

Approved: February 21, 2008

Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:45 P.M. on February 19, 2008, in Room 526-S of the Capitol.

All members were present except Representatives Kelley, McLeland, Tafanelli, Wilk, Holland, Mah, and Trimmer, all of whom were excused.

Committee staff present:

Mary Galligan, Kansas Legislative Research Department
Jennifer Thierer, Kansas Legislative Research Department
Rena Jefferies, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees appearing before the committee:

Debra Billingsley, Executive Secretary, Kansas State Board of Pharmacy

Others attending:

See attached list.

The Chair welcomed Debra Billingsley, Executive Secretary, Kansas State Board of Pharmacy, who recounted the Board's experience of trying to shut down the Red Mesa Pharmacy in Wichita, an Internet pharmacy selling controlled substances without prescriptions (Attachment 1). She said the Board discovered that K.S.A. 65-1627 allows the Board immediate emergency powers to shut down a "licensee," but not a "registrant." The pharmacy itself is a "registrant," requiring the Board to file for a formal hearing. She said that the Board obtained help from the DEA (Drug Enforcement Administration), which conducted a raid and was able to close the pharmacy.

Members queried Ms. Billingsley extensively regarding issues raised by the experience, to which she replied:

- Chain pharmacies must obtain a separate license for each store.
- There is no statutory authority that a physician-patient relationship must exist before a prescription is written.
- There are few statutory references to the Internet.
- The Board requires a Kansas license for any pharmacist writing a prescription for a Kansas resident, regardless of where the pharmacist lives.
- The DEA is opposed to electronic prescriptions for controlled substances, but Medicare is moving in that direction.
- The Board has no authority over insurance policies regarding prescriptions.
- The prescription-drug monitoring program will assist in tracking pharmacists and prescriptions when it is deployed in a year or two. The cost will be about \$350,000 and a bill addressing the issue is presently in the Kansas Senate.
- The Board can cross-reference information regarding pharmacists, but not physicians.
- A pharmacist who wants to be licensed in Kansas but has had his/her license revoked in another state

CONTINUATION SHEET

MINUTES OF THE House Government Efficiency and Technology Committee at 3:45 P.M. on February 19, 2008, in Room 526-S of the Capitol.

must go back to his/her home state to regain a license.

A motion was made, seconded and passed to amend **HB 2207** with **Substitute for HB 2207** (Attachment 2).
(Motion, Representative Swenson; second, Representative Ruiz)

A motion was made, seconded and passed unanimously to recommend **Sub for HB 2207** as favorable for passage as amended. (Motion, Representative Loganbill; second, Representative Frownfelter)

The meeting was adjourned at 4:34 p.m. The next meeting is scheduled for Wednesday, February 20, 2008.

KANSAS

KANSAS BOARD OF PHARMACY
DEBRA BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

**Government Efficiency and Technology Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
February 19, 2008**

Mister Chairperson, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Thank you for permitting me to give additional testimony regarding some of the challenges that the Board of Pharmacy has had in the last few years.

The Board currently licenses and registers approximately 3,980 pharmacists, 836 pharmacies and over 400 non-resident pharmacies. The Pharmacy Act makes a distinction between licensees and registrants. Licensees are pharmacists and everyone else is considered a registrant.

In late 2006 the Board received a pharmacy application from a physician who planned to own and operate a pharmacy in Wichita. The pharmacy was Red Mesa Pharmacy. On its face the application looked legitimate and a license was issued. After the Board inspector conducted a couple of visits to the location it was apparent that there were some irregularities. The Board opened an investigation and discovered that the physician had been revoked of his medical license three times in Kansas and one time in Oklahoma. Further, we discovered that he had forged the name of a pharmacist on the application. The operation was strictly an Internet pharmacy and Dr. Wilbur Hilst was providing controlled substances to patients all over the United States without benefit of the patient having a lawful prescription.

The Board turned the case over to their attorney and asked for an Emergency Order. It was at that time that we were advised that K.S.A. 65-1627 permitted the Board to take emergency action against a "licensee" but not a "registrant". Upon further review of K.S.A. 65-1627 it was clear that we could not take emergency action against a pharmacy, a distributor, a manufacturer, or a retail dealer. We were then forced to file a Petition to Revoke and to take the long slow approach at shutting the pharmacy down.

The Board did turn this matter over to the Drug Enforcement Agency and they were able to go in and seize the controlled substances that were being dispensed. We provided the DEA with all of our information and they were able to file a case in US Federal Court. Dr. Wilbur Hilst entered a plea of guilty to conspiracy and a pharmacist and pharmacy technician were both convicted on Friday of conspiracy, and filling prescriptions unlawfully.

This was the first time the Board has had the issue of doing an emergency proceeding on a pharmacy. However, as Internet pharmacies are becoming more prevalent we feel that we need to have the ability to shut down illegal pharmacies immediately.

The statutes that need to be amended are K.S.A. 65-1627 (d), (e), and (f). If language could be added that grants authority to conduct an emergency proceeding in accordance with the Kansas Administrative Procedure Act that would benefit the Board of Pharmacy.

If you have any questions I would be happy to yield to questions.

Substitute for HOUSE BILL NO. 2207

By Committee on Government Efficiency and Technology

AN ACT concerning the Kansas board of pharmacy; authorizing emergency proceedings against permits and registrations; amending K.S.A. 2007 Supp. 65-1627 and repealing the existing section.

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

Section 1. K.S.A. 2007 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

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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;

(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. 60-4404 and amendments thereto.

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

(15) the licensee has failed to furnish the board, its investigators or its representatives any information legally requested by the board.

(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 temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action under subsection (a) against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) 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. When the board determines that action under this subsection requires the immediate protection of the public interest, the board shall conduct an emergency proceeding in accordance with K.S.A. 77-536, and amendments thereto, under the Kansas administrative procedure act.

(e) 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. When the board determines that action under this subsection requires the immediate protection of the public interest, the board shall conduct an emergency proceeding in accordance with K.S.A. 77-536, and amendments thereto, under the Kansas administrative procedure act.

(f) A registration to manufacture drugs, to distribute at wholesale a drug, to sell durable medical equipment 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. When the board determines that action under this subsection requires the immediate protection of the public interest, the board shall conduct an emergency proceeding in accordance with K.S.A. 77-536, and amendments thereto, under the Kansas administrative procedure act.

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

Sec. 2. K.S.A. 2007 Supp. 65-1627 is hereby repealed.

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