Approved: March 25, 2008
Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Brenda Landwehr at 1:55 P.M. on March 17, 2008 in Room 526-S of the Capitol.

All members were present except:
Representative Schroeder, Excused
Representative Shultz, Excused
Representative Colyer, Excused

Committee staff present:
Norman Furse, Revisor of Statutes Office
Dianne Rosell, Revisor of Statutes Office
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Chris Haug, Committee Assistant

Conferees appearing before the committee:
Robert Waller, Chief Administrator for the Kansas Board of Emergency Medical Services
Diane Glynn, J.D., R.N., Practice Specialist
Chad Austin, Vice President, Government Relations, Kansas Medical Society (KMS)
Sarah Tidwell, M.S.N., R.N. VP of the Kansas State Nurses Association (KSNA)
Tony Anno, BSN, R.N. St. Jude Medical
Dan Morin, Director of Public Affairs, Kansas Medical Society
Representative Gene Rardin

Others Attending:
See Attached List.

The hearing for **SB512 - Emergency medical services, attendant's certificate requirements** was opened.

Proponents:
Robert Waller, Chief Administrator for the Kansas Board of Emergency Medical Services (KBEMS) provided testimony in support of **SB512**. (Attachment1) The passage of **SB512** provides assurance to the general public that KBEMS has provided the appropriate screening of applicants and ensures KBEMS responsibility to public safety. There was a question on what was being struck. Mr. Waller will provide a balloon on exactly what he would like to have removed or changed. There was a question about whether there was a shortage of EMT's. Mr. Waller said 40% of EMT's are volunteer jobs. KBEMS is currently stable. He couldn't say it will be stable next year.

There was no additional testimony.

The hearing for **SB512** was closed.

The hearing for **SB107 - Fingerprinting and criminal history background checks for certain licensees of the board of nursing** was opened.

Proponents:
Dianne Glynn, J.D., R.N., Practice Specialist, Kansas State Board of Nursing spoke in support of **SB107**. (Attachment 2) Ms. Glynn provided testimony on behalf of the board members to provide support for this bill which will allow the Board of Nursing to ask an applicant for licensure to be fingerprinted and submit to a national and state criminal history record check.

There was discussion regarding the expungement of records in page 1, line 32 and 33. Ms. Glynn said it was important to see the pattern of convictions. There was additional discussion about if the law only allowed adult convictions, would it severely limit their ability to hire. Ms. Glynn said it would limit them, but not severely. There was a question about the pass through fund on line 34. Ms. Glynn said the money would not count against them for appropriations purposes. The committee has concerns about including juveniles.

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on March 17, 2008 in Room 526-S of the Capitol.

There was more discussion about KBI and FBI history records. The language is necessary to get the Federal records. The KBI will pass the fees onto the FBI. They do not get juvenile history with federal requests, only adult history. If the non-conviction language is struck, they would need to check with the KBI to insure the language wasn't required by the FBI. Dianne Rosell, Revisor of Statutes, said the background check and fingerprinting language from the gaming bill was, "magic language". The Feds place different requirements on different requests. Ms. Rosell provided a balloon on this bill. (Attachment 3) Ms. Rosell is doing additional research on adjudication.

Chad Austin, Vice President, Government Relations, Kansas Medical Society, spoke in favor of **SB 107.** (Attachment 4) They feel it is a good policy to have background checks on nurses.

Opponents:
Sarah Tidwell, M.S.N., R.N. Vice President of the Kansas State Nurses Association (KSNA) provided testimony against **SB107**. (Attachment 5) KSNA would like to amend line 32 and 33 and take off reference to juveniles and the expunged records. They would also like clarification of whether this language is needed by the FBI. There was discussion about the review committees and looking at convictions and expungement. Ms. Tidwell said she would not have looked at the arrest records as strongly as she would the conviction records.

Tony Anno, BSN, R.N., St. Jude Medical gave testimony against **SB107** (Attachment 6). Mr. Anno believes this is an intrusion on personal rights.

Dan Morin, Director of Governmental Affairs, Kansas Medical Society, did not have written testimony but wanted to speak on a possible amendment to this bill. **SB81-H Sub for S 0081 by Committee on Health and Human Services--Health reform act of 2008** was recently melded into **HB2620 -State board of healing arts, non-disciplinary resolutions.** This is currently in Senate Health Care Strategies. They have concerns about arrests and expungement. The selectivity part of the bill or choosing the Nurses bothered them. The burden of the cost on the license applicants also bothers them. There was discussion about whether the language still exists in the modified **HB2620** bill and it does. There was discussion about which titles currently need to be fingerprinted. Larry Buening, Executive Director, Board of Healing Arts, made a comment about this. Attorney's are required, people who work in day care, nursing homes and there are a few others. (No Written Testimony)

Written Testimony against the bill was provided by Julie Reyes, RN, Kansas City Kansas. (Attachment 7)

The hearing on **SB107** was closed.

The hearing on **HB2914 -Enacting the pharmaceutical manufacturing disclosure act** was opened.

Representative Gene Rardin, provided testimony in support of **HB2914.** (Attachment 8) This bill is designed to educate the consumer about the practices of pharmaceutical companies in working with their physicians. There was discussion on how this benefits the consumer. Representative Rardin said this helps the consumer by opening up the records and getting the information out there. Is marketing driving the high cost of pharmaceuticals? There was further discussion about whether the cost of research of drugs would need to be included and what the health benefit is. Representative Rardin said it is more of an economical benefit.

Written testimony in support of the bill was provided by Ernest Kutzley, Advocacy Directory for AARP, (Attachment 9) and John Cattelino (Attachment 10)

The hearing on **HB2914** was closed.

The meeting adjourned at 3:22 p.m. The next meeting was scheduled for March 18, 2008.

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE GUEST LIST

DATE: March 17, 2008

NAME	REPRESENTING
Sarah Tidwell	KSNA
JOHN C. BOTTENBERG	CVS/CAREMARK
Pat Hubbell	Pharma
Diane Gilpin	KSBN
MARK KNIGHT	KSBN
Judith HINER	KSBN
Mary Blubaugh	KSBN
Robert Waller	KBEMS
Jan Gaches	KIPSC
Tony Arro	KSNA
Barbara Belcher	Merck
Bill Sneed	MERCK
Carol A. Curtis	AstraZeneca
Chad Austin	KHA
Lindsey Douglas	Hein Law Firm

KANSAS

DENNIS ALLIN, M.D., CHAIR
ROBERT WALLER, CHIEF ADMINISTRATOR

KATHLEEN SEBELIUS, GOVERNOR

BOARD OF EMERGENCY MEDICAL SERVICES

Testimony

Date: March 17, 2008

To: House ~~Federal and State Affairs Committee~~ Health & Human Services Committee

From: Robert Waller, Chief Administrator

RE: 2008 Senate Bill 512

Madam Chairman Landwehr and members of the House Federal and State Affairs Committee, thank you for the opportunity to provide testimony on the Senate Bill 512/513, my name is Robert Waller and I am the Chief Administrator for the Kansas Board of Emergency Medical Services (KBEMS).

The mission of the Board of Emergency Medical Services is to ensure that quality out-of-hospital care is available throughout Kansas. This care is based on the optimal utilization of community resources that are consistent with the patient's needs. The delivery of optimal care is supported through the adoption of standards; definition of scopes of practice; and provision of health, safety, and prevention education and information to the public, and is achieved in collaboration with Emergency Medical Services services/agencies, Emergency Medical Services providers/instructors, related health care professionals, and other public service, health care and political entities.

2008 Senate Bill 512

Over the last calendar year, the KBEMS Board was presented with a number of issues from the EMS public relating to current laws. Along with those issues presented by EMS service directors and attendants, was the decision to adopt the National Registry of Emergency Medical Technicians (NREMT) as the state certification test. To adopt these changes, the Board tasked Board staff to develop language to revise KSA 65-6129, the changes are listed below:

- Change in language in section (a)(1)(A) that extends the period of eligibility from one year from last date of class to two years. This language mimics NREMT (since Kansas is a NREMT state, except for the EMT-I).
- Removal of language in section (a)(1)(B)(2) that grants automatic approval based on an "accreditation". The language eliminates verbiage that granted automatic approval of "accredited" programs that failed to meet the "equivalency" standards of Kansas EMS training programs both in course content and length. The language also removed any

Amendments:

Senate Federal and State Affairs

1. Strikes background check language contained in former Section 2 (h)

KBEMS would propose amending the Senate version to reinstate the background check language. KBEMS believes there was an "error" in removing the language, and would hope for favorable passage of the bill in its original form. Language included in 2008 HB 2620 would be acceptable to KBEMS with rules and regulations to be approved by the Legislative Joint Committee on Rules and Regulation on administering the fingerprinting of individuals.

2. Section (g) allows the Board to perform the following:

An attendant's certificate may be denied, revoked, limited, modified or suspended by the board or the board may refuse to renew such certificate if such individual: has made intentional misrepresentations in obtaining a certificate
or renewing a certificate;

(2) has demonstrated incompetence or engaged in unprofessional conduct as defined by rules and regulations adopted by the board;

(3) has violated or aided and abetted in the violation of any provision of this act or the rules and regulations promulgated by the board; or

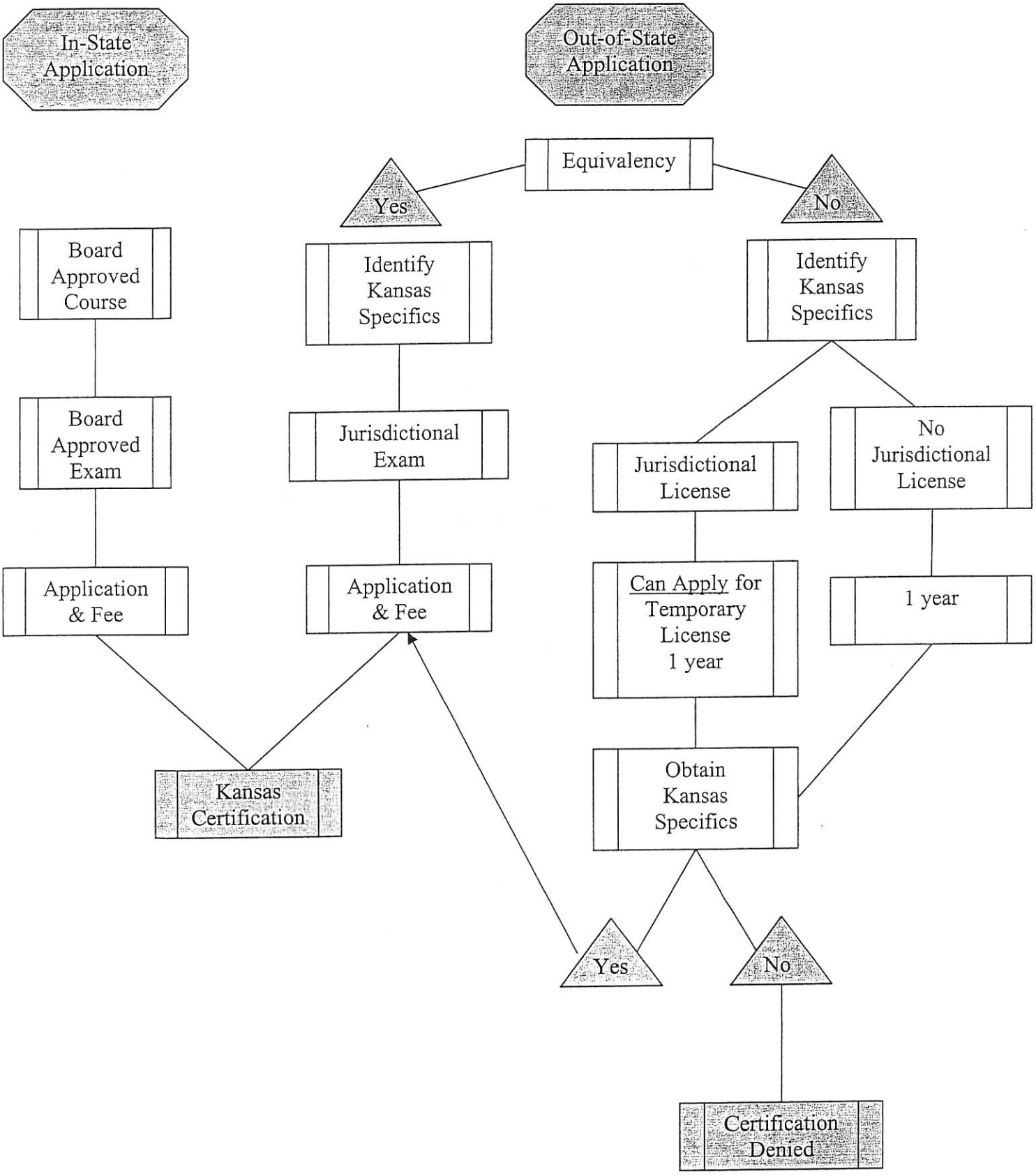
(4) has been convicted of any state or federal crime that is related substantially to the qualifications, functions and duties of a certified attendant, instructor-coordinator or training officer or any crime punishable as a felony under any state or federal statute and the board determines that such individual has not been sufficiently rehabilitated to warrant public trust. A conviction means a plea of guilty, a plea of nolo contendere or a verdict of guilty. The board may take disciplinary action pursuant to this section when the time for appeal has elapsed, or after the judgment of conviction is affirmed on appeal or when an order granting probation is made suspending the imposition of sentence

However, the KBEMS Board already has this authority (KSA 65-6133). Therefore, the language does not add any additional authority to the KBEMS Board and does not address the issue of determining whether an individual has a criminal record. The purpose of former Section (2)(h) was to establish whether an individual had a criminal record, and then a determination of certification could be made by the Board under the current authority contained within KSA 65-6133 (which is the equivalent of the Senate amendment). Therefore, the current amendment contained in new Section (2)(g) is not necessary.

Conclusion

Simply, members of the Committee, the passage of Senate Bill 512 provides assurance to the general public that KBEMS has provided the appropriate screening of applicants and ensured KBEMS' responsibility to public safety. Thank you for allowing me to testify on the amended version of Senate Bill 512 and I will stand for any questions you may have.

Certification Application Flow-Chart



KANSAS
STATE BOARD OF NURSING

Kathleen Sebelius, Governor
Mary Blubaugh MSN, RN
Executive Administrator
www.ksbn.org

Health and Human Services Committee
March 17, 2008

Testimony in Support of Senate Bill 107

Diane Glynn, J.D., R.N.
Practice Specialist

Good Afternoon Chair Landwehr and Members of the Health and Human Services Committee. My name is Diane Glynn, Practice Specialist for the Kansas State Board of Nursing. I am providing testimony on behalf of the Board Members to provide support of SB 107 which will allow the Board of Nursing to ask an applicant for licensure to be fingerprinted and submit to a state and national criminal history record check.

The mission of the Board of Nursing is to assure the citizens of Kansas safe and competent practice by trustworthy nurses and mental health technicians.

The citizens of Kansas are dependent upon the Board of Nursing to conduct appropriate screening of applicants. Boards of Nursing have the responsibility of regulating nursing and a duty to exclude individuals who pose a risk to the public health and safety. One means of predicting future behavior is to look at past behavior. In 1998 only five boards of nursing were authorized to use criminal background checks. In 2005 a National Council of State Boards of Nursing (NCSBN) survey revealed the number had increased to 18 boards and that number increased in 2006 to 20. The latest NCSBN information from 2007 reveals that 22 states require fingerprints which are submitted for a state and national criminal history record check.

Teachers, banking and financial positions, and in some states physicians require criminal background checks. The Kansas judicial system received authority to require fingerprint and criminal back ground checks on attorneys in 2005 and the system has been implemented. The Board of Healing Arts fingerprint bill (81) is almost identical to SB 107. This bill passed the Senate last year. It was amended into HB 2620 by the Judiciary Committee and passed the whole house 120 to 2 on February 29, 2008. Three states (Massachusetts, Missouri, and Oregon) require criminal background checks for most, if not all professional licensure applicants. Although most states ask questions about criminal convictions on licensure applications, applicants may not be motivated to be truthful. Criminal background checks provide validation of the information reported or not reported on applications. The board asks applicants to self-report but the board has no way to know if applicants have fully disclosed arrests and convictions in other states.

Health & Human Services Committee
Date: 3-17-08
Attachment: 2

Landon State Office Building, 900 SW Jackson St., Ste 1051, Topeka
Voice: (785) 296-4929 • Fax: (785) 296-3929

Review of information from State Boards of Nursing who have implemented fingerprints and criminal background checks reveal that the rate of positive returns is 6-7% for RNs and 10-12% for LPNs.

On September 30, 2003 the Board of Nursing was notified by a Registered Nurse in New Mexico that he had received information from the Internal Revenue Service (IRS) that he had worked in Kansas and had not paid taxes on that income. The nurse from New Mexico had never worked in Kansas. KSBN investigated the allegations and collaborated with the FBI who arrested the imposter on November 18, 2003. The imposter was originally licensed in Missouri in 1985 and in Kansas in 1998. At least one agency that had employed the imposter had run a security check and it produced a "clean" record. Had fingerprints been required on application, this imposter would not have been granted a license. The imposter was a convicted felon. The nurse who was the victim of identify theft was in the Army Reserve. Fingerprints for both of these individuals were on file, and the imposter would have been exposed.

Criminal convictions are permissive grounds for discipline or denial of licensure for all boards of nursing, with the one exception for Kansas, the person-felony bar. Kansas law requires the board to weigh and balance the conviction with mitigating factors. Not all applicants with a criminal history are or should be denied a license, most are granted a license. Each applicant receives individual analysis. K.S.A. 65-1120 (f) currently authorizes the Board of Nursing to receive (from the KBI) criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensure. This bill will broaden current authority to the national level.

In August 2005, National Council of State Boards of Nursing passed a **model** process for fingerprints and background checks. The model is a baseline for states to use and build on. Kansas currently conducts KBI background checks which include arrests, convictions, and expungements.

On December 4, 2005 the Council of State Governments Health Policy Task Force signed a resolution on supporting criminal background checks for nurses applying for state licenses. A copy of the resolution is attached to this testimony.

Legislative Post Audit Committee recommended in October 2006 that the Board of Healing Arts request statutory authority which would require applicants to be fingerprinted and the fingerprints be submitted to KBI and FBI for a background check. The Special Committee on Judiciary to the 2008 Kansas Legislature supports the bills authorizing fingerprinting (SB 107 and 81). The committee recommended that the Committee where the bills are assigned take appropriate action. A copy of this recommendation is attached.

We ask for favorable action on this legislation. Thank you for your time and consideration and I will stand for questions.

THE COUNCIL OF STATE GOVERNMENTS
INTERGOVERNMENTAL AFFAIRS COMMITTEE

RESOLUTION SUPPORTING CRIMINAL BACKGROUND CHECKS FOR NURSES APPLYING FOR STATE LICENSURE

WHEREAS, nurses work with vulnerable populations, and it is in the interest of public safety to review nurse licensure applicants' past criminal behavior in determining whether they should be granted a license to practice nursing in a state or territory;

WHEREAS, applicants for nurse licensure with criminal histories may not be truthful on applications, and fingerprint based background checks are valuable in identifying past criminal behavior;

WHEREAS, in 1990 the California Board of Registered Nursing began to conduct fingerprint based criminal background checks, and in 1998 the National Council of State Boards of Nursing (NCSBN) reported five states were authorized to use fingerprint based criminal background checks and that number increased to 18 boards of nursing in 2005 utilizing criminal background checks. That progress has been significant, but more states need to address this issue;

WHEREAS, boards of nursing assure the security and confidentiality of the background information and must comply with any state or federal requirements to obtain access to state criminal background checks, making this process fair to licensure applicants;

WHEREAS, Public Law 92-544 provides funding to the Federal Bureau of Investigations (FBI) for acquiring, collecting, classifying, preserving and exchanging identification records with duly authorized officials of the federal government, the states, boards of nursing, cities, and other institutions;

BE IT NOW THEREFORE RESOLVED, that The Council of State Governments urges states to conduct biometric based criminal background checks on all nurse licensure applicants (both for initial licensure, and subsequent licensure endorsement into other states and territories) through including this provision in the jurisdiction's Nurse Practice Act;

BE IT FURTHER RESOLVED, that The Council of State Governments recommends that states work with their boards of nursing in developing plans to conduct nurse licensure comprehensive national criminal background checks, considering the following policy questions:

1. Assess and strategize what are the current workload and resource implications?
2. What are the questions needed on the licensure application regarding an applicant's criminal past?
3. Should criminal background checks be implemented from a point forward or with grandfathering of individuals already licensed?
4. Should temporary permits be issued for nurse licensure applicants awaiting criminal background checks?
5. What will the policy for non-readable fingerprints entail?
6. What will the appeal process be for an applicant or licensee?

Adopted this 4th Day of December, 2005, at the
CSG Annual Task Force and Committee Meeting in
Wilmington, Delaware

Governor Ruth Ann Minner
2005 CSG President

Assemblyman Lynn Hettrick
2005 CSG Chair

THE COUNCIL OF STATE GOVERNMENTS
INTERGOVERNMENTAL AFFAIRS COMMITTEE

Resolution Supporting Criminal Background Checks for Nurses Applying for State Licensure

Resolution Summary

While most interaction between nurse and patient is mutually beneficial, there is always a chance that the health care provider is capable of harm, incompetence, neglect or abuse. There is a measure of trust that the patient has in the nurse, as patients are often times vulnerable, disabled and susceptible to malicious intent. In the interest of protecting the public, nurses are held to a high standard. It is the duty of the state board of nursing to determine which individuals that are applying for licensure pose any type of risk to the public. A biometric based background check is essential to making this determination.

Traditionally, inquiries into an applicant's background have taken the form of a question on an application form, and case-by-case reviews were used to determine application status. In 1990, the first board of nursing conducted criminal background checks on licensure applicants. Soon, other boards began to explore requiring such checks. By 1996, the National Council of State Boards of Nursing (NCSBN) adopted a resolution directing NCSBN to develop resources to support member boards' decision-making regarding criminal convictions. In response to that resolution, policy recommendations and a supporting paper, *Criminal Convictions and Nursing Regulation*, were brought to the 1998 Delegate Assembly. That year a policy recommendation was adopted that recommended boards of nursing conduct criminal background checks on applicants for nursing licensure.

In 1998, NCSBN developed a paper titled *Uniform Core Licensure Requirements*, which contained conduct expectations for self-reports, including all felony convictions, all plea agreements and misdemeanor convictions of lesser included offenses arising from felony arrests. Biometric based criminal background checks were included to validate self-reports. This requirement was found to be consistent with the aforementioned policy recommendation to conduct criminal background checks on candidates for nurse licensure. In the autumn of 2004, NCSBN developed a model process for conducting criminal background checks. Today, many boards of nursing are more interested in how to conduct such checks, and support biometric based criminal background checks.

In 2005, NCSBN adopted the Model Process for Criminal Background Checks and the supporting concept paper, *Using Criminal Background Checks to Inform Licensure Decision Making*, for use by member boards. This resolution encourages states to enact legislation requiring comprehensive national criminal background checks for all applicants for nurse licensure and to work with state boards of nursing to implement this policy.

Additional Resource Information

Criminal Convictions and Nursing Regulation: A Supporting Paper
– Cooper, G. and Sheets, V. (1998) National Council of State Boards of Nursing

Using Criminal Background Checks to Inform Licensure Decision Making
– National Council of State Boards of Nursing (2005)

National Council of State Boards of Nursing
www.ncsbn.org

Nurses Background Check Management Directives

- Management Directive #1: Create a sense of urgency concerning the need for criminal background checks for nursing applications and licensure as a public safety issue.
- Management Directive #2: Support efforts to better serve the public through diligent and thorough screening of all nursing applicants.
- Management Directive #3: The Council of State Governments' Health Policy Task Force will post approved resolution on The Council of State Governments' Web site and work with the National Council of State Boards of Nursing to ensure distribution to a wide audience in the states and nationally.

Report of the Special Committee on Judiciary to the 2008 Kansas Legislature

CHAIRPERSON: Senator John Vratil

VICE-CHAIRPERSON: Representative Mike O'Neal

RANKING MINORITY MEMBER: Senator Greta Goodwin

OTHER MEMBERS: Senators Phillip Journey, Julia Lynn, and Derek Schmidt; and Representatives Sydney Carlin, Marti Crow, Lance Kinzer, Bill Light, Jan Pauls, Marc Rhoades, and Vern Swanson

STUDY TOPICS

- Operations of the Board of Healing Arts
- Kansas Administrative Procedure Act and the Act for Judicial Review of Agency Actions
- Operations of the Kansas Parole Board
- Medical Assistance for Trust Beneficiaries
- Subrogation Clauses in Health Insurance Contracts
- Change in Judge in a Civil Action
- Allow a Parent to Remove a Child from the Custodial Parent to Protect the Child from Abuse
- Aggravated Incest
- Establishment of District Attorney Offices
- Submission of Blood or Other Biological Samples to the Kansas Bureau of Investigation
- Settle Damages Between Landowners and Their Farm Tenants and Gas and Oil Operators
- Vehicular Homicide
- Indemnification Agreements
- Release of Inmates to House Arrest by the Secretary of Corrections
- Child Care Custody-Military Deployment

December 2007

Special Committee on Judiciary

Operations of the Board of Healing Arts

Conclusions and Recommendations

It was the consensus of the Committee that the Board of Healing Arts (BOHA) has made a reasonable, good faith response to the recommendations of the Post Audit Report.

The BOHA has proposed statutory language that would authorize the Board to accomplish competency maintenance in a nondisciplinary setting. The Committee recommends legislation on alternative sanctions as recommended by Larry Buening, Executive Director of the BOHA.

The Committee also supports the bills authorizing fingerprinting, 2007 SB 81 and 2007 SB 107, which currently are in the House. The Committee recommends that the Committee where the bills are assigned take appropriate action. It was further recommended that the Executive Director of the BOHA, report the status of items under advisement to the Chairpersons of the House and Senate Judiciary Committees and the House Health and Humans Services Committee and Senate Public Health and Welfare Committee.

The Committee recommends the alternative sanctions legislation be introduced in the House.

Proposed Legislation: The Committee recommends the alternative sanctions legislation be introduced in the House.

Background

The Committee was directed to review the recent Legislative Post Audit report on operations of the BOHA. The Committee also was called on to study the appointment of members to the BOHA; the professions covered by the BOHA's jurisdiction; the nature, fairness and quality of the BOHA's investigations; and recommendations regarding implementation of graduated sanctions.

Committee Activities

Chris Clarke, Performance Audit Manager, Legislative Division of Post Audit, reviewed the findings, conclusions, and recommendations of the Legislative Division of Post Audit as of October 2006. She reviewed the mission, membership and the responsibilities of BOHA. Post Audit reviewed three questions covering key issues regarding the complaint-handling system of the BOHA:

- Does the BOHA conduct timely and thorough investigations of complaints it receives, and take timely and appropriate actions to correct regulatory violations it finds?
- Does the BOHA conduct background investigations that would enable it to know whether a potential licensee has had malpractice or negligence problems in another jurisdiction before being licensed in Kansas?

- Does the BOHA composition give fair representation to all healing arts practices and, if not, what could be done to address any deficiencies?

The conclusions and recommendations of these questions are contained in the Performance Audit Report.

Larry Buening, Executive Director, BOHA, introduced to the Committee, the Chairperson, Vice Chairperson, and various members of the BOHA. He reviewed actions taken by the Board in response to the recommendations made in the October 2006 Post Audit Report.

Mr. Buening expressed support for 2007 SB 81, which, as amended by the Senate Judiciary Committee, would authorize the BOHA to require new licensees to be fingerprinted and to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI), for a national criminal history record check for the purpose of determining initial qualifications and suitability to obtain a license. The conferee also expressed support for SB 107, as amended by the Senate Committee on Public Health and Welfare, to authorize the fingerprinting requirement to apply to the State Board of Nursing. In addition, the bill authorizes the State Board of Nursing to set a fee for fingerprinting in an amount necessary to reimburse the Board for the cost of fingerprinting and criminal history record check and to deposit such fees to the Criminal Background and Fingerprinting Fund created by the bill.

The Committee submitted questions regarding the guidelines used in investigation of patient complaints, availability of information to the public, website availability, and investigation of malpractice suits.

Conclusions and Recommendations

It was the consensus of the Committee that BOHA has made a reasonable, good faith response to the recommendations of the Post Audit Report.

The BOHA has proposed statutory language that would authorize the Board to accomplish competency maintenance in a nondisciplinary setting. The Committee recommends legislation on alternative sanctions as recommended by Larry Buening.

The Committee also supports the bills authorizing fingerprinting, 2007 SB 81 and 2007 SB 107, which currently are in the House. The Committee recommends that the Committee where the bills are assigned take appropriate action. It was further recommended that Mr. Buening, as Executive Director of the BOHA, report the status of items under advisement to the Chairpersons of the House and Senate Judiciary Committees and the House Health and Humans Services Committee and Senate Public Health and Welfare Committee.

The Committee recommends the alternative sanctions legislation be introduced in the House.

sas State Board of Nursing

The KSBN is a regulatory agency that licenses Registered Nurses, Licensed Practical Nurses and Licensed Mental Health Technicians. The role of KSBN is to protect the citizens of Kansas. The regulatory process and licensing assures citizens of Kansas that nurses and licensed mental health technicians have met minimum competence requirements. Testing establishes minimum competence. Statutes and regulations found in the Kansas Nurse Practice Act (KNPA) define your scope of practice and outline unacceptable conduct. There are actions for which your license may be called into question. When a licensee's conduct is questioned, KSBN has authority to investigate and collect information. If a sworn complaint is received KSBN is required to investigate you.

K.S.B.N.'s Scope of Authority

If the KSBN believes a violation of the KNPA (K.S.A. 65-1120) has occurred it may commence an administrative action against your license. The Board through an administrative action may deny, revoke, suspend, limit, or publicly or privately censure a license. The Board may also levy fines (K.S.A.74-1110) against a license. The first offense is not to exceed $1,000.00, second offense is not to exceed $2,000.00, and third and subsequent offenses are not to exceed $3,000.00.

Kansas Administrative Procedure Act

The KSBN is a regulatory agency. Being licensed is a privilege not a right. A license once obtained, is a form of a property right. The Board takes action against this property right not the person, but the action against the license may affect the licensee. Because the license is a property right the KSBN must afford you certain constitutional protections. All disciplinary actions before the KSBN are subject to the Kansas Administrative Procedure Act (KAPA). The KAPA is a set of statutes that outline the procedures the KSBN must follow. It provides for due process. This includes things such as reasonable notice, fair and impartial hearing, and right to representation, right to question witnesses or present evidence. KAPA is applied to all regulatory agencies of varying sizes.

What Happens If I Apply During An Investigation?

We receive applications for initial licensure, endorsement, renewal and reinstatement. Your completed application is a request for an order or a license. KSBN must acknowledge receipt and status of your application within 30 days. If a question is raised and you are investigated, KSBN must complete the process in 90 days or "as is practicable". KSBN licenses over 40,000 people and investigates an average of 750 cases per year. The majority of requests/applications are processed immediately and you receive your license card in the mail. If not immediately processed you will receive a letter of notification from KSBN on your application status.

Informal Resolutions

The committee may request the licensee to sign an agreement and/or meet conditions designed to impose an educational remedy. In this way the Board's primary purpose of protecting the public is met and the licensee's practice is improved and maintained.

Formal Discipline Process

The process can begin one of two ways. First, an applicant may receive a document called "Summary Denial". This document states the facts and legal reasons for denial of a license. If the licensee disagrees he/she may request a hearing. Second, a licensee may be served with a petition stating facts and law and asking for action upon the license.

The request for hearing by the licensee or petition filed by the Attorney General is followed by a notice of hearing which sets a time and date for the licensee to appear and defend. The notice gives directions on how to ask for additional time (called a continuance) if a licensee is unable to appear on the date set. The notice also warns that if a licensee fails to appear or contact the KSBN the matter will proceed and judgement may be entered in the matter affecting the license. Documents and statements may be requested by the licensee or the Board's attorney and are exchanged in a process known as discovery.

You may appear in front of the entire Board, a panel of Board members or the Board's appointed hearing officer. A licensee may represent yourself or be represented by an attorney. The proceeding is recorded. Oaths are administered to those who testify. Each party can require witnesses to appear and testify. Each party may cross-examine witnesses presented by the other side. Each party may submit exhibits. The hearing officer / panel may also ask questions. Evidence may be written or oral and must be relevant to the claim. Hearsay can be introduced and is to be weighed appropriately. Evidence submitted varies from case to case. If your fitness to practice nursing is in question, factors to be considered include but are not limited to: (1) danger to the public health safety and welfare, (2) the present moral fitness, (3) your consciousness of what you did wrong and the effect

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2-10

ofession, (4) what you did and are doing for rehabilitation (5) nature and seriousness of misconduct, (6) current conduct, (7) time elapsed since prior discipline or criminal activity, (8) character, maturity and experience (9) present competence and skill. These points are not all inclusive.

At the conclusion the hearing officer/panel weighs and considers the evidence and renders a decision. A written order, which consists of findings of fact, conclusions of law, and any sanctions imposed, is served upon the parties after the decision. Costs of the proceeding may be charged to the applicant or licensee. The written order will state the time when it becomes effective and provide notice to both sides of their appeal rights.

Appeal Process

Within a set period of time the parties have the right to request to have a decision reviewed by the Board. If the Board affirms the decision, or if the Board declines to review the decision, or makes a decision not liked by either party, either party may appeal to District Court. An appeal in District Court is subject to an act called the Kansas Judicial Review Act (KJRA).

Appeals to District Court for the KSBN are not tried again. The KJRA sets out the court's scope of review. The court considers the party's stated appeal grounds and decides whether the KSBN's order/record is supported by substantial evidence. Once the District Court enters its order either party, if not satisfied, has one more opportunity for appeal to the Court of Appeals or Supreme Court of the State. There are established time lines in which such requests or notices must be filed.

Rev. 10/22/07

11-2

Disclaimer

The information provided in this pamphlet is not intended to be legal advice or a complete explanation of legal rights.

Note: Statutes available at www.ksbn.org and www.accesskansas.org.

Investigative Committee

Tamara Hutchison, R.N., B.S.N., Chair
Quinter, Kansas
Janet Jacobs, L.P.N., Vice-Chair
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Jane Conroy, R.N., M.S., N.P.-C., A.R.N.P.
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Alma Heckler, J.D.
Assistant Attorney General

KANSAS STATE BOARD OF NURSING

YOUR RIGHTS BEFORE THE

KANSAS STATE BOARD OF NURSING

Kansas State Board of Nursing
900 SW Jackson, Suite 1051
Landon State Office Building
Topeka, Kansas 66612-1230
785-296-4325

1-8

As Amended by Senate Committee

Session of 2007

SENATE BILL No. 107

By Committee on Public Health and Welfare

1-17

AN ACT concerning ~~the board of nursing~~; concerning fingerprinting and criminal history records checks; creating the criminal background and fingerprinting fund.

licensure of certain health professions

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

Section 1. (a) The board of nursing may require an ***original*** applicant for licensure as a professional nurse, practical nurse or mental health technician to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or other jurisdictions. The board of nursing is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The board of nursing may use the information obtained from fingerprinting and the applicant's criminal history for purposes of verifying the identification of any applicant and in the official determination of character and fitness of the applicant for any licensure to practice professional or practical nursing or mental health technology in this state.

(b) Local and state law enforcement officers and agencies shall assist the board of nursing in taking and processing of fingerprints of applicants to practice professional or practical nursing or mental health technology in this state and shall release all records of adult and juvenile convictions, adjudications, expungements and non-convictions to the board of nursing.

(c) The board shall fix a fee for fingerprinting of applicants or licensees, or both, as may be required by the board in an amount necessary to reimburse the board for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the criminal background and fingerprinting fund.

(d) There is hereby created in the state treasury the criminal background and fingerprinting fund. All moneys credited to the fund shall be used to pay the Kansas bureau of investigation for the processing of fingerprints and criminal history background checks for the board of nursing. The fund shall be administered by the board of nursing. All expend-

Health & Human Services Committee
Date: 3-17-08
Attachment: 3

itures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Sec. 3. (a) As part of an original application for or reinstatement of any license, registration, permit or certificate or in connection with any investigation of any holder of a license, registration, permit or certificate, the state board of healing arts may require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The state board of healing arts is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of healing arts may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, registration, permit or certificate.

(b) Local and state law enforcement officers and agencies shall assist the state board of healing arts in taking and processing of fingerprints of applicants for and holders of any license, registration, permit or certificate and shall release all records of adult and juvenile convictions, adjudications, expungements and nonconvictions to the state board of healing arts.

(c) The state board of healing arts may fix and collect a fee as may be required by the board in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history record check. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the healing arts fee fund.

(d) This section shall be part of and supplemental to the Kansas healing arts act.

3-7

Thomas L. Bell
President

TO: House Health & Human Services Committee

FROM: Chad Austin
Vice President, Government Relations

DATE: March 17, 2008

RE: Senate Bill 107

The Kansas Hospital Association (KHA) appreciates the opportunity to speak in favor of Senate Bill 107 which would require nursing licensees to be fingerprinted and submit to both state and national criminal history record checks. This information would then be made available to the Kansas State Board of Nursing for use in determining the suitability of the applicant for licensure.

KHA supports this legislation as it assists Kansas hospitals by requiring both a state *and* federal criminal background check for all registered nurses, licensed practical nurses and licensed mental health technicians seeking a license to practice in Kansas. In this transient society in which we live, obtaining both state and federal criminal background information will provide a complete history of the individual for the Board to use when making licensing decisions.

Screening potentially dangerous applicants for licensure before they become employed greatly assists Kansas health care facilities in providing a safer environment for patients, co-workers and the community. Applicants could easily meet these new requirements by going to their local or state law enforcement agency to have their fingerprints taken. The proposed legislation calls for the applicant to pay the fee for these background checks (approximately $54).

Thank you for your consideration of this bill.

Health & Human Services Committee

Date: 3-17-08

Attachment: 4

KSNA
KANSAS STATE NURSES ASSOCIATION

1109 SW Topeka Blvd
Topeka, Kansas 66612
785.233.8638. Fax 785.233.5222
www.nursingworld.org/snas/ks
ksna@ksna.net

Caring Hearts, Healing Hands
Decade of the Nurse in Kansas
2005 2015

Susan Bumsted, M.N., R.N.
President

The Voice And Vision Of Nursing In Kansas

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

For More Information Contact:
Terri Roberts J.D., R.N.
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March 17, 2008

S.B. 107 Fingerprinting and Background Checks for Professional, Practical Nurses and Licensed Mental Health Technicians

Chairperson Landwehr and members of the House Health and Human Services Committee, my name is Sarah Tidwell, M.S.N., R.N. and I am the Vice-President of the KANSAS STATE NURSES ASSOCIATION. KSNA is the professional organization for registered nurses in Kansas. I served on the Board of Nursing from 1995-1999 and as President of the Board of Nursing the last two years of my term.

S.B. 107 contains new language that would authorize the Kansas Board of Nursing to obtain not only criminal convictions, but arrests, expungements and juvenile records from the Kansas Bureau of Investigation for all original licensee applications and reinstatements. **KSNA has no objection to the agency receiving criminal conviction data**, or using **fingerprints for proper identification**. We do however, have concerns about the Board obtaining juvenile, expunged and arrest records.

In 2005, the National Council of State Boards of Nursing, which is the national assembly of all the U.S. Boards of Nursing, their Delegate Assembly adopted a paper entitled *Using Criminal Background Checks to Inform Licensure Decision-Making*. This paper provided guidelines for conducting criminal background check(s) (CBC) describing the legal authority required to mandate criminal background checks, practical suggestions for boards moving toward this requirement and information on using CBC data to inform nursing licensure decision-making. Recommendations were included in the paper, one specifically relevant to today's discussion. One of their precepts for Criminal Background checks is:

- **It is not the role of the board of nursing to retry a case or second-guess the criminal justice system. It is the role of the board to use conviction histories in decision-making regarding competence conduct and licensure.**

KSNA cannot support access to *arrest records* because it must be assumed that they will be construed as prejudicial in determining whether a license should be granted. Licensees and/or applicants would be forced to defend an "arrest" that might be aged, a false accusation and in most cases certainly a challenge to defend, if no prosecution ensued and an opportunity under the law to defend the allegation. We cannot support that licensees/applicants are considered guilty and have to defend themselves under these circumstances. Only criminal convictions should be obtained and used by the agency in determining eligibility to be licensed.

Health & Human Services Committee

Date: 3-18-08

Attachment: 5

Juvenile records are currently protected under separate statute which prohibits their release unless the entity has statutory authority. We have not heard a compelling argument by the Board of Nursing in any of their discussions about fingerprinting and background checks why juvenile records should be considered by the Board in awarding licensure.

Expungements are slightly different. There is a laundry list in K.S.A. 21-4619 the Expungement Statute of those entities that are entitled to receive expungement information, and there appear to be no categories of licensed health professionals currently in that list and this may be one of the first to be added.

Expungements generally require:

- 3-5 years of no criminal conviction,
- going to court to ask for the expungement,

and heinous felonious crimes cannot ever be expunged. Again, we have heard no compelling argument for obtaining these records.

KSNA has a rich history of supporting the Board of Nursing in their role of "protection of the public". Licensees are required to self-report felonies and misdemeanors on their initial and every two year renewal forms. In 1997 KSNA introduced and lobbied for a statutory change in the Nurse Practice Act that was passed and prohibits individuals with *Article 34, Chapter 21 Felony Convictions* from being licensed as nurses in Kansas. This followed a highly publicized conviction of a PSU senior nursing student, with a previous felony conviction that murdered a PSU female student. At the time the legislature passed this absolute prohibition Kansas was only the second state to add such a restriction for licensure. It reads as follows and is in K.S.A. 65-1120;

> ***no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;***

See the attachment labeled *Felony Restrictions on RN Licensure in Kansas.* We print this list regularly in **The Kansas Nurse** to insure that educators and others are aware of this statutory prohibition.

However, in addition to supporting the role of the Board in protecting the public, *we have an obligation to insure that the Board is following the statutes and is consistent and fair in matters related to licensure, discipline and affording licensees their legal rights.*

KSNA respectfully requests that this committee amend S.B. 107 by:

Deleting from the new proposed language in S.B. 107 on lines 32 and 33 the references to arrests, juvenile and expungement records. See attached Ballon.

Thank you for your consideration.

As Amended by Senate Committee

Session of 2007

SENATE BILL No. 107

By Committee on Public Health and Welfare

1-17

AN ACT concerning the board of nursing; concerning fingerprinting and criminal history records checks; creating the criminal background and fingerprinting fund.

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

Section 1. (a) The board of nursing may require an ***original*** applicant for licensure as a professional nurse, practical nurse or mental health technician to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or other jurisdictions. The board of nursing is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The board of nursing may use the information obtained from fingerprinting and the applicant's criminal history for purposes of verifying the identification of any applicant and in the official determination of character and fitness of the applicant for any licensure to practice professional or practical nursing or mental health technology in this state.

(b) Local and state law enforcement officers and agencies shall assist the board of nursing in taking and processing of fingerprints of applicants to practice professional or practical nursing or mental health technology in this state ~~and shall release all records of adult and juvenile convictions, adjudications, expungements and non-convictions to the board of nursing.~~

(c) The board shall fix a fee for fingerprinting of applicants or licensees, or both, as may be required by the board in an amount necessary to reimburse the board for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the criminal background and fingerprinting fund.

(d) There is hereby created in the state treasury the criminal background and fingerprinting fund. All moneys credited to the fund shall be used to pay the Kansas bureau of investigation for the processing of fingerprints and criminal history background checks for the board of nursing. The fund shall be administered by the board of nursing. All expend-

Kansas State Nurses Association
Monday, March 17, 2008
Proposed Amendment

Delete

53

Felony Restrictions on RN Licensure in Kansas

The Kansas Nurse Practice Act was amended in 1997 to prohibit licensure of RNs, LPNs or LMHTs who have a criminal conviction of felony crimes against persons. This is the list of felonies referenced in KSA 65-1120 which reads as follows:

65-1120.

(a) *Grounds for disciplinary actions.* The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 *no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;*

Article 34, chapter 21 Felony Crimes Sorted Numerically by Statute Number

REFERENCE	DESCRIPTION
21-3401	Murder in the First Degree
21-3401	Murder in the First Degree; Attempt (K.S.A. 21-3301)
21-3401	Murder in the First Degree; Conspiracy (K.S.A. 21-3302)
21-3401	Murder in the First Degree; Solicitation (K.S.A. 21-3303)
21-3402(a)	Murder in the Second Degree (intentional)
21-3402(b)	Murder in the Second Degree (reckless)
21-3403	Voluntary Manslaughter
21-3404	Involuntary Manslaughter
21-3406(a)(1)	Assisting Suicide (force or duress)
21-3406(a)(2)	Assisting Suicide
21-3410	Aggravated Assault
21-3411	Aggravated Assault on LEO
21-3412a	Domestic Battery; third or subsequent conviction w/in last 5 years (b)(3)
21-3413(a)(2)	Battery Against a Correctional Officer
21-3413(a)(3)	Battery Against a Juvenile Correctional Facility Officer
21-3413(a)(4)	Battery Against a Juvenile Detention Facility Officer
21-3413(a)(5)	Battery Against a City/County Correctional Officer/Employee
21-3414(a)(1)(A)	Aggravated Battery – intentional, great bodily harm
21-3414(a)(1)(B)	Aggravated Battery – intentional, bodily harm
21-3414(a)(1)(C)	Aggravated Battery – intentional, physical contact
21-3414(a)(2)(A)	Aggravated Battery – reckless, great bodily harm
21-3414(a)(2)(B)	Aggravated Battery – reckless, bodily harm
21-3415(a)(1) or (3)	Aggravated Battery on LEO – intentional, great bodily harm or w/motor vehicle
21-3415(a)(2)	Aggravated Battery on LEO – bodily harm or physical contact; deadly weapon
21-3419(a)(1)	Criminal Threat
21-3419(a)(2)	Criminal Threat *(adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply)*
21-3419a	Aggravated Criminal Threat; < $500 loss of productivity
21-3419a	Aggravated Criminal Threat; > $500 but < $25,000 loss of productivity
21-3419a	Aggravated Criminal Threat; e" $25,000 loss of productivity
21-3420	Kidnapping
21-3421	Aggravated Kidnapping
21-3422(c)(2)	Interference With Parental Custody in all other cases
21-3422(a)(b)	Aggravated Interference With Parental Custody
21-3426	Robbery
21-3427	Aggravated Robbery
21-3428	Blackmail
21-3435(1)(2) or (3)	Exposing Another to a Life Threatening Communicable Disease
21-3437(a)(1)	Mistreatment of a Dependant Adult - physical
21-3437(a)(2)*	Mistreatment of a Dependant Adult – aggregate amount $25,000 or more
21-3437(a)(2)*	Mistreatment of a Dependant Adult – aggregate amount at least $500 but < $25,000
21-3437(a)(2)*	Mistreatment of a Dependant Adult – aggregate amount is < $500 and committed by a person convicted w/5 years of this crime two or more times
21-3438(a)	Stalking
21-3438(b)	Stalking *when the victim has an order pursuant to the protection from stalking act*, a Temporary Restraining Order or an Injunction in effect against the offender
21-3438(c)	Stalking when the offender has a previous conviction w/in 7 years for stalking the same victim
21-3439	Capital Murder
21-3440(a)	Injury to a Pregnant Woman in the Commission of a Felony
21-3440(c)	Injury to a Pregnant Woman in the commission of KSA 21-3412 (battery), or KSA 21-3413(a)(1) (battery on LEO), or KSA 21-3412a(b)(1) or (b)(2) (domestic battery statute), or KSA 21-3517 (sexual battery)
21-3441(c)(1)	Injury to a Pregnant Woman by Vehicle-committing a violation of 8-1567
21-3442	Involuntary Manslaughter in the Commission of a DUI

5-4

TESTIMONY

S.B. 107 Fingerprinting and Background Checks for Registered Nurses

Chairperson Landwehr and members of the House Health and Human Services Committee, my name is Tony Anno BSN, R.N. and I work for a medical device company implanting cardiac rhythm management devices, St. Jude Medical. I have been a registered nurse for 22 years in Topeka.

I want to provide comments on S.B. 107, which I have been reviewing. Attached is a briefing statement that I prepared about background checks and fingerprinting for RN licensure generally speaking. My main reason for appearing here today is that I 'd like to encourage the committee to remove some language from this bill that I personally and professional believe is unfair. Giving the Kansas Board of Nursing access to non-conviction data, juvenile and expungement records may be used in a way that would deny potential licensees fair and impartial consideration for obtaining a license.

Tony

Tony Anno
1117 SW Red Oaks Court
Topeka, Kansas 66615

tanno@cox.net

Health & Human Services Committee

Date: 3-17-08

Attachment: 6

Briefing for Senate Bill 107 Fingerprinting and Background Checks for RN Licensure

Background

In 1990, the California Board of Nursing began to conduct criminal background checks on applicants for nursing licensure. This practice soon spread through the United States and its territories.

Currently, 35 states require Criminal Background Checks (CBC's) as a prerequisite for nursing licensure. Additionally, 4 states, including Kansas are considering such requirements. CBC's range from local and national checks including fingerprints identification.

Types of Background Checks

The United States Congress identifies criminal history records as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release." Typical CBC's include local, national, and sex offender database searches.

Public law (PL) 92-544 authorizes the FBI to conduct a criminal background check for boards empowered by a state statue approved by the United States Attorney General. The statue must:

1) Exist as a result of a legislative enactment;
2) Require that the CBC check be fingerprint-based;
3) Authorize the submission of fingerprints to the State Identification Bureau for forwarding to the FBI for a national criminal history check;
4) Identify the categories of licensees subject to CBC's; and
5) Provide that an authorized government agency be the recipient of the results of the record check.

PL 92-544 does not allow federal criminal records to be directly shared with health care employers or others. Only criminal conviction data is shared from the FBI.

Proposed Legislation

S.B. 107 not only requires the above, but includes the language "local and state law enforcement officers and agencies are directed by the bill to assist the Board in taking and processing fingerprints and to release all records of adult and juvenile convictions, adjudications, expungments, and non-convictions to the Board of Nursing.

Surrounding States Practices

Missouri – Currently uses federal and state criminal fingerprint background checks for initial licensure, and for applicants who endorse into Missouri with a license from another state. Only criminal conviction data is obtained.

Nebraska – The department conducts criminal background checks only on advanced practice nurses. The board fingerprints and does FBI checks. All applicants for nurse licensure are asked to self disclose criminal convictions. State justice system online records checks are conducted on all applicants.

Ok. .na – Currently uses state background checks for initial licensure, endorsements. Only criminal con. on data is obtained.

Colorado – Does not require criminal background checks, but will perform them if the applicant or renewal licensee checks yes to crimes or substance abuse.

Summary

The National State Board of Nursing has published a document to give State Boards direction in the establishment of statutes on fingerprinting and background checks. The document recommends "conviction data" be collected in the authorized background check. There is no mention of "juvenile, expunged or arrest records" being included in the background check authorization.

Peterson, lead author and recognized expert in the field, believes the use of arrest data in screening processes for paid positions has been adjudicated as a discriminatory practice and is therefore barred under Title VII of the U.S. Civil Rights Act of 1964. Therefore, the proposed legislation can be considered overreaching and unfair to Licensed Nurses in Kansas.

From: "Reyes, Julie" <Julie.Reyes@providence-health.org>
To: <kiegerl@house.state.ks.us>, <quigley@house.state.ks.us>, <rhoades@house...
Date: 3/17/2008 9:49 AM
Subject: Opposition to provisions in S.B. 107

S.B. 107 Fingerprinting and Background Checks

Chairperson Landwehr and members of the House Health and Human Services Committee, my name is Julie Reyes and I am a registered nurse in Kansas City, KS. I am opposed to S.B. 107 and cannot support it in its current form with the language that permits the Board of Nursing to legally obtain "juvenile records, arrest (non-conviction data), and expunged records" on potential licensees of the Board of Nursing. I would be willing to support criminal background checks and fingerprinting for original licensure applications and would see the necessity for this level of information in the licensure process. However, please consider eliminating the language that would permit expunged, juvenile and arrest records from being obtained. Non-conviction data would put potential licensees in the position of having to defend themselves against allegations that were not strong enough for criminal charges to be filed and pursued. Please consider my comments as you consider S.B. 107. Thank You.

Please contact me with any questions, thank you for your time.

Julie Reyes, RN BSN
Nurse Educator
Providence Medical Center
913-596-4770
julie.reyes@providence-health.org

Health & Human Services Committee

Date: 3-17-08

Attachment: 7

State of Kansas
House of Representatives

Gene Rardin
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10900 W. 104TH STREET
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(913) 492-2253

MEMORANDUM

TO: The Honorable Brenda Landwehr, Chair
Members, House Committee on Health & Human Services

FROM: Representative Gene Rardin – Dist. 16
DATE: March 17, 2008
RE: HB 2914 – AN ACT CONCERNING PHARMACEUTICAL MANUFACTURING COMPANIES

HB 2914 takes a needed step in the direction of public disclosure and openness of pharmaceutical company marketing practices. With drug prices increasing at nearly double the inflation rate and doctors feeling pressured by drug advertising on television and pharmaceutical marketers in their offices, it's time to take steps to insure that doctors and other healthcare providers are completely free to use their best professional judgment in making medical decisions.

The recently passed HB2730 Taxpayer Transparency Act and our own Campaign Contribution Ethics Laws are based on the idea that more knowledge on the part of the voter or, in this case, the consumer, is a good thing and serves to reduce the potential for practices which do not serve the public good.

I learned a long time ago in economics class that the marketplace works best when the consumer has the best and most complete knowledge on which to base decisions. This bill is designed to move the consumer toward more complete knowledge and provide them with important information relating to the practices of pharmaceutical companies in working with their doctors and health care providers.

Several key medical groups have supported similar legislation, including the American Medical Students Association, the National Physicians Alliance and the Prescription Project.

The provisions of this bill are reasonable, not onerous or punitive. They place no caps or limits on economic benefits or gifts supplied; they simply require pharmaceutical manufacturers and their marketing representatives to register and pay a small fee, once per year. The manufacturers must then file an annual disclosure report with the Secretary of State for any gifts or economic benefits they supply in connection with marketing to physicians, hospitals, nursing homes, pharmacists or health benefit plan administrators. Those reports will be open to public inspection.

Excluded from reporting requirements are free samples for patients, reimbursement for clinical trials, anything less than $25, scholarships to educational conferences and prescription drug rebates and discounts.

The act is to be administered by the Governmental Ethics Commission under Governmental Ethics Law, paralleling our own Legislature's campaign finance contribution and ethics laws.

Health & Human Services Committee

Date: 3-17-08

Attachment: 8

AARP Kansas
555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

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F 785-232-8259
TTY 1-877-434-7598
www.aarp.org/ks

March 17, 2008

The Honorable Brenda Landwehr, Chairperson
House Health and Human Services Committee

Reference - HB 2914

Good afternoon Madam Chair and Members of the House Health and Human Services Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP represents the views of our over 371,000 members in the state of Kansas. Thank you for allowing us to submit our written testimony in support of HB 2914 which would create the Pharmaceutical Manufacturing Company Disclosure Act

New prescription drugs may prolong life, improve the quality of life, and/or replace the need for more intensive, often expensive medical treatments. Drugs have become an increasingly accepted part of daily life for many people, and public and private efforts to expand access to pharmaceuticals have increased.

Accompanying the increase in drug use has been a dramatic rise in prescription drug costs, both overall and in the rate of annual increases. Manufacturers' prices for widely used prescription drugs are rising at an average yearly rate that is more than double the rate of inflation. Outpatient prescription drug spending has increased at double-digit rates and is projected to continue to do so well into the future. This has led public and private purchasers to adopt a variety of cost-containment strategies.

AARP believes that prescription drug costs cannot continue to rise at the current rate. Millions of Americans can no longer afford the vital drug therapies they need. Drugs have become so expensive that many people don't even fill their prescriptions. Others are forced to take drastic measures such as splitting pills or skipping doses. Still others have been driven to selling their possessions in a desperate attempt to pay for the medications they need to live.

AARP is fighting for affordable prescription drugs. We support reform to the questionable marketing practices of drug companies in order to curb the undue influence they have on the drugs physicians prescribe. One way to achieve such reform is marketing disclosure laws. Legislation of this type:

- illuminates one of the reasons why prescription drugs cost so much.
- particularly those that track payments received by individual prescribers, allows state governments, policymakers, and consumers to gauge the direct impact of marketing on prescribing patterns.
- helps policymakers determine the need for countervailing measures such as evidence-based research, preferred drug lists, and counter-detailing.
- can help evaluate the cost-effectiveness of countervailing measures.

Health & Human Services Committee

Date: 3-17-08

Attachment: 9

Drug manufacturers spend substantial sums promoting their products to physicians and other providers. In 2003 this included $16 billion for the retail value of drug samples left with physicians, $5.5 billion for personal visits by pharmaceutical company representatives to office- and hospital-based physicians, and nearly $400 million for advertising in medical journals. In addition, in 2004 drug companies sponsored 237,000 meetings and talks featuring doctors as speakers, and 134,000 meetings led by sales representatives, compared with about 60,000 of each type of meeting in 1998. Such meetings are often accompanied by meals and gifts for physicians and other prescribers. A number of concerns have been raised about whether these promotional activities inappropriately influence physicians' prescribing decisions.

Guidelines were issued by the American Medical Association and the American College of Physicians in 2002, and in 2006 by many of the country's most prestigious academic medical centers, on gifts to physicians from the pharmaceutical industry. PhRMA also issued a voluntary code on interactions with health care professionals. In 2003 the HHS Office of the Inspector General issued guidance for pharmaceutical manufacturers on what types of actions might be considered fraudulent (e.g., those that would inappropriately increase the use or price of certain prescription drugs paid for by federal health programs).

At the state level, by 2004, Maine, Nevada, New Mexico and Vermont, as well as the District of Columbia, had begun requiring pharmaceutical manufacturers to disclose the amount of money spent on direct marketing of prescription drugs to physicians in their state. In September 2005 Pennsylvania launched a $3 million, three-year "academic detailing" program that has initially focused on participants in the state's drug assistance program for the elderly. In academic detailing, specially trained drug information consultants visit physicians to educate them about therapeutic options for particular medical conditions.

Also, in 2006, state attorneys general funded two dozen projects to improve prescribing practices and to educate physicians about industry marketing practices. The funding was generated by a 2004 consumer protection settlement against a pharmaceutical manufacturer charged with deceptive offlabel marketing practices of a blockbuster antiepileptic drug. The manufacturer's total settlement was $430 million. Related consumer education projects will be funded in 2007 from the same settlement.

These nationwide trends are positive actions to track and monitor drug costs and pharmaceutical company marketing practices. AARP Kansas believes that Kansas should legislate similar disclosure reform to protect and inform Kansans. Therefore, AARP Kansas supports HB 2914 and respectfully requests the support of the House Health and Human Services Committee on this important piece of legislation.

Thank you.

Print AARP Bulletin

Ties That Bind

- ***Drugmakers spend billions a year wooing doctors with gifts and free trips.***
- ***Critics say these relationships aren't healthy.***
- ***But breaking up is proving hard to do.***

By Barbara Basler
January 2008

Video
Adriane Fugh-Berman, M.D., director of PharmedOut.org, talks about what her organization is doing to counter the influence of the pharmaceutical industry on doctors.

For years, pharmaceutical companies have courted America's doctors with an ever-growing intensity, showering them with billions of dollars' worth of gifts, consulting fees and trips to persuade them to prescribe their drugs. But now, patient advocates and lawmakers are out to break up those relationships, arguing that physicians—working amid the clutter of the drug industry's free samples, pens, clipboards, calculators and pizza boxes—often lose sight of the patient's best interests.

Even some doctors are speaking out against these gifts and favors on websites such as No Free Lunch and PharmedOut. The Institute of Medicine at the National Academies is drawing up conflict of interest guidelines for doctors, while leading medical schools are tightening their policies on accepting gifts. And legislators in Congress and in statehouses across the country are drafting laws to require drug companies to report these gifts publicly so patients can find out which doctors took what from the industry.

Several states, including Pennsylvania and South Carolina, have hired their own representatives to call on doctors and discuss older drugs and generics. The idea is to counter the sophisticated pitches and gift giving of drug industry sales reps who are promoting their company's latest, most expensive drugs.

"There are signs of a building momentum to restore a sense of medical ethics, a sense of service to the patient, to our profession," says Howard Brody, M.D., director of the Institute for the Medical Humanities at the University of Texas Medical Branch in Galveston.

But Brody points to a national survey published last year in the *New England Journal of Medicine,* in which 94 percent of the doctors polled said they had "direct ties" to the drug industry. "So you can see the position we are starting from and how far we have to go."

The drug industry maintains that its voluntary guidelines recommend only "modest" meals and gifts and says that the sales representatives provide vital information to doctors.

But reformers point to the sheer momentum of the industry's massive spending on

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marketing to doctors—up 275 percent from 1996 to 2004—along with the rising costs of health care and the safety problems of such drugs as the painkiller Vioxx.

While few would deny that new drugs have saved lives, new medications are typically more expensive than older or generic versions and can have adverse side effects that were not apparent in initial clinical tests. Prescribing new drugs for older patients is even more problematic because most drugs are approved based on trials in which older patients were woefully underrepresented, says Jerry Avorn, M.D., of Harvard Medical School.

Whether they know it or not, "many doctors have been prescribing according to industry profits rather than the patient's needs," says Brody of the University of Texas.

Sales reps aggressively promoted Vioxx, minimizing unfavorable findings on the drug. Doctors wrote millions of prescriptions for it—right up until the drug was pulled from the market, in 2004, because it raised the risk of heart attack and stroke.

"I stopped seeing all drug reps when the problems with Vioxx hit the news," says Jonathan Mohrer, M.D., a family practitioner in Forest Hills, N.Y., who is one of a small but growing number of physicians swearing off drug reps. "Like every other doctor, I had a closet full of Vioxx pills—free samples for my patients. The Vioxx reps came by every two or three days with samples and other stuff because they were in a marketing war against Celebrex." Reps, he says, would call his office in the morning to see what the staff wanted for lunch: "Nothing fancy—pizza, sandwiches."

Despite a slight dip in spending in 2005, drugmakers still spend about $7 billion a year to win the hearts and minds of doctors and another $18 billion on free drug samples for doctors, according to data compiled by the Prescription Project, an effort funded by the Pew Charitable Trust to curb the drug industry's influence.

"I've had doctors say, 'I can't be bought with a slice of pizza,' " says Adriane Fugh-Berman, M.D., a Georgetown University associate professor who has studied industry tactics. "In fact, one drug industry study, for instance, showed that when a drug rep got one minute with a doctor, the doctor's prescriptions for that drug increased 16 percent. With three minutes—52 percent."

Each day more than 101,000 drug company reps—one for every five office-based physicians—call on the nation's doctors. Primary care physicians, on average, have 28 interactions a week with drug reps, according to a 2005 report by the Health Strategies Group, a consulting firm for manufacturers of health care products.

"I go to medical conferences and ask, 'Why do you think the pharmaceutical companies are spending all that money and giving you all that free stuff?' And I get blank stares," says Jerome P. Kassirer, M.D., former editor of the *New England Journal of Medicine.* "Doctors," he says, "continue to insist they can't be bought."

Even so, Congress is considering a bill that would require big drug companies to report gifts to doctors worth $25 or more, or face substantial fines. The legislation would set up a national website so patients could learn which doctors were taking gifts and fees from the drug companies.

"Right now the public has no way to know whether a doctor's been given money that might affect prescribing habits," said Sen. Chuck Grassley, R-Iowa, who, with Sen. Herb Kohl, D-Wis., introduced the measure last year.

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The industry is vehemently opposed to marketing-disclosure legislation, which the Pharmaceutical Research and Manufacturers of America says "offers no extra value to patients and is a costly, unnecessary burden for innovative" drugmakers.

"In the end, pharmaceutical marketing is one of several important ways for physicians to receive information they need to make sure patients are safely and effectively treated," Ken Johnson, PhRMA senior vice president, said in a statement to the *AARP Bulletin.* Others disagree.

"I think all the trend lines are pointing in one direction, showing us we have real problems," says Harvey V. Fineberg, M.D., president of the Institute of Medicine. An IOM committee of consumer, medical and ethics experts is drawing up guidelines for the medical community, which should be ready by the end of the year, he says. While the guidelines are nonbinding, experts say the prestige of the IOM could give them real clout. In the meantime, the effort to curb industry influence is progressing very slowly.

"Doctors say they see the reps for the latest information, but it's also for the food and toys and flattery," says Georgetown's Fugh-Berman, who helped organize PharmedOut.org to counterbalance industry influence. The site aims to offer doctors unbiased drug information and insight into drug company marketing strategies. It's funded by money from a 2004 settlement with 50 states and the District of Columbia of a case alleging improper marketing by the drugmaker Pfizer.

Vermont, Maine, West Virginia, California and Washington, D.C., now have drug company gift disclosure laws. And since 2005 Minnesota has limited giving to $50 worth of meals or gifts a year per doctor. The effect of the restriction is dramatic: Primary care doctors there have been seeing far fewer drug reps, according to a firm that tracks pharmaceutical marketing.

But in New York, for example, the state Assembly passed one of the toughest disclosure bills in the country in 2006 and again in 2007, only to have the bill die in a Senate committee after what one supporter called "an army of lobbyists" descended on Albany. The measure, supported by AARP and other consumer groups, will be back this year.

New Hampshire passed a law in 2006 prohibiting drug companies from purchasing information about doctors' prescribing habits, information they use to tailor their sales pitches. The industry challenged the law, and it was overturned in federal court last year. But the state is appealing. Maine and Vermont passed similar laws that also are being challenged in federal courts.

Altogether last year 17 states drafted legislation that would regulate gifts to doctors or require their disclosure, according to the National Legislative Association on Prescription Drug Prices, a nonpartisan organization of state legislators who work on ways to reduce drug costs. Not one of these bills became law.

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TESTIMONY IN SUPPORT OF HB 2914

TO: The Honorable Brenda Landwehr, Chair

Members, House Committee on Health & Human Services

FROM: John Cattelino

DATE: March 17, 2008

RE: HB 2914

I am offering written testimony today in support of HB 2914.

It is no secret that drug companies are spending massive amounts on marketing. This spending is up considerably within the past ten years. We can see the TV advertising, which to me is senseless and adds to the cost of medication. The giving of gifts, free lunches, etc to doctors and health care workers also adds to the cost. I believe costs would and should come down if these marketing tactics were better controlled and openly reported.

Drug companies are competing fiercely to place new drugs on the market without vast testing. This presents safety problems as in the case with Vioxx. These drug companies are pressuring doctors to prescribe such medications. Doctors are prescribing more brand name drugs instead of generics, which are considerably lower in cost and have a good safety track record.

New drugs are being prescribed for older patients. This, in my estimation, is dangerous because most new drugs are approved on trials in which older patients are not well represented. This can be harmful to seniors.

Drug representatives pressure doctors to make them feel obligated to prescribe brand name medications. In essence, drug companies are prescribing medication rather than doctors.

It is my understanding the Kansas House is considering a bill that would require drug companies to report gifts worth $25 or more.

This is a good first step in providing public information on specific costs of marketing efforts in the pharmaceutical industry.

Make a record of freebies available to the public, leave the doctors alone, and let the doctor practice medicine. This should help bring costs down.

Seventeen states have drafted legislation requiring disclosure of gifts. I understand more states will be following and hope that Kansas will be among them.