug Smith	KAPA
LARRY FROELICH	Board of Pharmacy
George Thompson	
William Jakobleff	
William J Black	
LARRY BUENING.	BD OF HEALING ARTS
Stacey Soldan	Columbia / HCA
Wesley Marshall	Interlab
Chip Wheelen	Ks Assn of Osteopathic Med.
Rebecca Rice	KANA

NORTON
HUBBARD
RUZICKA &
KREAMER L.C.
ATTORNEYS AT LAW

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913-782-2012

MEMO

TO: Larry Campbell
Via facsimile: 829-5754

FROM: L. Franklin Taylor

RE: Amendment to K.S.A. 65-1905(b)

DATE: January 29, 1999

Thank you for the opportunity to provide testimony in support of an amendment to K.S.A. 65-1905(b)(1). As we have discussed, this statute was among those amended by Substitute for House Bill No. 2609 in the 1998 Legislative session. The 1998 amendment changed the qualifications for licensure by the Board of Cosmetology. Prior to the amendment, an applicant for a cosmetology license was required either to be at least 17 years of age and a high school graduate or equivalent or to be at least 25 years of age. That is, applicants over age 25 were not required to be high school graduates.

The 1998 amendment changed the requirements so that all applicants must have a high school diploma or GED certificate.

K.S.A. 65-1912(b)(1) requires that "[a]n applicant for examination and licensure as a cosmetologist shall be required to have practiced as an apprentice in a licensed school for not less than 1,500 clock hours." The practical effect of this requirement is that prospective cosmetologists must obtain an apprentice's license and receive school training as an apprentice for a period of eight to ten months.

When the amendments in Substitute for House Bill No. 2609 became effective upon publication in the Kansas Register in the spring of 1998, there were apprentices in cosmetology school who would have been eligible to apply for licensure upon completion of 1,500 clock hours of training. Some of those apprentices, including two enrolled in Superior School of Hair Styling in Olathe in September 1997 and April 1998, became *disqualified* for the licensure they expected to receive from the program in which they were enrolled because the high school graduation requirement was extended to *all* applicants rather than those under 25.

Senate Public Health & Welfare
Date: 3-4-99
Attachment No. 1

Legislature has determined that it makes sense to require a high school diploma for every applicant to be licensed as a cosmetologist by the State Board of Cosmetology. That requirement does not apply, however, to persons already licensed and should not apply to persons who were apprenticed and in the process of obtaining licensure on the effective date of the statute.

In the cases at the Superior School of Hair Styling, applicants who were engaged in and making satisfactory progress in an approved program, through no fault of their own, lost their eligibility to apply for licensure. The proposed amendment would, in effect, grandfather these applicants without modifying the licensure requirement for future students.

I would be pleased to provide more information if that would be helpful.

State of Kansas

BILL GRAVES, *Governor*

BOARD OF COSMETOLOGY

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Senate Committee Hearing - Public Health and Welfare
Thursday, March 4, 1999

House Bill 2086 addresses one provision of legislation passed during the 1998 legislative session. This proposed legislation addresses a very limited number of individuals seeking Kansas cosmetology licensure.

During the 1998 legislation, Substitute for House Bill 2609 was enacted which included numerous changes for the Kansas Board of Cosmetology. Most provisions of this legisaltion became effective on May 21, 1998.

Prior to the 1998 legislative change, individuals who were 25 years of age or older were not required to provide verification of completion of high school - or the equivalent thereof. However, an applicant between the ages of 17 and 24 was required to be a high school graduate or provide verification of a graduate equivalency diploma (GED). It was the consensus of the Kansas Board of Cosmetology that all examination and licensure requirements should be applied consistently to all applicants.

House Bill 2086 addresses only those individuals making application for examination (not licensure) who are at least 25 years of age and licensed as an apprentice on May 21, 1998. (Each student who has completed a required number of cosmetology classroom hours is issued an apprentice license. This license allows the student to "work" on the floor, providing a cosmetology service for a client while under the supervision of an instructor.)

The Board staff has reviewed all pending examination applicants who were apprenticed on May 21, 1998, and are over the age of 25. Of those individuals who have completed their cosmetology schooling, nine applicants do not have verification of high school graduation or a GED in their applicant file. However, we are unable to determine if this requirement is the sole reason for their lack of progress toward examination and licensure.

Our records further indicate that 29 currently enrolled students meet the 25 years of age requirement who were also apprenticed on May 21, 1998. However, we are unable to ascertain if any of the 29 students may be adversely impacted by the high school graduation or GED requirement, as these individuals have yet to make examination application.

Kansas licenses 26 cosmetology schools. Approximately 913 students currently hold apprentice licenses. An average of 80 to 100 initial licenses are issued.

Senate Public Health & Welfare
Date: 3-4-99
Attachment No. 2

It should be noted that individuals seeking reciprocal licensure into the state of Kansas will continue to be reqired to meet the high school graduation, or equivalent provision.

Kansas State Board of Nursing

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Topeka, Kansas 66612-1230
785-296-4929
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Patsy L. Johnson, R.N., M.N.
Executive Administrator
785-296-5752
ksbn0@ink.org

To: The Honorable Senator Sandy Praeger
and Members of the Public Health and Welfare Committee

From: Patsy L. Johnson, M.N., A.R.N.P.
Executive Administrator
Kansas State Board of Nursing

Date: March 4, 1999

Re: HB 2168

Thank you for allowing me to testify on HB 2168 for the Board of Nursing. The Board proposes the following changes:

- "Training" and "expanded" have been removed throughout K.S.A. 65-1130 as an update in the language. The removal of training does not change the educational requirements that all ARNP's have to meet. Some categories of ARNP's are certified without obtaining a masters degree. Also registered professional nurses may perform in expanded roles such as critical care or oncology. Because they have not completed a formalized education program, they are not eligible for ARNP certification.

- The major change in the bill is in Section 1 (d) that starts on page 2, line 22.

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Patricia McKillip, R.N., Ph.D.
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Diane Glyn
Practice
296-

Senate Public Health & Welfare
Date: 3-4-99
Attachment No. 3

Currently ARNP's may verbally transmit an order for controlled substances. With the change in statutes, ARNP's will have the authority to **write** prescriptions for controlled substances. A new definition for mid-level practitioner (page 7, line 34 and page 11, line 18) has been added to the pharmacy and controlled substances acts to allow for the written prescription under state law.

The ARNP will obtain a DEA number that can be used at the pharmacy as a means of identification if any tracking is needed. The reason for changing language from "transmitting" to "prescribing" is to meet federal requirements to get a DEA number. The actual practice is no different whether it be transmit or prescribe. It is still based on protocol with a physician. (See Attachment A for protocol requirements) Mid-level practitioner has also been added to the definition of prescription order (page 6, line 30).

The Kansas Medical Society also asked that the name and address of the responsible physician or physicians be on file at a regulatory agency. That requirement has been added so the ARNP will file that information with the Board of Nursing.

The Board does not believe there is any expansion of practice with this change since the ARNP may already telephone orders for controlled substances. The Board does believe this is safer practice since the prescription is in written form with less chance of error in the transmission of the verbal order. Having a DEA number allows for better tracking if there are any problems with misuse of the controlled substances.

- **Professional samples.** At this time only physicians may request, receive, and sign for professional samples (page 2, line 31).

  Since many ARNP's work in different locations from the physician, they may not have the opportunity to obtain professional samples which they may provide to their clients. Also, the contact with the pharmaceutical representative offers an educational opportunity. If the sales representatives cannot leave samples with ARNP's, they do not call on them.

The Board is supportive of the amendment presented by the Kansas Association of Osteopathic Medicine that professional samples be tied to a protocol authorized by the responsible physician.

While the physician needs to know what samples are being used by the ARNP as per protocol, the Board believes that education is critical for the safe use of the new medications.

Through the many months of work on this bill, the Board of Nursing has supported adoption of the same language for physician assistants.

I want to recognize the many groups that have been involved in the development of the changes in HB 2168: Kansas State Nurses Association, other Nurse Practitioner groups, the Board of Healing Arts, the Board of Pharmacy, the Kansas Medical Society, and the Kansas Association of Osteopathic Medicine.

In summary, there are two very practical changes in this bill. I hope the committee will pass HB 2168 out favorably.

Thank you. I am available for questions.

60-11-104a. Protocol requirements; transmitting prescription orders. (a) Each written protocol pursuant to which an advanced registered nurse practitioner may transmit prescription orders shall:

(1) specify for each classification of disease or injury the corresponding class of drugs for which the advanced registered nurse practitioner is permitted to transmit a prescription order;

(2) be maintained in either a looseleaf notebook or a book of published protocols. The notebook or book of published protocols shall include a cover page containing:

(A) the names, telephone numbers and signatures of the advanced registered nurse practitioner and a responsible physician who has authorized the protocol; and

(B) the date the protocol was adopted or last reviewed; and

(3) be kept at the advanced registered nurse practitioner's principal place of practice.

(b) An advanced registered nurse practitioner shall ensure that each protocol is reviewed by the advanced registered nurse practitioner and physician at least annually.

(c) Any prescription order transmitted in written form shall:

(1) include the name, address and telephone number of a responsible physician;

(2) be signed by the advanced registered nurse practitioner with the letters A.R.N.P.

(3) not be for any controlled substance drug; and

(4) be from a class of drugs transmitted pursuant to protocol.

(d) An advanced registered nurse practitioner may orally transmit a prescription order pursuant to protocol for:

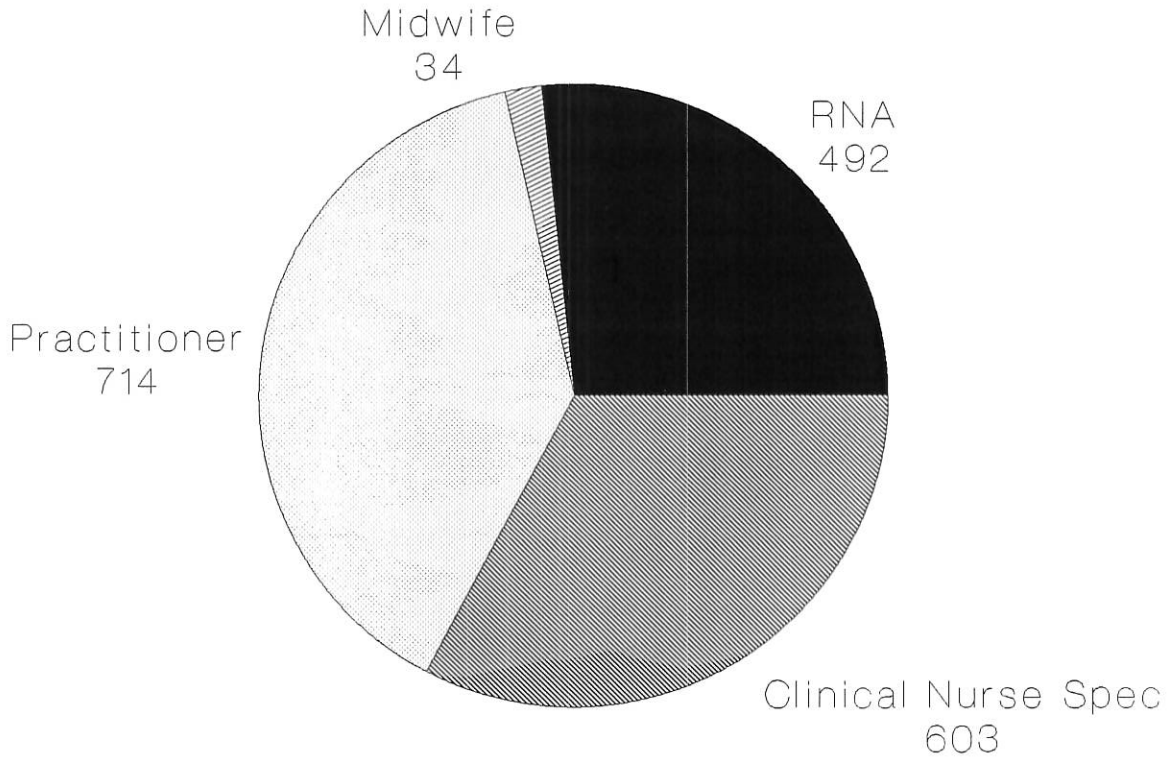
(1) a schedule II controlled substance in the case of an emergency situation as defined in K.A.R. 68-20-19(a); and

(2) a controlled substance listed in schedule III, IV, or V.

(e) Nothing in this regulation shall be construed to prohibit any registered nurse or licensed practical nurse or advanced registered nurse practitioner pursuant to a lawful direction of a person licensed to practice medicine and surgery or dentistry, or certified as an advanced registered nurse practitioner from conveying a prescription order orally, or from administering a drug.

(f) When used in this section, terms shall be construed to have the meanings set forth in the pharmacy act of the state of Kansas, K.S.A. 65-1626. (Authorized by K.S.A. 65-1129 and K.S.A. 65-1130; implementing K.S.A. 65-1130, effective T-60-9-12-88, Sept. 12, 1988; effective Feb. 13, 1989; amended May 7, 1990; amended Jan. 3, 1995.)

1999 A.R.N.P.'s



Total 1,843

George S. Thompson, Jr., M.D.
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TESTIMONY IN SUPPORT OF H.B. 2168

Senator Praeger and members of the Senate Public Health and Welfare Committee, I am George Thompson, a physician, a psychiatrist, Director of the Menninger Community Service Office, and Director of Outpatient Mental Health Training at Menninger and a member of the Kansas Medical Society. Thank you for allowing me to speak in favor of H.B. 2168. The opinions I present today are my own and do not represent the policies or opinions of Menninger or the Kansas Medical Society.

We employ four Advanced Registered Nurse Practitioners (ARNP's) at the Community Service Office. They are professional, ethical and provide quality treatment to our clients. My personal experience working with these fine clinicians leads me to come before you today in support of this bill which expands the prescriptive authority for ARNP's.

Role of Nurse Practitioners

I want to give you an example of how Nurse Practitioners and physicians work together in actual practice. In our office, Nurse Practitioners treat many of our patients, both children and adults. They perform diagnostic evaluations, provide psychotherapy, and manage our patients' medication treatment under physician protocol. I serve as their protocol physician. It is in our clinic's standards that patients whose conditions are especially complex or unresponsive to traditional treatments are referred to me for physician consultation. I meet with the Nurse Practitioners to review their cases and provide guidance where appropriate. The Nurse Practitioners have been able to assess when cases are too complex for their abilities, and have consulted with me responsibly.

Senate Public Health & Welfare
Date: 3-4-99
Attachment No. 4

What Can Nurse Practitioners Do Under Current Law and Regulations?

Nurse Practitioners can currently write prescriptions for "non-scheduled" medications. Non-scheduled medications can be powerful, dangerous and complex to prescribe. In our office, Nurse Practitioners prescribe medications such as Lithium Carbonate which is used to treat Manic-Depression. Lithium requires regular monitoring of laboratory tests and can be lethal when taken in overdose. Again, Nurse Practitioners currently have authority to write prescriptions for this type of powerful and effective medication, and do so skillfully and responsibly.

Nurse Practitioners can currently call in prescriptions for most scheduled medications. They telephone the pharmacy and verbally inform the pharmacist that a patient should be prescribed the scheduled medication.

What is Currently Prohibited?

Nurse Practitioners are currently prohibited from writing prescriptions for scheduled medications, those same medications that they are allowed to prescribe verbally. They are also prohibited from calling in prescriptions for Schedule II medications except in an emergency. They are prohibited from calling in a particular class of Schedule II medication, the stimulant medications, as are physicians.

What are Scheduled Medications?

What are these scheduled medications which Nurse Practitioners are allowed to prescribe verbally, but not in writing? Scheduled medications, also known as controlled substances, are medications with addictive potential. That is the only difference between scheduled and non-scheduled medications. There are five "schedules" or categories for these medications. Lower category numbers represent higher addictive potential of medication. For example Schedule I medications cannot be prescribed, except in research settings. The Schedule II list includes codeine, which is used as cough syrup. The Schedule V list includes medications which are not as addictive, or which are addictive but prescribed in smaller quantities.

Should Nurse Practitioners Write Prescriptions for Scheduled Medications?

YES

1. Nurse Practitioners already have the skills and experience necessary to handle the complexity of prescribing medication with the potential for serious side-effects. They can handle the complexity of prescribing medications, which are potentially addictive.

2. Nurse Practitioners are as ethical and as responsible as physicians when it comes to prescribing addictive substances. There are unethical medical professionals in our state, but we already have laws to prohibit illegal prescription of addictive substances. There are medical professionals who become addicted themselves, but we already have laws and regulations governing impaired professionals. We need not limit Nurse Practitioners prescribing authority because of these types of concerns.

3. Nurse Practitioners already prescribe most scheduled medications verbally. Written prescriptions are safer than verbal prescriptions because they provide documentation that can be referred to in situations of ambiguity.

Should Nurse Practitioners Prescribe Schedule II Medications?

YES

1. Again, Nurse Practitioners have the skills, abilities, professionalism and ethical standards to prescribe even the most addictive substances. Schedule II medications are actually safer and easier to prescribe and monitor than many non-scheduled medications. Nurse Practitioners like physicians are trained to manage the addictive risk of these medications.

2. According to the Journal of the American Academy of Child and Adolescent Psychiatry, Kansas does not have enough Child Psychiatrists to treat all of the children who suffer from emotional

problems in our state. One of the most common childhood emotional disturbances is Attention Deficit Hyperactivity Disorder, which is treated with Schedule II medications like Ritalin, Dexedrine and Adderall. Granting Nurse Practitioners authority to write prescriptions for Schedule II medications will fill a much-needed gap in services to children in Kansas.

Again thank you for allowing me to speak in favor of H.B. 2168. I have enjoyed a collaborative and collegial relationship with Nurse Practitioners. I encourage the Senate Public Health and Welfare Committee to:

- Approve H.B 2168, and
- Grant authority to Nurse Practitioners to prescribe Schedule II through Schedule V medications in writing.

These actions on your part will help to enhance treatment for many patients and provide for better access to care for the children and adults in Kansas.

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor

235 S. Topeka Blvd.
Topeka, KS 66603-3068
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(785) 368-7102

MEMORANDUM

TO: Senate Committee on Public Health and Welfare

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: March 4, 1999

RE: **House Bill No. 2168**

Madam Chair and members of the Committee, thank you for the opportunity to appear before you on behalf of the Kansas State Board of Healing Arts and provide information on House Bill No. 2168. Although the Board was not a conferee in the House Committee, the Board was originally mildly opposed to this bill as it was originally drafted because of a concern that it would enable advanced registered nurse practitioners to prescribe drugs and receive manufacturers' samples without sufficient oversight by a person licensed to practice medicine and surgery. However, the amendments made by the House Committee have alleviated the original Board concerns. Since the Board does not regulate advanced registered nurse practitioners, the Board really has no position on this bill as it passed the House. The interest the Board has in this Bill is to incorporate the provisions of Senate Bill No. 193 into the provisions of this bill so that physicians' assistants may prescribe drugs and receive samples in the same manner and under the same supervision as advanced registered nurse practitioners. As you may recall, the Board provided testimony in support of S.B. No. 193 and discussion was held in this Committee to incorporate the provisions of that bill into the language of this bill since H.B. No. 2168 had already passed the House at the time the hearing on S.B. No. 193 was conducted.

The Board is supportive of the balloon prepared by the Revisor of Statutes and the incorporation of this language into the bill is strongly supported by the Board. I will not repeat the testimony I gave and provided in support of S.B. No. 193. The Board believes that enacting H.B. No. 2168 with the amendments suggested by the Revisor of Statutes is in the public's interest constitutes a protection to the public health, safety and welfare. Enactment of this bill with the suggested amendments will reduce the chances of error that may more likely occur in the oral transmission of prescription orders for controlled substances.

Thank you for allowing me to appear before you today and support H.B. No. 2168 with the inclusion of the amendments suggested by the Revisor of Statutes. I would be happy to respond to any questions.

Senate Public Health and Welfare
Date: 3-4-99
Attachment No. 5

U.S. Department of Justice

Drug Enforcement Administration

REC'D SEP 28 1998

Washington, D.C. 20537

SEP 22 1998

Jack C. Lewin, M.D., EVP, CEO
California Medical Association
221 Main Street
P.O. Box 7690
San Francisco, California 94120-7690

RECEIVED
EXECUTIVE MANAGEMENT
OCT 8 1998
Joan M. Hall, JD

Dear Dr. Lewin:

Thank you for your letter of June 19, 1998, seeking the position of the Drug Enforcement Administration (DEA) regarding the authority of California physician assistants to handle controlled substances under Federal law. In your letter, you ask that DEA "issu[e] a statement that transmittal or furnishing orders of mid-level practitioners under California law may be filled by pharmacists and are acceptable under federal law."

Since receiving your letter, DEA, through the Office of Diversion Control, has closely reviewed the practices and procedures involved with the issuance of transmittal orders by mid-level practitioners in California. DEA contacted the California Board of Pharmacy, among others, to obtain a better understanding as to exactly what is a transmittal or furnishing order and how does the process of filling prescriptions pursuant to such orders work. As a result of our review, it appears that the issuance of a transmittal or furnishing order under California law appears to be the equivalent of the issuance of a prescription under DEA laws and regulations. Therefore, it is the opinion of DEA that such transmittal orders cannot lawfully be filled by pharmacists unless the orders are signed by a practitioner registered with DEA to dispense controlled substances.

It is DEA's understanding that physician assistants are authorized under California law to issue transmittal orders for controlled substances pursuant to a written protocol between a supervising physician and the physician assistant. The transmittal or furnishing order specifies the type and amount of controlled substance prescribed to a patient and is signed by the physician assistant. The transmittal order is then filled at a pharmacy by the patient. Further, it is our understanding that while there is no specific form for a transmittal order, that a transmittal or furnishing order for controlled

Copy to Catherine Hanson, Astrid Meghrigian

#5-2

substances must conform with California Business and Professions Code § 3502.1(c) and contain the printed name, address and telephone number of the supervising physician, the printed or stamped name and license number of the physician assistant, the signature of the physician assistant and the physician's license and DEA registration.

According to an information bulletin issued by the Physician Assistant Examining Committee for the Medical Board of California, a supervising physician must review the medical record of any patient to whom such transmittal orders are issued "within seven (7) days." As stated in your letter of June 19, 1998, the "transmittal order serves as the supervising physician's 'prescription'". Based on this information and the applicable California regulations, it appears that the physician assistant actually prescribes the controlled substances pursuant to a transmittal order, subject to a subsequent review of the patient medical file by the supervising physician. There is no evidence that a practitioner registered with DEA actually prescribes the controlled substance.

The Federal Controlled Substances Act (CSA) requires every practitioner who dispenses (including prescribing and administering) any controlled substance to obtain a DEA registration in accordance with DEA regulations. 21 U.S.C. § 822(a)(2). Practitioners may only dispense controlled substances to the extent expressly authorized by their DEA registration. 21 U.S.C. § 822(b). These provisions apply to physician assistants as mid-level practitioners, since mid-level practitioners are a category of practitioners. *See* 21 C.F.R. § 1300.01(28). In accordance with the CSA, every practitioner --including mid-level practitioners --may only prescribe controlled substances if he (1) is registered with DEA, and (2) has authority under state law to prescribe controlled substances. Based on DEA's interpretation of California law, it is DEA's opinion that mid-level practitioners in California are not specifically authorized to prescribe controlled substances and are not authorized to obtain a DEA registration for such purposes.

Under the CSA and DEA regulations, a pharmacy may only dispense controlled substances pursuant to the prescription of a practitioner. 21 U.S.C. § 829; 21 C.F.R. §§ 1306.04, 1306.05, 1306.11, 1306.21. As you correctly noted, the CSA prohibits the dispensing of schedule II controlled substances without the written prescription of a practitioner. 21 U.S.C. § 829. Please be aware, however, that Federal law requires that a written prescription must contain the practitioner's DEA registration number and be signed by the practitioner on the date when issued. 21 C.F.R. §§ 1306.05(a), 1306.21(a). While the information required for an oral prescription for schedule III-V controlled substances may be transmitted by the agent of an individual practitioner to

the pharmacy, the prescription itself must be made by the individual practitioner. 21 C.F.R. § 1306.21(a). The prescribing supervising physician remains responsible for ensuring that the written prescription conforms in all essential respects to the law and regulations, including the requirement that the prescription be for a legitimate medical purpose. 21 C.F.R. §§ 1306.04(a), 1306.05(a). A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by the DEA regulations. 21 C.F.R. § 1306.05(a). Therefore, a pharmacist cannot lawfully fill a transmittal order signed by a practitioner who does not have a DEA registration.

If California law were amended so that specific categories of mid-level practitioners, including physician assistants, were expressly authorized to independently prescribe, administer or dispense controlled substances, DEA would then have the authority under the CSA to issue DEA registrations to those mid-level practitioners, to the extent of their state authorization. Once registered with DEA to prescribe controlled substances, California physician assistants could then issue prescriptions or transmittal orders. At this point, pharmacists could accept written transmittal orders for controlled substances signed by physician assistants who are registered as practitioners with DEA.

DEA has, in fact, already issued DEA registrations to physician assistants, nurse practitioners and other mid-level practitioners in states where the law expressly permits them to independently prescribe, administer or dispense controlled substances. Many of those states have similar provisions requiring written protocols and supervisory arrangements between physicians and physicians assistants to provide appropriate oversight to physician assistants while providing them the authority to prescribe controlled substances.

Please note that the foregoing is the opinion of DEA pertaining to the authorization of certain mid-level practitioners to dispense controlled substances under the laws of California. Notwithstanding this opinion, individuals requesting registration with DEA can file individual applications for registration and follow the appropriate judicial procedures in the event of any adverse determination by DEA.

We hope that you find the foregoing information helpful. If you need any further information or assistance please do not hesitate to contact me at (202) 307-7165.

Sincerely,

John H. King
Deputy Assistant Administrator
Office of Diversion Control

5-4

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the Voice of Nursing in Kansas

Debbie Folkerts, A.R.N.P.--C.
President

Terri Roberts, J.D., R.N.
Executive Director

H.B. 2168 PRESCRIPTIVE AUTHORITY FOR ARNP'S

Chairperson Praeger and members of the Senate Health and Welfare Committee, KANSAS STATE NURSES ASSOCIATION asks for your consideration and support of H.B. 2168.

Chairman Praeger and members of the committee my name is Terri Roberts. I am the Executive Director of the Kansas State Nurses Association. Advanced Practice Nursing was authorized by statute in the State of Kansas in 1978. At that time prescriptive authority was unclear. Prescriptions were verbally called to the pharmacy only. In 1989 there was a keen awareness of the under utilization of Advanced Practices Nurses with the restriction in their ability to write prescriptions. Greater than 60% were practicing in rural areas and many were the only healthcare provider in their community. Subsequently, statutes were changed to permit Advanced Practice Nurses to ***transmit*** prescription orders in writing per protocols established with a responsible physician. Controlled substances were not included. Again, noting the patient restriction to necessary medication, regulations were implemented in 1995 which allowed Advanced Practice Nurses to verbally transmit orders for controlled substances according to their protocol. Currently, in Kansas Advance Practice Nurses are prohibited from writing prescriptions for controlled substances.

This bills proposed changes which would:

* Permit ARNP's to write Prescription orders for Schedule II-V drugs.
* Permit ARNP's to obtain DEA Numbers necessary for issuing schedule drug prescription in writing.
* Sign for and receive medication samples from pharmaceutical representatives.

In todays environment of culturally diverse providers and electronic faxsmile transmissions, we feel it is imperative Advanced Practice Nurses be allowed to prescribe controlled substances in writing. This prevents the misinterpretation of telephonic communications of medicines such as hydrocodone for hydrocortisone, or Meperidine for imipramine. We believe written prescriptions for schedule drugs that consensus exist that increases public safety.

The changes being proposed are not an expansion of practice, per se, they are a safety issue allowing written documentation of medication prescribed and a tracking mechanism for controlled substances.

Additionally, the proposed language makes it clear that Advanced Practice Nurses are authorized to receive medication samples from pharmaceutical companies. This permit patients living in rural area's, without full-time pharmacy's the ability to begin treatment immediately, with sample medications. It also provides the opportunity to provide sample medications to those who are unable to afford them.

Currently, there are explicit statutory or regulatory provisions for Advance Practice Nurses prescribing in approximately forty jurisdictions, and proposals are pending in several others. We urge your support of HB 2168.

Thank you!

Senate Public Health and Welfare
Date: 3-4-99
Attachment No. 6

Kansas--Facts About Nurses In Advanced Practice

Advanced Registered Nurse Practitioners (ARNP) 1999

The following four categories of ARNP's in Kansas, and the number in each category are listed below:

Nurse Practitioners (NP)	714
Midwives (CNM)	34
Clinical Nurse Specialists (CNS)	603
Registered Nurse Anesthetists (RNA)	492

A brief description of educational requirements of each categry of ARNP is provided below. Additionally statistical information and schools preparing each category in Kansas is listed.

NURSE PRACTITIONER (NP)

Number: Kansas 714
U.S. 25,000 - 30,000

Education: Most of the approximately 150 NP education programs in the United States today confer a master's degree. At least 36 states require NPs to be nationally certified by the ANA or a speciality nursing organization. Kansas has two schools, Fort Hays State University and Wichita State University. Both programs began August of 1992. Kansas University began a Nurse Practitioner program in the fall of 1993. Pittsburg State University began a program in the fall of 1995.

CERTIFIED NURSE MIDWIFE (CNM)

Number: Kansas 34
US about 5,000

Education: An average one and one-half years of specialized education beyond nursing school, either in an accredited certificate, or like NPs, increasingly at the master's level. Kansas has no nurse midwifery school.

CLINICAL NURSE SPECIALISTS(CNS)

Number: Kansas 603
US about 40,000

Education: Registered nurses with advanced nursing degrees—master's or doctoral— who work in clinical settings, community or office-based settings, and hospitals and are experts in a specialized area such as cardiac or cancer care, mental health, or neonatal health. Kansas has four programs preparing CNS's, University of Kansas, Wichita State University, Pittsburg State University and Fort Hays State University.

CERTIFIED REGISTERED NURSE ANESTHETISTS (CRNA)

Number: Kansas 492
US 25,000

Education: Registered nurses who complete 2-3 years additional education beyond the four-year bachelor of science in nursing, as well as meeting national certification and recertification requirements. Kansas has two schools preparing RNA's, University of Kansas in Kansas City and an outreach program from Texas Wesleyan in Wichita.

...y State Provisions of Controlled Substances Prescribing

Alabama
NPs and CN... ...y prescribe noncontrolled drugs only.

Alaska
NPs and CRNAs may prescribe controlled substances on Schedules II-V.

Arizona
NPs may prescribe drugs on Schedules II through V.

Arkansas
NPs and CNSs may prescribe drugs on Schedules II through V.

California
NPs are fighting to keep their right to prescribe controlled substances, which they won in 1996. An ambiguous reference to "furnishing," not "prescribing" in California state law and a recent opinion from the California attorney general's which says that NPs cannot write for controlled substances without a DEA number are threatening NPs' right to write.

Colorado
NPs, CNSs, CNMs and CRNAs may prescribe drugs on Schedules II through V.

Connecticut
NPs, CNMs, CNSs and nurse anesthetists may prescribe drugs on Schedules II through V, but certain limitations exist on the prescription of drugs in Schedules II and III for NPs and CNSs.

District of Columbia
NPs, CNMs, CRNAs and CNSs may prescribe drugs in Schedules II through V.

Delaware
Advanced practice nurses may prescribe drugs on Schedules II through V.

Florida
The Joint Boards of Nursing and Medicine have voted to give ARNPs the right to prescribe drugs in Schedules II through V, pending an opinion from the State Attorney General.

Georgia
Advanced practice nurses have no independent prescriptive authority but they may be delegated the authority to prescribe controlled substances under formulary.

Hawaii
Advanced practice nurses may prescribe noncontrolled drugs only.

Idaho
Amendments were recently made to Idaho's Nurse Practice Act that provide for the recognition of all APNs and provide for NP prescribing of drugs on Schedules II-IV.

Illinois
A bill granting recognition and prescriptive privileges to NPs, CNMs and CNSs was signed into law in August 1998. The law provides these advanced practice nurses with the authority to write for drugs on Schedules III through V.

Indiana
NPs and CNSs may prescribe drugs on Schedules II through V.

Iowa
Advanced practice nurses may prescribe drugs on Schedules II through V.

Kansas
ANPs may transmit controlled substances according to protocol.

Kentucky
NPs and CNSs may prescribe noncontrolled drugs only.

Louisiana
Louisiana is developing rules and regulations governing limited prescriptive and distributing authority for advanced practice registered nurses in the state. The proposed rules do not provide for prescription of controlled substances except as explicitly authorized by the Joint Administration Committee.

Maine
NPs and CNSs may prescribe drugs on Schedules III through V.

Maryland
NPs may prescribe drugs on Schedules II through V.

Massachusetts
NPs in Massachusetts may prescribe drugs on Schedules II through VI. (In Massachusetts, all drugs that are not listed on Schedules II-V by the federal government are listed as Schedule VI.)

Michigan
NPs may prescribe noncontrolled drugs only.

Minnesota
NPs and CNSs may prescribe drugs on Schedules II through V.

Mississippi
NPs may prescribe noncontrolled drugs only.

Missouri
Advanced practice nurses may prescribe noncontrolled drugs only.

Montana
NPs may prescribe drugs on Schedules II through V.

Nebraska
NPs and CNSs may prescribe drugs on Schedules III through V.

Nevada
Advanced practice nurses may prescribe noncontrolled drugs only.

New Hampshire
Advanced practice nurses may prescribe drugs on Schedule II through V.

New Jersey
The New Jersey State Assembly Health Committee voted unanimously in December 1998 to allow NPs and CNSs to prescribe controlled substances. At press time, the bill still had to go through the Senate and the Governor.

New Mexico
NPs and CNSs may prescribe drugs on Schedules II through V.

New York
NPs and CNMs may prescribe drugs on Schedules II through V.

North Carolina
NPs may prescribe drugs on Schedules II through V.

North Dakota
NPs, CNSs (who are licensed as ARNPs), and CNMs may prescribe drugs on Schedules II through V.

Ohio
NPs and CNSs may prescribe noncontrolled drugs only, with site restrictions.

Oklahoma
NPs, CNSs and CNMs won prescriptive rights in spring 1997, which include the right to prescribe drugs on Schedules II through V.

Oregon
NPs may prescribe drugs on Schedules III through V.

Pennsylvania
NPs may prescribe drugs on Schedules III through V.

Rhode Island
NPs and CNSs may not prescribe scheduled drugs. CNMs may prescribe drugs on Schedules III through V only.

South Carolina
NPs and CNSs may prescribe drugs on Schedule V only, as listed in a physician-approved protocol.

South Dakota
NPs may prescribe drugs on Schedules III through IV.

Tennessee
NPs can prescribe drugs on Schedules II through V.

Texas
NPs may prescribe noncontrolled drugs only. CNMs may prescribe some controlled substances on a very limited basis in the hospital setting.

Utah
Advanced practice nurses may prescribe drugs on Schedules III through V.

Vermont
NPs may prescribe drugs on Schedules II through V.

Virginia
NPs and CNSs (as long as the CNS is licensed as an ARNP) may prescribe drugs on Schedules II through VI.

Washington
Nurse practitioners may only prescribe drugs on Schedule V. NPs in the state continue their push to expand prescriptive privileges to include drugs on Schedules II through IV.

West Virginia
Nurse practitioners may prescribe drugs on Schedules III through V.

Wisconsin
NPs, CNMs, CRNAs and CNSs may prescribe drugs on Schedules II through V.

Wyoming
NPs and CNSs may prescribe drugs on Schedules III through V.

** Information current at press time; check with your state NP organization for futher information.*

(Jan. 1999) 6-3

As Amended by House Committee

Session of 1999

HOUSE BILL No. 2168

By Committee on Health and Human Services

1-28

AN ACT concerning health care providers; relating to advanced registered nurse practitioners and midlevel practitioners; amending K.S.A. 65-1130 and K.S.A. 1998 Supp. 65-1626 and 65-4101 and repealing the existing sections.

authorizing physicians' assistants and

to prescribe drugs

,65-2896e, 65-4116, 65-4123 and 65-4134 and K.S.A. 1998 Supp. 65-1626, 65-1627, 65-1643 and 65-4101

;also repealing K.S.A. 1998 Supp. 65-1627i

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

Section 1. K.S.A. 65-1130 is hereby amended to read as follows: 65-1130. (a) No professional nurse shall announce or represent to the public that such person is an advanced registered nurse practitioner unless such professional nurse has complied with requirements established by the board and holds a valid certificate of qualification as an advanced registered nurse practitioner in accordance with the provisions of this section.

(b) The board shall establish standards and requirements for any professional nurse who desires to obtain a certificate of qualification as an advanced registered nurse practitioner. Such standards and requirements shall include, but not be limited to, standards and requirements relating to the education ~~and training~~ of advanced registered nurse practitioners. The board may require that some, but not all, types of advanced registered nurse practitioners hold an academic degree beyond the minimum educational requirement for qualifying for a license to practice as a professional nurse. The board may give such examinations and secure such assistance as it deems necessary to determine the qualifications of applicants.

(c) The board shall adopt rules and regulations applicable to advanced registered nurse practitioners which:

(1) Establish categories of advanced registered nurse practitioners which are consistent with nursing practice specialties recognized by the nursing profession.

(2) Establish education~~, training~~ and qualifications necessary for certification for each category of advanced registered nurse practitioner established by the board at a level adequate to assure the competent performance by advanced registered nurse practitioners of functions and procedures which advanced registered nurse practitioners are authorized to perform.

Senate Public Health and Welfare
Date: 3-4-99
Attachment No. 7

(3) Define the ~~expanded~~ role of advanced registered nurse practitioners and establish limitations and restrictions on such ~~expanded~~ role. The board shall adopt a definition of ~~expanded~~ *the* role under this subsection (c)(3) which is consistent with the education~~, training~~ and qualifications required to obtain a certificate of qualification as an advanced registered nurse practitioner, which protects the public from persons performing functions and procedures as advanced registered nurse practitioners for which they lack adequate education~~, training~~ and qualifications and which authorizes advanced registered nurse practitioners to perform acts generally recognized by the profession of nursing as capable of being performed, in a manner consistent with the public health and safety, by persons with postbasic education in nursing. In defining such ~~expanded~~ role the board shall consider: (A) The ~~training and~~ education required for a certificate of qualification as an advanced registered nurse practitioner; (B) the type of nursing practice and preparation in specialized practitioner skills involved in each category of advanced registered nurse practitioner established by the board; (C) the scope of practice of nursing specialties and limitations thereon prescribed by national organizations which certify nursing specialties; and (D) acts recognized by the nursing profession as appropriate to be performed by persons with postbasic education ~~and training~~ in nursing.

(d) An advanced registered nurse practitioner may ~~not~~ prescribe drugs ~~but may transmit prescription orders~~ pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced registered nurse practitioner is authorized to ~~transmit prescription orders~~ *prescribe* and shall specify all drugs which may be ~~transmitted~~ *prescribed* by the advanced registered nurse practitioner. **Any written prescription order shall include the name, address and telephone number of the responsible physician.** *The advanced registered nurse practitioner may not dispense drugs, but may request, receive and sign for professional samples and may distribute professional samples to patients* **pursuant to a written protocol as authorized by a responsible physician**. *In order to prescribe controlled substances, the advanced registered nurse practitioner shall (1) register with the federal drug enforcement administration; and (2) notify the board of the name and address of the responsible physician or physicians.* In no case shall the scope of authority of the advanced registered nurse practitioner exceed the normal and customary practice of the responsible physician. An advanced registered nurse practitioner certified in the category of registered nurse anesthetist while functioning as a registered nurse anesthetist under K.S.A. 65-1151 to 65-1164, inclusive, and amendments thereto, shall be subject to the provisions of K.S.A. 65-1151 to 65-

1164, inclusive, and amendments thereto, with respect to ~~medications~~ *drugs* and anesthetic agents and shall not be subject to the provisions of this subsection. For the purposes of this subsection, "responsible physician" means a person licensed to practice medicine and surgery *in Kansas* who has accepted responsibility for the protocol and the actions of the advanced registered nurse practitioner ~~involving the transmitting of prescription orders~~ *when prescribing drugs*.

(e) As used in this section, "drug" means those articles and substances defined as drugs in K.S.A. 1998 Supp. 65-1626 and 65-4101 and amendments thereto.

Sec. 2. K.S.A. 1998 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner, or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(g) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(h) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner.

(i) "Dispenser" means a practitioner or pharmacist who dispenses

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prescription medication.

(j) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(k) "Distributor" means a person who distributes a drug.

(l) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, as defined in K.S.A. 47-501 and amendments thereto, if such livestock remedy has been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated.

(m) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(n) "Generic name" means the established chemical name or official name of a drug or drug product.

(o) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the Kansas code for care of children and the Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas; or

(D) employees of a business or other employer.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(p) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for

the mentally retarded.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(r) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(s) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(t) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(u) "Pharmacy," "drug store" or "apothecary" means 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; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "℞" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the

address for which the registration was issued.

(v) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(w) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(x) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(y) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(z) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(aa) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(bb) "Prescription-only drug" means any drug required by the federal or state food, drug and cosmetic act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription."

(cc) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner **or a mid-level practitioner** in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner.

(dd) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(ee) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross

negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(ff) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a drug the label of which is required to bear substantially the statement "Caution: Federal law prohibits dispensing without prescription"; or (3) a drug intended for human use by hypodermic injection.

(gg) "Secretary" means the executive secretary of the board.

(hh) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654 and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

(ii) "~~Midlevel~~ **Mid-level** *practitioner" means ~~a practitioner other than those defined in K.S.A. 1998 Supp. 65-1626 and 65-4101, and amendments thereto,~~* **an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto** *who has authority to prescribe drugs pursuant to written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto.*

Sec. 3. K.S.A. 1998 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation,

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or a physician's assistant registered pursuant to K.S.A. 65-2896a and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-2896e and amendments thereto

ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy.

(d) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner or pharmacist who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means: (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

(m) "Immediate precursor" means a substance which the board has

found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a controlled substance: (1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) "Marijuana" means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis: (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation

thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102 and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species *Papaver somniferum l.* except its seeds.

(s) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(t) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(u) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "Ultimate user" means a person who lawfully possesses a controlled substance for such person's own use or for the use of a member of such person's household or for administering to an animal owned by such person or by a member of such person's household.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Medical care facility" shall have the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto.

(aa) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(bb) (1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto; and:

(A) Which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled

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substance included in the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto; or

(B) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption; or

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(cc) "~~Midlevel~~ **Mid-level** *practitioner" means a ~~practitioner other than those defined in 1998 Supp. 65-1626 and 65-4101,~~* **an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131** *and amendments thereto, who has authority to prescribe drugs pursuant to written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto.*

[Sec. 4. K.S.A. 65-1130 and K.S.A. 1998 Supp. 65-1626 and 65-4101 are hereby repealed.]

Sec. [5]. This act shall take effect and be in force from and after its publication in the statute book.

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or a physician's assistant registered pursuant to K.S.A. 65-2896a and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-2896e and amendments thereto

See attached

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Sec. 4. K.S.A. 1998 Supp. 65-1627 is hereby amended to read as follows: 65-1627. (a) The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that:

(1) The license was obtained by fraudulent means;

(2) the licensee has been convicted of a felony and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

(3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;

(4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act;

(6) the licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner or a mid-level practitioner;

(7) the licensee is found to be mentally or physically incapacitated to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(8) the licensee has violated any of the provisions of the

pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act;

(9) the licensee has failed to comply with the requirements of the board relating to the continuing education of pharmacists;

(10) the licensee as a pharmacist in charge or consultant pharmacist under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto has failed to comply with the requirements of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto;

(11) the licensee has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement;

(12) the licensee has had a license to practice pharmacy revoked, suspended or limited, has been censured or has had other disciplinary action taken, or voluntarily surrendered the license after formal proceedings have been commenced, or has had an application for license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof; ~~or~~

(13) the licensee has self-administered any controlled substance without a practitioner's prescription order~~.~~ or a mid-level practitioner's prescription order; or

(14) the licensee has assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of

guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 1998 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 1998 Supp. 60-4405 and amendments thereto.

(b) In determining whether or not the licensee has violated subsection (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion of such violation has authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate. To determine whether reasonable suspicion of such violation exists, the investigative information shall be presented to the board as a whole. Information submitted to the board as a whole and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of pharmacy with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice pharmacy and who shall accept the privilege to practice pharmacy in this state by so practicing or by the making and filing of a renewal application to practice pharmacy in this state shall be deemed to have consented to submit to a

mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(c) The board may suspend, revoke, place in a probationary status or deny a renewal of any retail dealer's permit issued by the board when information in possession of the board discloses that such operations for which the permit was issued are not being conducted according to law or the rules and regulations of the board.

(d) The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that: (1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; (2) the owner or any pharmacist employed at such pharmacy is convicted, subsequent to such owner's acquisition of or such employee's employment at such pharmacy, of a violation of the pharmacy act or uniform controlled substances act of the state of Kansas, or the federal

or state food, drug and cosmetic act; (3) the owner or any pharmacist employed by such pharmacy has fraudulently claimed money for pharmaceutical services; or (4) the registrant has had a registration revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for registration denied, by the proper registering authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(e) A registration to manufacture or to distribute at wholesale a drug or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent: (1) Has materially falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas; (2) has been convicted of a felony under any federal or state law relating to the manufacture or distribution of drugs; (3) has had any federal registration for the manufacture or distribution of drugs suspended or revoked; (4) has refused to permit the board or its duly authorized agents to inspect the registrant's establishment in accordance with the provisions of K.S.A. 65-1629 and amendments thereto; (5) has failed to keep, or has failed to file with the board or has falsified records required to be kept or filed by the provisions of the pharmacy act of the state of Kansas or by the board's rules and regulations; or (6) has violated the pharmacy act of the state of Kansas or rules and regulations

adopted by the state board of pharmacy under the pharmacy act of the state of Kansas or has violated the uniform controlled substances act or rules and regulations adopted by the state board of pharmacy under the uniform controlled substances act.

(f) Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

Sec. 5. K.S.A. 1998 Supp. 65-1643 is hereby amended to read as follows: 65-1643. On and after the effective date of this act, it shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board: (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued

to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are

to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection (f), 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 authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a drug product the label of which is required to bear substantially the statement: "Caution: Federal law prohibits dispensing without prescription"; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection (u) of K.S.A. 65-1626 and amendments thereto, for the designation of

a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a and amendments thereto and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of $25 to the board.

Sec. 6. K.S.A. 1998 Supp. 65-2896e is hereby amended to read as follows: 65-2896e. (a) A person whose name has been entered on the register of physicians' assistants may perform, only under the direction and supervision of a physician, acts which constitute the practice of medicine and surgery to the extent and in the manner authorized by the physician responsible for the physician's assistant and only to the extent such acts are consistent with rules and regulations adopted by the board which relate to acts performed by a physician's assistant under the responsible physician's direction and supervision. A physician's assistant may ~~not~~ prescribe drugs ~~but may transmit a prescription order for drugs~~ pursuant to a written protocol as authorized by the responsible physician. Before a physician's assistant shall perform under the direction and supervision of a physician, such physician's assistant shall be identified to the patient and

others involved in providing the patient services as a physician's assistant to the responsible physician. A physician's assistant may not perform any act or procedure performed in the practice of optometry except as provided in K.S.A. 65-1508 and 65-2887 and amendments thereto.

(b) The board shall adopt rules and regulations governing the ~~transmitting of prescription orders for~~ prescribing of drugs by physicians' assistants and the responsibilities of the responsible physician with respect thereto. Such rules and regulations shall establish such conditions and limitations as the board determines to be necessary to protect the public health and safety. In developing rules and regulations relating to the ~~transmitting of prescription orders for~~ prescribing of drugs by physicians' assistants, the board shall take into consideration the amount of training and capabilities of physicians' assistants, the different practice settings in which physicians' assistants and responsible physicians practice, the degree of direction and supervision to be provided by a responsible physician and the needs of the geographic area of the state in which the physician's assistant and the responsible physician practice. In all cases in which a physician's assistant is authorized to ~~transmit prescription orders for~~ prescribe drugs by a responsible physician, a written protocol between the responsible physician and the physician's assistant containing the essential terms of such authorization shall be in effect. Any written prescription order shall include the name, address and telephone number of the responsible physician. In no case shall the scope of the authority of the physician's assistant to

~~transmit prescription orders for~~ prescribe drugs exceed the normal and customary practice of the responsible physician in the prescribing of drugs.

(c) The physician's assistant may not dispense drugs, but may request, receive and sign for professional samples and may distribute professional samples to patients pursuant to a written protocol as authorized by the responsible physician. In order to prescribe controlled substances, the physician's assistant shall register with the federal drug enforcement administration.

(d) As used in this section, "drug" means those articles and substances defined as drugs in K.S.A. 65-1626 and 65-4101 and amendments thereto.

Sec. 7. K.S.A. 65-4116 is hereby amended to read as follows: 65-4116. (a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state shall obtain annually a registration issued by the board in accordance with the uniform controlled substances act and with rules and regulations adopted by the board.

(b) Persons registered by the board under this act to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this act.

(c) The following persons need not register and may lawfully possess controlled substances under this act, as specified in

this subsection:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of such agent or employee's business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or a mid-level practitioner or in lawful possession of a schedule V substance;

(4) persons licensed and registered by the board under the provisions of the acts contained in article 16 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, to manufacture, dispense or distribute drugs are considered to be in compliance with the registration provision of the uniform controlled substances act without additional proceedings before the board or the payment of additional fees, except that manufacturers and distributors shall complete and file the application form required under the uniform controlled substances act;

(5) any person licensed by the state board of healing arts;

(6) any person licensed by the state board of veterinary examiners;

(7) any person licensed by the Kansas dental board; ~~and~~

(8) a mid-level practitioner; and

~~(8)~~ (9) any person who is a member of the Native American

Church, with respect to use or possession of peyote, whose use or possession of peyote is in, or for use in, bona fide religious ceremonies of the Native American Church, but nothing in this paragraph shall authorize the use or possession of peyote in any place used for the confinement or housing of persons arrested, charged or convicted of criminal offenses or in the state security hospital.

(d) The board may waive by rules and regulations the requirement for registration of certain manufacturers, distributors or dispensers if the board finds it consistent with the public health and safety, except that licensure of any person by the state board of healing arts, Kansas dental board or the state board of veterinary examiners shall constitute compliance with the registration requirements of the uniform controlled substances act by such person for such person's place of professional practice. Evidence of abuse as determined by the board relating to a person licensed by the state board of healing arts shall be submitted to the state board of healing arts and the attorney general within 60 days. The state board of healing arts shall, within 60 days, make findings of fact and take such action against such person as it deems necessary. All findings of fact and any action taken shall be reported by the state board of healing arts to the board of pharmacy and the attorney general. Evidence of abuse as determined by the board relating to a person licensed by the state board of veterinary examiners shall be submitted to the state board of veterinary examiners and the attorney general within 60 days. The state board of veterinary examiners shall, within 60 days, make findings of fact and take

such action against such person as it deems necessary. All findings of fact and any action taken shall be reported by the state board of veterinary examiners to the board of pharmacy and the attorney general. Evidence of abuse as determined by the board relating to a dentist licensed by the Kansas dental board shall be submitted to the Kansas dental board and the attorney general within 60 days. The Kansas dental board shall, within 60 days, make findings of fact and take such action against such dentist as it deems necessary. All findings of fact and any action taken shall be reported by the Kansas dental board to the board of pharmacy and the attorney general.

(e) A separate annual registration is required at each place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules and regulations.

(g) (1) The registration of any person or location shall terminate when such person or authorized representative of a location dies, ceases legal existence, discontinues business or professional practice or changes the location as shown on the certificate of registration. Any registrant who ceases legal existence, discontinues business or professional practice, or changes location as shown on the certificate of registration, shall notify the board promptly of such fact and forthwith deliver the certificate of registration directly to the secretary or executive secretary of the board. In the event of a change in name or mailing address the person or authorized representative

of the location shall notify the board promptly in advance of the effective date of this change by filing the change of name or mailing address with the board. This change shall be noted on the original application on file with the board.

(2) No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the board may specifically designate and then only pursuant to the written consent of the board.

Sec. 8. K.S.A. 65-4123 is hereby amended to read as follows: 65-4123. (a) Except as otherwise provided in K.S.A. 65-4117 and amendments thereto or in this subsection (a), no schedule I controlled substance may be dispensed. The board by rules and regulations may designate in accordance with the provisions of this subsection (a) a schedule I controlled substance as a schedule I designated prescription substance. A schedule I controlled substance designated as a schedule I designated prescription substance may be dispensed only upon the written prescription of a practitioner. Prior to designating a schedule I controlled substance as a schedule I designated prescription substance, the board shall find: (1) That the schedule I controlled substance has an accepted medical use in treatment in the United States; (2) that the public health will benefit by the designation of the substance as a schedule I designated prescription substance; and (3) that the substance may be sold lawfully under federal law pursuant to a prescription. No prescription for a schedule I designated prescription substance may be refilled.

(b) Except when dispensed by a practitioner, other than a

pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner or a mid-level practitioner. In emergency situations, as defined by rules and regulations of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner or a mid-level practitioner reduced promptly to writing and filed by the pharmacy. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV which is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner or a mid-level practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times.

(d) A controlled substance shall not be distributed or dispensed other than for a medical purpose. Prescriptions shall be retained in conformity with the requirements of K.S.A. 65-4121 and amendments thereto.

Sec. 9. K.S.A. 1998 Supp. 65-4134 is hereby amended to read as follows: 65-4134. A practitioner engaged in medical practice or research or a mid-level practitioner acting in the usual course of such mid-level practitioner's practice is not required or compelled to furnish the name or identity of a patient or research subject to the board, nor may ~~he~~ such practitioner or mid-level practitioner be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the

practitioner or mid-level practitioner is obligated to keep confidential.

Sec. 10. K.S.A. 65-1130, 65-2896e, 65-4116, 65-4123 and 65-4134 and K.S.A. 1998 Supp. 65-1626, 65-1627, 65-1643 and 65-4101 are hereby repealed.