Approved: March 16, 2005
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:30 P.M. on March 7, 2005 in Room 231-N of the Capitol.

All members were present except:
Nick Jordan- excused
Susan Wagle- excused

Committee staff present:
Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Whitney Nordstrom, Committee Secretary

Conferees appearing before the committee:
Representative Annie Kuether
Ward Cook, American Cancer Society
Lynne Schlosser, Director of Government Relations, American Cancer Society
Kansas Trial Lawyers Associaion
Debra Billingsly, Kansas Board of Pharmacy
Stanley Langhofer, Kansas Dialysis Services
Brad Stuewe, M.D.

Others attending:
See attached list.

Hearing on HB 2077

HB 2077– Establishing a cancer drug repository program

Upon calling the meeting to order Chairperson Barnett announced there would be a hearing on **HB 2077**, an act concerning the state board of pharmacy, establishing a cancer drug repository program, but first called upon Emalene Correll, Legislative Research Department, to give a brief overview of the bill.

The Chair asked for questions and/or comments from the Committee. Senators V. Schmidt and Palmer asked questions ranging from whether the above bill is including Schedule 2,3,4,5 drugs, is "unit dosage" in statutes and is the liability on page 3 normal liability.

As there were no further questions for Ms. Correll, Chairperson Barnett called upon the first proponent conferee to testify. Representative Annie Kuether stated that after her husband passed way of cancer, her only choice was to dispose shelves filled with medication. She also stated there are 18 such programs in the nation at this time. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chair thanked Representative Kuether for her testimony and asked the Committee for any questions and/or comments.

Senators Palmer and Haley asked questions ranging from what problems occurred on the House side last year when this bill was introduced, and were there any question from the House this year concerning this bill.

As there were no further questions for Representative Kuether the Chair called upon the second proponent conferee to testify. Ward Cook with the American Cancer Society presented written testimony from Lynn Schlosser, Director of Government Relations for the American Cancer Society. Her testimony included that the idea for this legislation first surfaced in Ohio. Her testimony also included that this bill is good politics, it is good for Kansas, and it will not only save the state dollars, but it will save lives. A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

As there were no questions for the American Cancer Society, Chairperson Barnett called the Committee's attention to the neutral written testimony submitted by the Kansas Trial Lawyers Association. A copy of their testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there were no further questions and/or comments the Chair closed the hearing on **HB 2077**.

Hearing on HB 2156

HB 2156– Pharmacy technicians, registration of

The next order of business was a hearing on **HB 2156**, an act concerning the state board of pharmacy; regarding registration of pharmacy technicians; amending K.S.A. 2004 Supp. 65-1663 and repealing the existing section. Chairperson Barnett first called upon Emalene Correll, Legislative Research Department, to give a brief overview of the bill.

As there were no questions and/or comments for Ms. Correll, the Chair called upon the first proponent conferee to testify. Debra Billingsley, Executive Director of the Kansas Board of Pharmacy, stated the Board has only issued pharmacy technician registrations for approximately four months and we have had at least six cases filed regarding diversion of drugs from the registrant's employer. The Attorney General advised the Board that we need language authorizing limitations, suspensions and revocations before we can take any such action. The Board would respectfully request that this additional authority be given to the Board of Pharmacy as it relates to pharmacy technicians. A copy of her testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

Chairperson Barnett asked the Committee for any questions and/or comments.

Senator V. Schmidt commented on the importance of getting this bill out of Committee as soon as possible.

Senator Palmer asks if criminal charges are brought in such cases.

Senator V. Schmidt motioned to amend the legislation that the effective date of the bill be changed from statute book to Kansas register and be passed favorably. Senator Palmer seconded motion. Motion Passed.

Hearing on HB 2225

HB 2225– Renal dialysis facility pharmacist consultant

The next order of business was a hearing on **HB 2225**, an act concerning pharmacists; relating to renal dialysis facility pharmacist consultants; amending K.S.A. 65-1661 and repealing the existing section. Chairperson Barnett first called upon Emalene Correll, Legislative Research Department, to give a brief overview of the bill.

As there were no questions and/or comments for Ms. Correll, the Chair called upon the first proponent conferee to testify. Debra Billingsley, Executive Director of the Kansas Board of Pharmacy, stated that the Board is asking that the provision mandating that the Board provide a pharmacists consultant, make arrangements, or assist the facility in locating a pharmacist consultant be deleted. A copy of her testimony is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

As there were no questions and/or comments for Ms. Billingsley, Chairperson Barnett called upon the first opponent conferee to testify. Stan Langhofer, Kansas Dialysis Services, stated that it is our studied opinion that the entire Article 16 regarding "Regulation of Pharmacists" should be replaced. The medication administered at the dialysis clinics are done so under the medical order of our nephrologists. Home dialysis patients (which account for 10% of all patients tend to be in rural areas with limited access

to dialysis clinics) are taught to administer their medicines at home in a way similar to diabetics using insulin. The primary medicine administered is Epogen that helps patients make red blood cells and feel more energetic. A copy of his testimony is (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

The Chair asks the Committee for questions and/or comments.

Senator V. Schmidt asks how many states require such legislation. Emalene Correll asks if Pharmacy Board has received any complaints concerning renal dialysis. Senator Palmer asks how current legislation has impacted the Kansas Dialysis Services. Senator Journey asks what sections does Dr. Langhofer specifically want repealed.

As there were no further questions and/or comments Chairperson Barnett calls the Committee's attention to the written testimony submitted by Brad Stuewe, M.D.. A copy of his testimony is (Attachment 7) attached hereto and incorporated into the Minutes as referenced.

As there were no further questions and/or comments the Chair closed the hearing on **HB 2225**.

Adjournment

As there was no further business, the meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for Tuesday, March 8, 2005.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: March 7, 2025

NAME	REPRESENTING
Debra Billingsley	Bd of Pharmacy
Ward Cook	American Cancer Society
Jace Smith	American Cancer Society
Callie Denton	KTLA
Stan Langhofer	Kansas Dialysis Services
Bill Sneed	Merck
John Kieffaber	Ks. Pharmacists Assn.

STATE OF KANSAS

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(SESSION ONLY)

TOPEKA

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March 7, 2005

Chairman Barnett and Committee Members:

Thank you for allowing me to speak with you today, regarding a subject that is near and dear to my heart.

As some of you may know, my husband, John Kuether died in 1999 – of lung cancer. He died on the day I was to be sworn in to begin my second term as a member of the Kansas House of Representatives.

Several weeks after John died, I opened the door to my bathroom closet. Staring back at me were shelves filled with medication that he had been taking. Some of that medication cost over $1,000 a piece! I had nothing that I could do with it. My only choice was to dispose of all of it. And that's when the idea occurred to me... this wasn't right, that there must be something that we can do! There must be a way to get medication to people who can use it.

House Bill 2077 would enact a new law requiring the Board of Pharmacy to establish a cancer drug repository program that would provide donated cancer drugs to cancer patients. There are 18 such programs in the Nation.

I am going to let others testify as to the specifics of this bill. I simply ask for your support of HB 2077.

Thank you,

Annie Kuether

Senate Public Health & Welfare
3-7-05
Attachment #1

FAX: (785) 296-0251 E-MAIL: KUET@AOL.COM

March 7, 2005

House Bill 2077 - Cancer Drug Repository Program

Mr Chairman and members of the Committee, my name is Lynne Schlosser and I am the Director of Government Relations for the American Cancer Society. I will be brief in my comments as I think the bill really says it all.

Each year, millions on dollars of usable medications are being thrown away in our Health Care Facilities and Nursir Homes while thousands of Kansans do not have access to needed medications. The Establishment of a Cancer Drug Repository Program can provide medications to Kansans that would not other wise have be able to attain live saving drugs.

The idea for this legislation first surfaced in Ohio. A volunteer of the American Cancer Society's wife had lost her fi with cancer and he had $10,000 worth of perceptions he had just refilled. He took the drugs to his local pharmacist hopes that he could give them to someone else but instead, the pharmacist helped him to flush the medications do the toilet. He was devastated and decided he needed to find away to reuse individually bubble wrapped medicatior to benefit those in need, and the idea of a drug repository was born. I believe 18 other state have now followed sui with Ohio and passed similar legislation.

This bill is good politics, it is good for Kansas, and it will not only save the state dollars, but it will save lives.

Thank you.

Senate Public Health & Welfare
3-7-05
Attachment #2

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Chairman Barnett and Members of the Senate Public Health and Welfare Committee

From: Callie Jill Denton for the Kansas Trial Lawyers Association

Date: March 7, 2005

Re: **HB 2077**

The Kansas Trial Lawyers Association is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to present written testimony on HB 2077.

KTLA supports the good intentions behind HB 2077 but opposed the bill during the House hearing due to questions regarding the immunity provisions. HB 2077 gives immunity to those who, in good faith, donate, accept, or dispense cancer medications and insulates them from criminal and civil suits as well as professional disciplinary action. KTLA's primary concern was whether the language could be interpreted to provide immunity to a drug manufacturer in a product liability suit where the defect in the product was unrelated to the donation of the drug to the repository program. In such a situation, Kansans that received donated medications through the cancer drug repository and were harmed because the medication was defective would not be able to seek recovery of their damages, while Kansans that had paid for or were insured for the same medications would have had a cause of action against the drug manufacturer. We believe this would have been an unfair and unintended result of the immunity provisions in HB 2077.

The House Committee on Health and Human Services discussed this issue and the staff revisor to the committee advised the committee that the provisions would not extend immunity to drug manufacturers where the medication is defective and the defect is unrelated to the donation of the drug to the repository program. Given this clarification, our questions and concerns with HB 2077 are resolved.

We appreciate the opportunity to provide you with comments on HB 2077.

Senate Public Health & Welfare
3-7-05
Attachment #3

Terry Humphrey, Executive Director

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw @ ink.org

KANSAS
KANSAS BOARD OF PHARMACY
DEBRA BILLINGSLEY, EXECUTIVE DIRECTOR
KATHLEEN SEBELIUS, GOVERNOR

Testimony concerning HB 2156: registration of pharmacy technicians
Senate Public Health and Welfare Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
March 7, 2005

Mr. Chairman, Members of the Committee:

My name is Debra Billingsley and I am the Executive Secretary of the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom are appointed by the Governor. The Board is responsible for registering pharmacy technicians in the State of Kansas pursuant to K.S.A. 65-1663.

On October 30, 2004, the Board of Pharmacy began to register all pharmacy technicians in Kansas. Subsection (f)(1) of K.S.A. 65-1663 provides that the Board may deny an application for issuance or renewal of any pharmacy technician registration. Subsection (3) also grants the Board the authority to temporarily suspend or temporarily limit the technician registration in accordance with emergency proceedings under the Kansas administrative procedure act, if there is cause to believe that the pharmacy technician's registration would constitute a danger to the public. The statute did not give the board the authority to limit, or revoke a registration other than to provide for temporary suspension under an emergency proceeding.

The Board has only issued pharmacy technician registrations for approximately four months and we have had at least six cases filed regarding diversion of drugs from the registrant's employer. Due to limitations in the statute the Board is required to file an emergency suspension order and to provide a hearing. The most the Board can do to the technician is temporarily suspend the registration. The Attorney General advised the Board that we need language authorizing limitations, suspensions and revocations before we can take any such action.

The Board of Pharmacy takes drug diversion very seriously. These are cases that would warrant a revocation of a registration. If a technician is diverting drugs from his/her employer than we would want to take the most appropriate action available for the safety of the public. This would also provide protection to other states should an individual seek employment across the state lines.

The Board would respectfully request that this additional authority to be given to the Board of Pharmacy as it relates to pharmacy technicians.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Senate Public Health & Welfare
3-7-05 Attachment #4

LANDON STATE OFFICE BUILDING, 900 SW JACKSON ST, ROOM 560, TOPEKA, KS 66612-1231
Voice 785-296-4056 Fax 785-296-8420 http://www.accesskansas.org/pharmacy/

KANSAS
KANSAS BOARD OF PHARMACY
DEBRA BILLINGSLEY, EXECUTIVE DIRECTOR
KATHLEEN SEBELIUS, GOVERNOR

Testimony concerning HB 2225: renal dialysis facility pharmacist consultant
Public Health and Welfare Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
March 7, 2005

Chairman Barnett, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom are appointed by the Governor. The Board is responsible for regulating the sale and quality of drugs, medicines, chemicals and poisons in the State of Kansas.

The Board has been relegated with the authority to license medicare approved renal dialysis facility pharmacies, pursuant to K.S.A. 65-1661. These facilities may be operated in a variety of ways. Patients may receive treatment at the facility or they may be sent home with drugs. Therefore, the renal dialysis facility stores prescription drugs for patient administration.

The Board of Pharmacy's mission is to promote, preserve, and protect the public health, safety, and welfare regarding the drug delivery system. The Board is asking that the provision mandating that the Board provide a pharmacist consultant, make arrangements, or assist the facility in locating a pharmacist consultant be deleted. This should not be a function of the State Board of Pharmacy. We are not staffed or funded to provide this type of assistance. Further, this language could imply that the Board staff a dialysis facility at our expense. The Board is not required to assist any other licensed entity, regardless of its profit or not for profit status and likewise the Board should not be required to assist renal dialysis facilities in this manner. The Board regards this duty as a function that should be assigned to an appropriate and proper employment agency. Therefore, we respectfully request that this statute be amended deleting the requirement that the Board assist renal dialysis pharmacies in what is viewed as an economic issue and not one related to safety.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Senate Public Health & Welfare
3-7-05
Attachment #5

LANDON STATE OFFICE BUILDING, 900 SW JACKSON ST, ROOM 560, TOPEKA, KS 66612-1231
Voice 785-296-4056 Fax 785-296-8420 http://www.accesskansas.org/pharmacy/

Testimony concerning HB 2225: renal dialysis facility pharmacy consultant
Senate Public Health and Welfare Committee
Presented by Stan Langhofer
On behalf of Kansas Dialysis Services
March 7, 2005

Mr. Chairman and Members of the Committee:

My name is Stanley Langhofer and I am the nursing administrator of Kansas Dialysis Services (KDS). KDS is a provider of kidney dialysis treatments for patients in Northeast Kansas with clinics in Topeka, Lawrence, Manhattan, Ottawa and Sabetha.

There are more than 1,800 dialysis patients in Kansas and there are 42 free standing kidney dialysis facilities that are Medicare approved and have Medicare contracts with the State Department of Health and Environment. I have visited with representatives of each of these facilities to discuss HB 2225 and they all support my comments today.

We applaud the initiative of the State Board of Pharmacy to clean up its governing statues, but do not believe that HB 2225 goes far enough. HB 2225 amends KSA 65-1661 by merely eliminating the requirement that the State Board of Pharmacy provide a pharmacist consultant.

It is our studied opinion that the entire Article 16 regarding "Regulation of Pharmacists" should be repealed.

Section 65-1661 [a] of this Article requires that dialysis facilities register with the Board of Pharmacy as a renal dialysis facility pharmacy in accordance procedures established by the Board. And, of course, authorizes the Board to collect such fees that are applicable to the registration of any regular pharmacy.

To our knowledge, the Board has wisely never promulgated regulations to implement sub-Section [a]. The State Department of Health and the Environment inspects all dialysis facilities and they use federal regulations that do not require dialysis facilities to have pharmacists and they cover more than 300,000 patients nationally. They do, however, require that we have nurses, dieticians, social workers, nephrologists and medical directors to oversee patient care and all of these individuals are integrally involved with our facilities.

Section 65-1661 [b] requires that any such renal dialysis facility pharmacy shall be supervised by a pharmacist consultant who will act as the pharmacist in charge. The remainder of [b] is the language the Board is seeking to have repealed.

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3-7-05
Attachment #6

This requirement, in our view, adds unneeded expenses to dialysis facilities that are struggling to provide care to Medicare and Medicaid patients amidst shrinking reimbursement. For example; State of Kansas Medicaid currently pays $100 for a 4 hour dialysis treatment while our costs are significantly more than that [$124.40 to $164.42 for our KDS facilities].

This problem has been worsening and to add expense now would be economically devastating for dialysis patients as well as dialysis providers. Due to the economics that we face, KDS has not opened a new dialysis facility in 6 years although we have been asked to repeatedly to do so. Rural access to kidney dialysis treatment is already severely limited and, if this or any Board wishes to implement this aspect of the law, would make this situation even worse

In addition, there is the matter of supply when it comes to many health care professions, particularly pharmacists. With the baby boomers aging, there is a national shortage of pharmacists. Given the laws of supply and demand, it would be difficult to recruit pharmacists for these consultant jobs and we would have to pay a premium for these positions.

Finally Section 65-1661 [c] allows medicare-approved renal dialysis facilities to be in compliance with the rules and regulations of the state Board of Pharmacy, except that the Board may adopt rules and regulations applicable to such pharmacy that establish labeling requirements for prescription medications delivered by such pharmacy.

Again here, the labeling issue is not needed. There have been no problems, to my knowledge, with medication labeling within dialysis facilities. My company, KDS administered many thousands of dialysis treatments without incident. I raised this issue with my peers as well and they reported similar experience. And of course, the State Department of Heath and Environment already conducts inspections.

Article 16 of KSA 65-1661 is an excellent example of layering on more levels of bureaucracy for no good reason. Again, we applaud the Kansas Board of Pharmacy for attempting to remove language that will clean up their statutes, and ask the Committee to not stop there, but to repeal Article 16 in its entirety.

In conclusion, the medications administered at the dialysis clinics are done so under the medical order of our nephrologists. Home dialysis patients [which account for 10% of all patients tend to be in rural areas with limited access to dialysis clinics] are taught to administer their medicines at home in a way similar to diabetics using insulin. The primary medicine administered is Epogen that helps patients make red blood cells and feel more energetic.

I thank you for your time and would be happy to answer any questions that you might have.

MOWERY CLINIC, L.L.C.

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(785) 827-7261

(7)

MOWERY MAIN
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MICHAEL K. LAWRENCE, MD

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RICHARD GOMENDOZA, MD

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BRAD R. STUEWE, MD

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SHASHI SHARMA, MD, FAAP.
GINGER SENSEMAN, MD, FAAP.

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Gastroenterology
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PAUL A. JOHNSON, MD
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JEFFREY B. KNOX, MD, FACOG.
JOEL E. PARRIOTT, MD, FACOG.
DAVID C. PRENDERGAST, MD, FACOG.

TAMMY WALKER CANCER CENTER
Internal Medicine/Medical Oncology
W.F. CATHCART-RAKE, MD, FACP.

Hematology/Medical Oncology
LARRY K. BECK, MD

Business Administration
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March 3, 2005

Senator Jim Barnett
Public Health and Welfare Committee
State Office Building
Topeka, KS 66612

Dear Senator Barnett:

I spoke with our local senator, Senator Pete Brungardt today about action pending on House Bill #2225. I would very much like the committee to consider further information.

Currently, the present statute KSA 65-1661 requires pharmaceutical consultation for a certified renal dialysis facility. Under current law, if such a pharmacist is not available on staff, then this would be supplied by the pharmacy board.

The proposed changes resulting in House Bill #2225 leaves the law the same but essentially changes this from a "funded mandate" to an "unfunded mandate".

Dialysis facilities use a very small number of medications. These are almost all intravenous medications that carry with them no potential for abuse. Renal dialysis facilities are monitored by a number of organizations with both state and federal mandates. The requirement of obtaining a consulting pharmacist will add a significant cost to an already burdened industry to solve no problems that I know of. In fact, if problems do exist, I think these can be monitored and corrected within other monitoring organizations and other monitoring processes, without engendering this kind of cost.

I know of no dialysis facility that currently consults with a pharmacist to supervise a "registered dialysis facility pharmacy".

Again, the drugs that we have in stock are drugs that are used solely by dialysis patients.

To me, the most rational choice would be to repeal the entire bill 65-1661 and not place any burden on dialysis facilities to obtain a pharmaceutical consultation. If problems exist or if concerns exist about the management of these pharmaceuticals within the confines of a dialysis facility, then these responsibilities should be able to be adequately addressed through other

Senate Public Health & Welfare
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monitoring activities.

I am very appreciable of your kind consideration in this matter.

Sincerely,

Brad R. Stuewe, M.D.

BRS/CD