Approved: April 1, 2008
Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Brenda Landwehr at 1:30 P.M. on March 24, 2008 Room 526-S of the Capitol.

All members were present except:
Representative Rhoades, Excused
Representative Colyer, Excused
Representative Shultz, Excused
Representative Morrison, Excused

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

Conferees appearing before the committee:
Senator Vicki Schmidt
Debra Billingsley, Executive Director KS Board of Pharmacy
Frank Whitchurch, RPh, Member Board of Pharmacy
Julie Hein, Kansas Pharmacy Coalition (KPC)
Jeffery Brandau, Kansas Bureau of Investigation (KBI)
Ed Klump, Kansas Association Chiefs of Police, Kansas Peace Officers
Dan Morin, Director Government Affairs, Kansas Medical Society
Michael Larkin, Executive Director, Kansas Pharmacists Association

Others Attending:
See Attached List.

The hearing on **Sub SB491 - Prescription monitoring program act** was opened.

Senator Vicki Schmidt presented testimony in support of **Sub SB491**. (Attachment 1) Senator Schmidt gave a brief history on Prescription Monitoring Programs (PMP). PMP's prevent drug diversion, prescription fraud and illicit use and abuse. The program can confirm, "doctor shopping", assist in referring a patient for substance abuse treatment and allow dispensers and those prescribing drugs to use the information pro-actively. Senator Schmidt stated the entire Senate committee had agreed to the amendment; however, the amendment was inadvertently placed in the wrong section and she asked the revisors for assistance in getting this placed in the right section. There was discussion about which medical profession would be excluded. The only profession not included are the veterinarians.

Debra Billingsley, Executive Director, Kansas Board of Pharmacy, gave testimony in support of this bill. (Attachment 2) The Board of Pharmacy endorses this bill as an effective means to fight prescription drug diversion. The Board recognizes there are a few challenges involved in creating this system but they support the intent of this bill. There was discussion about whether it was known how many different drugs are in the veterinarian area. Ms. Billingsley said some of the other states are monitoring the vets. She didn't have any statistical information. The Board has worked with the National board and they are looking at Kansas to lead the way. They have 5 years to study this and get back to the task force.

Frank Whitchurch, RPh, Member Board of Pharmacy, spoke in support of **Sub SB491.** (Attachment 3) Mr. Whitchurch has been a pharmacist for over 30 years and he said legislation enabling Prescription Monitoring is needed in Kansas.

Julie Hein, Kansas Pharmacy Coalition (KPC), gave testimony in support of this bill. (Attachment 4) The Coalition believes this is a good step in limiting prescription drug diversion. Some of their members have concerns with scheduling Pseudoephedrine products. This policy issue requires full evaluation by the task force.

Jeffery Brandau, Kansas Bureau of Investigation (KBI) provided testimony in favor of **Sub SB491.**

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on March 24, 2008 in Room 526-S of the Capitol.

(Attachment 5) Illicit use of prescription medications is increasing. In a 2005 report, The Partnership for a Drug Free America stated: Abuse of Rx/OTC medicines are now so prevalent it is "normalized" among teens. Nearly 1 in 5 teens, (19 percent) report abusing prescription medications to get high. There was discussion about whether this bill addresses drugs dispensed on the internet. Senator Schmidt said if they are licensed as a non-resident pharmacist in Kansas, they fall under the reporting requirement. The bill will address the pharmacies that are not the rogue internet pharmacies. There are also drugs being dispensed over the internet by non-pharmacy related groups from other countries. Senator Schmidt said they are working on addressing these issues.

Ed Klump, Kansas Association Chiefs of Police, Kansas Peace Officers provided testimony on behalf of both the Kansas Association of Chiefs of Police (Attachment 6) and the Kansas Peace Officers' Association (Attachment 7) in support of **Sub SB491.** These groups met in Topeka last year to discuss legislative issues and this bill was one of the top bills they wanted to support. They see this bill has a hope to deter prescription drug abuse. They support the task force and the veterinary task force. Mr. Klump addressed the question about veterinarian prescription drug abuse. He said they frequently have reports of burglaries of veterinary offices where the drugs are the target. There was discussion about how Meth use has dropped dramatically since they have placed the Meth precursors behind the counter. Mr. Klump said there is still manufacturing going on, but not nearly at the level it was. Most of the meth they see is being brought into the state. It is still one of the major drugs being investigated, but he didn't have data as to whether use was up or down.

Dan Morin, Director Government Affairs Kansas Medical Society, provided testimony in support of **Sub SB491**. (Attachment 8) They believe inappropriate use of prescription drugs should be identified but hope it will not impede access to clinically appropriate patient treatment or have a negative effect on physicians' ability to manage pain. They had one technical amendment to the language on page 3, section 5 (3) lines 27-34. Striking, "subject to the requirements in K.S.A. 22-2502, and amendments thereto;" and moving it to section 5 subsection 4.

Gary Reser, Kansas Veterinary Medical Association (no written testimony). They are in support of the bill in it's present form. They are committed to the task force. The KVMA is excited about the work the task force is going to do. States all over the country are struggling with this and they are looking to Kansas to come up with legislation. Mr. Reser stated if you look at page 2 and the 15 different databases that need to be reported, they don't feel that at this point they are compatible with veterinarian medicine. He sited patient name, address, as an example. What do you do about 4,000 head of cattle? Also the prescription monitoring will not help with the vet office break-ins.

Written testimony in support of **Sub SB491** was submitted by:
Larry Buening, Jr., Executive Director, Kansas State Board of Healing Arts (Attachment 9)
Linda Barefoot, Regional Director of State Governments Affairs, Purdue Pharma L.P. (Attachment 10)
Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine (Attachment 11)
Carey Potter, Regional Director State Government Affairs (Attachment 12)
Dana Ketterling, Mother of son with a serious prescription drug addiction (Attachment 13)
Debra Culala, Director, Cypress Recovery, Olathe, Kansas (Attachment 14)
Mandy Hagan, Consumer Healthcare Products Association (Attachment 15)

There were no additional proponents or opponents.

The hearings on **Sub SB491** were closed.

The hearings on **Sub SB549 - Board of pharmacy; continuous quality improvement programs and nonresident pharmacy** were opened.

Senator Vicki Schmidt spoke in support of this bill. (Attachment 16) This bill requires each pharmacy in Kansas to set up a continuous quality improvement program (CQI). This will allow pharmacies to assess errors in dispensing so they may take appropriate action to prevent a recurrence of any errors. Errors are mistakes, not intentional acts and need to be treated with non-punitive approach. Senator Schmidt asked the committee to not allow the decision in the case of Adams v. St. Francis Regional Medical Center to be

codified into statute and be broadly applied to all peer reviewed CQI programs. By doing this, it removes the necessary legal protections for these programs and would render them useless.

Debra Billingsley, Executive Director Kansas Board of Pharmacy presented in support of this bill. (Attachment 17) The Board of Pharmacy supports **Sub S549** as a proactive measure to guard against errors that occur in pharmacy. The second portion of the bill, relates to non-resident pharmacies, licensed in Kansas. This language allows the Board additional authority to access a civil fine against any nonresident pharmacy. The fine would not exceed $5,000 and would be imposed when the pharmacy fails to respond to the Board, in a timely manner.

Frank Whitchurch, RPh, Member of the Kansas Board of Pharmacy, provided testimony in favor of **Sub SB 549**. (Attachment 18) Section 1 and Section 2 will provide great improvement and positively impact the health of Kansas citizens. This bill allows the board to work in a proactive manner rather than a reactive manner. There was discussion about the pharmacy self reporting, when they find an error. Mr. Whitchurch said they are proposing to have the ability, within the pharmacies, to look at errors every 3 months or sooner. This will make it easier to determine what happened. The process that exists now is the person that is dissatisfied with the pharmacy goes to the Board of Pharmacy and files a citizens complaint. The board then determines what went wrong. This would not keep anyone from accessing the facts in any situation. Someone may have failed to check the date of birth or the address. There was discussion about the error rate for non-resident versus resident pharmacies. Mr. Whitchurch said there is no mechanism that he knows of on tracking non-resident pharmacies. He said mail-order pharmacies were very accurate.

Julie Hein, Kansas Pharmacy Coalition, gave testimony in support of this bill. (Attachment 19) Ms. Hein said continuous quality improvement programs will assist in reducing errors and make procedural changes, in a non-punitive environment.

Michael Larkin, Kansas Pharmacists Association provided testimony supporting **Sub SB549**. (Attachment 20) Mr. Larkin said everyone in pharmacy recognizes the need to reduce prescription errors to the lowest possible level.

Written testimony in support of this bill was provided by Carey Potter, National Association of Chain Drug Stores. (Attachment 21)

Steve Borel, Member KS Association for Justice gave testimony against **Sub SB 549**. (Attachment 22) The KsAJ supports the underlying goal of **Sub SB549** but feel this bill must be clarified to reflect the constitutional right to information established in the Kansas case, *Adams v. St. Francis Regional Medical Center* and to expedite the resolution of disputes between pharmacies and health care consumers in Kansas. They propose to replace the final sentence at the end of new Section 1, subsection (b). The proposed language is on Proposed Amendment 2. (Attachment 23) Representative Patton wondered about the Adam's case. When they found the peer review unconstitutional did they strike the peer review statute? Mr. Borel said they remanded it back for further proceedings based on the rule of law established in that case. He said they did not strike down the peer review affecting doctors and other health care providers. Representative Patton asked whether the judge provided that just the facts would be discoverable and if so, how did the court come to that opinion? Mr. Borel stated they based it on constitutional law and sited a lot of cases and decisions. He said the peer review process since the Adam's case has been good. Their intent in proposed amendment 2, is to follow the supreme court's decision in the Adam's case. There was further discussion about medical records and what is considered discoverable.

Senator Schmidt corrected her previous testimony to show the bill passed in the Senate with a 39 to 1 vote.

The hearing on **Sub SB549** was closed.

The meeting was adjourned at 3:05 p.m. The next meeting will be March 25, 2008.

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE GUEST LIST

DATE: March 24 , 2008

NAME	REPRESENTING
Steven J Borel	Kansas Assoc. for Justice
Laurel Forbes	United Health Group
RANDALL J. FORBES	Kansas Pharmacy Brd.
Deb Billingsley	" "
MIKE LARKIN	KANSAS PHARMACISTS ASSOCIATION
DEBORAH STERN	KHA
Mary Blubaugh	KSBN
Nancy Macbeth	KSBN
Bill Sneed	Merck
Susan Zabenske	J+J
Jeff Brand	KBT
[illegible] Whitehurst	KANSAS BOARD PHARMACY
[illegible]	Pharma
Tammie Capps	Schering Plough
Michelle Peterson	Capitol Strategies
ED KLUMPP	KS ASSOC OF CHIEFS OF POLICE / KS PEACE OFFICERS ASSOC.
Gary Reser	KS. ~~ASSN. OF~~ VETERINARY MEDICAL ASSN.
Robert Waller	KBEMS
Heather Wibach	Rep Otto intern
John Bertels	Pinkham, Smith & Assoc.
A. Snyders	Intern
Jeannie Konarik	Wichita Eagle
Kala Ulert	KSAJ

OVER →

Tim Morin — KMS

STATE OF KANSAS

VICKI SCHMIDT
SENATOR, 20TH DISTRICT
(785) 296-7374

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN: JT. COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
VICE-CHAIR: PUBLIC HEALTH AND WELFARE
MEMBER: CAPITOL AREA PLAZA AUTHORITY
FINANCIAL INSTITUTIONS AND INSURANCE
HEALTH CARE STRATEGIES
JT. COMMITTEE ON INFORMATION TECHNOLOGY
STATE ADVISORY COUNCIL ON AGING
TRANSPORTATION
WAYS AND MEANS

Testimony Presented to The House Health and Human Services Committee By Senator Vicki Schmidt March 19, 2008 Concerning SB 491

Chairperson Landwehr, Vice-Chair Mast, Ranking Minority Flaharty and distinguished members of the House Health and Human Services Committee:

Thank you for the opportunity to provide testimony on SB 491. I would like to provide a brief history on Prescription Monitoring Programs (PMP). Prior to 2002 only 15 states were operating a PMP. As of today, 35 states have either enacted enabling legislation and operational PMP, enacted legislation, or have pending PMP legislation. In addition to individual states, California and Nevada are now sharing information through an automated process and Kentucky and Ohio are participating in a pilot program to share information between those two states.

PMP's are more than public safety. They ensure that pharmaceuticals are available for medical care. They prevent drug diversion, prescription fraud, and illicit use and abuse. By implementing a PMP the program can:

- Confirm "doctor shopping" or not
- Assist in referring patient for substance abuse treatment
- May utilize information about new patients and established patients
- Allows dispensers and prescribers to use the information proactively

Comprehensive studies have been done in Kentucky using Dillman's Tailored Design Method. One of the relevant statistics is that 60% or more prescribers have denied care or medication to a patient based solely on the information obtained through the Kentucky PMP.

Joe Rannazzisi is the Deputy Assistant Administrator, Office of Diversion Control with the Drug Enforcement Agency (DEA). He has stated that in 2006 there were 20.4 MILLION Americans aged 12 and over in a period of one month that used illicit drugs. In one year Americans had 109 MILLION prescriptions written for Hydrocodone. Americans consume 99% of the Hydrocodone worldwide. For comparison sake, let me present that 62 million prescriptions were written for Lipitor® and 52 million prescriptions for Amoxicillin during the same period.

Now, to change gears for a minute. Last year the Kansas Legislature enacted SB 302. This law created a task force consisting of 11 members: The attorney general or the attorney general's designee, one member appointed by the Kansas health policy authority, one member appointed by the director of the Kansas bureau of investigation, two members appointed by the board of pharmacy, one member appointed by the board of healing arts, one member appointed by the Kansas medical society, one member appointed by the Kansas association of osteopathic medicine, one member appointed by the Kansas pharmacists' association, one member appointed by the Kansas state dental association and one member appointed by the Kansas hospital association. In addition to the task force members, many other individuals and representatives of industry attended and had input. They included the Kansas Pain Initiative, Walgreens Pharmacy, National Association of Chain Drug Stores, Kansas Pharmacy Coalition,

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Health & Human Services Committee
Date: 3-24-08
Attachment: 1

EDS, Kansas Veterinary Medical Association, Medical Students, Legislative Research, Kansas Pharmacy Service Corporation, Kansas Senate, Methamphetamine Prevention Project, and Local Law Enforcement Officials. The task force was charged with developing a plan for the creation and implementation of: (1) a controlled substances prescription monitoring program; and (2) an electronic purchase log, which shall be capable of, in real-time, checking compliance with all state, federal and local laws concerning the sale of ephedrine and pseudoephedrine. SB 491 addresses the first task. The task force met on multiple occasions and had multiple revisions from the starting bill. My thanks to Jason Thompson, Revisor, for his patience and perseverance with this process.

During the hearings in the Public Health and Welfare committee in the Senate, the committee added a few amendments to the original bill. The committee felt it important to add a Prescription Monitoring Program Advisory Committee that would consist of nine members and would be responsible for the operation of the PMP. Another amendment would establish the Methamphetamine Precursor Scheduling Task Force. While SB 302 from last year included this type of task force, the majority of time was spent on the PMP portion of this proposed legislation. In addition, this task force would include the pharmaceutical industry. An amendment was added to create the Veterinary Prescription Monitoring Program Task Force. The original bill included veterinarians as a reporting entity. This amendment represents an agreed upon compromise with the Kansas Board of Veterinary Medicine and the Kansas Veterinary Medical Association. Finally, the last amendment needs some help from your committee. The intent was to require a subpoena when law enforcement needed access to the PMP records. The entire Senate committee agreed to the amendment. It was, however, inadvertently placed in the wrong section. Your assistance would be greatly appreciated!

I became aware of grant monies that are available for the design and implementation of a PMP. The Board of Pharmacy has submitted an application for the Harold Rogers Prescription Drug Monitoring Grant Program from the Bureau of Justice Assistance for $400,000. The design and implementation will probably take between 18 months and two years. After this time, it is estimated that on-going costs will be between $100,000 and $140,000 per year. The PMP should, however, see savings in both the Kansas Medicaid Program and the Workers Compensation Program. The savings should more than cover the operating expenses.

In closing, it seems odd that in an era where your grocery chain can document the last time you bought a can of creamed corn and can generate coupons tailored to your buying habits, doctors and pharmacies ought to be able to coordinate their records to make sure one patient isn't getting 12 prescriptions to treat the same alleged malady. This legislation has been carefully drafted to create a database to fight prescription drug abuse, while protecting confidentiality. You will hear from several proponents of this legislation. All have been involved in the process of drafting this bill. I would also like to express my gratitude to the task force for an excellent job and for their diligence.

I thank you for your consideration and ask that you pass SB 491 out of your committee favorably. I am happy to stand for questions at the appropriate time.

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

Testimony concerning SB 491: Controlled Substance Monitoring Program
House Health and Human Services Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
March 19, 2008

Chairperson Landwehr and Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom is appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public. They are charged with protecting the health, safety and welfare of the citizens of Kansas and to educate and promote an understanding of pharmacy practices in Kansas.

The Board of Pharmacy participated in the task force creating the system whereby anyone dispensing controlled substances in schedules II, III, and IV submit electronic information to a database maintained by the Board of Pharmacy. The Act would also permit the Board to add any other abused drug to the list should they deem it necessary. The Drug Enforcement Agency (DEA) statistics for Kansas indicate that oxycodone, principally in the form of OxyContin continues to be the pharmaceutical drug of choice in the Kansas City area for abusers. It is favored by users over street drugs such as heroin due to the consistent purity and quality. The DEA has stated that Oxycodone is the third most abused prescription drug as well as Hydrocodone in the Midwest. The Emergency Department trends from the Drug Abuse Warning Network (DAWN) reports that the Midwest has seen increases in prescription drug abuse and related emergency room admissions, as well as increases in theft and illegal resale of prescription drugs. It is clear that prescription drug diversion is a growing national problem.

The data base would be maintained by the Board of Pharmacy. The majority of information would be transmitted electronically although there is a system for waivers to reporters who do not have access to a computer. The Board would collect the reports and provide data to prescribers, individuals requesting their own information, designated representatives from other professional licensing or regulatory agencies; local state, and federal law enforcement or prosecutorial officials, the KS Health Policy Authority, persons authorized by grand jury subpoena or court order in a criminal action; personnel of the Prescription Drug Monitoring Program, and lastly, personnel of the Board for purposes of administration and enforcement of the uniform controlled substance act. The Board could also run reports with redacted personal information to be used for statistical purposes.

There is an educational component that would require all prescribers to be educated on their responsibilities regarding how this program will work. Prescribers will be educated to help them to identify at-risk patients, drug abusers, doctor-shoppers, or any other type of patient who may be involved in diversion or abuse of prescription drugs.

The bill also creates an advisory committee made up of representatives from both healthcare and law enforcement that would be responsible for oversight of the program. The Board would then be responsible for reporting the program's effectiveness to the legislature. The Board would be responsible to collect and monitor any specific information to measure the program's effectiveness.

The Board supports the amendments that were made to the bill. There was much discussion among the task force members related to whether pseudoephedrine should be scheduled or whether it should have its own reporting system. The bill was amended to let the task force continue to work on this issue. The Board fully supports continuing the review of this particular issue.

Likewise, the bill was amended to permit the veterinarians to provide information pursuant to a task force that would indicate whether there is a need for their reporting into the system. The Board supports this amendment as well.

The Board of Pharmacy endorses this legislation as an effective means to combat prescription drug diversion. It will also help physicians identify patients who have addiction problems and need specific help in that area. The Board realizes that there are still a few challenges involved in creating this system but they support the bill and the intent behind it.

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

Testimony in Support
Of
Senate Bill 491
Presented by Frank Whitchurch, RPh
Member of the Kansas Board of Pharmacy

Chairperson Landwehr,
Members of the House Health and Human Services Committee:

I wish to begin by expressing my thanks to this committee for allowing me to add my voice to those expressing support for this legislation.

My name is Frank Whitchurch. I am a licensed Kansas pharmacist and a member of the Kansas Board of Pharmacy, serving my second term on the board.

I have been privileged to be in the audience when Chairman Sarvis conducted meetings with an all inclusive task force on this bill. Barry did an excellent job addressing the concerns of all members of the task force as the group developed the recommendations for the contents of Senate Bill 491.

Their efforts as presented in the recommendations met the approval of all stakeholders on the taskforce. They are fair and balanced and will address the problems associated with diversion of controlled substances by practices such as "doctor or pharmacy shopping".

As a practicing pharmacist with over 30 years of experience, I can testify that legislation enabling Prescription Monitoring in Kansas is needed.

As a member of the Kansas Board of Pharmacy, I can tell you that the board will move with all haste and spare no effort to fulfill its responsibilities as indicated in the bill.

I therefore urge this committee to look favorably on this bill. Implementation of this bill will enable Kansas to join 30 plus states in implementing legislation that addresses illegal diversion of controlled substances. I now stand ready to answer any questions the committee may have on this matter

Health & Human Services Committee

Date: 3-24-08

Attachment: 3

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Testimony re: SB 491
House Health and Human Services Committee
Presented by Julie Hein
on behalf of
Kansas Pharmacy Coalition
March 19, 2008

Madam Chairman, Members of the Committee:

My name is Julie Hein, and I am representing the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association (KPhA) and the Kansas Association of Chain Drug Stores (KACDS).

On behalf of the Independent and Chain Pharmacists and Pharmacy members across the state, we thank you for considering our comments today.

Senate Bill 491 establishes a program to monitor controlled substances dispensed to Kansas residents. The Kansas Pharmacy Coalition is committed to curbing prescription drug diversion and abuse and we support implementation of prescription drug monitoring programs as a tool to accomplish this goal.

The Kansas Pharmacy Coalition supports the Prescription Monitoring Program provisions of this bill. The Task Force that met during the interim spent many hours studying and working on the specific provisions of the PMP program and we support that language as is presented in this bill.

This bill also creates a methamphetamine precursor scheduling task force which shall study the possibility and practicability of making methamphetamine precursors schedule III or IV drugs and also study the impact on consumer access and cost. Some of our members have concerns with scheduling Pseudoephedrine products. This is a major policy issue that requires full evaluation.

The Kansas Pharmacy Coalition supports SB 491 and believes this is a good step in limiting prescription drug diversion and abuse.

I would be happy to answer questions. Thank you.

I am Jeffery Brandau and I am a Special-Agent-in-Charge of the Topeka Regional Special Operations Division of the Kansas Bureau of Investigation (KBI). I am here today representing the KBI and giving our strong support to SB 491.

Today I am here to speak to you about a significant threat to our citizens -- the non-medical use and abuse of prescription medications. When appropriately used, many of us can benefit from the improved quality of life that prescription medications and analgesics provide. But when they are abused, these drugs can be as addictive and dangerous as other illegal drugs. Prescription drugs are the second most commonly abused category of drugs[1] in our society. Marijuana is first and prescription drugs are followed by cocaine, methamphetamine and heroin.

Obviously, our first priority is to protect our citizens. What makes this problem unique, though, is that we have to balance legitimate access to controlled substance prescription medication with prevention, education and enforcement against the abuse of these quality of life medications[2].

The three most commonly abused classes of drugs are[3]:

1. Opioids which are most often prescribed to treat pain and include codeine, oxycodone (OxyContin and Percocet), and morphine (Kadian and Avinza)
2. Central Nervous System (CNS) depressants which are used to treat anxiety and sleep disorders and include barbiturates (Mebaral and Nembutal) and benzodiazepines (Valium and Xanax)
3. Stimulants which are used to treat narcolepsy (sleep disorder), attention-deficit hyperactivity disorder (ADHD) and obesity and include dextroamphetamine (Dexedrine and Adderall) and methylphenidate (Ritalin and Concerta)
4.

How serious a threat is the diversion of prescription medications? The Drug Enforcement Administration reports that 20.4 million Americans use prescription medications illicitly. According to the National Drug Intelligence Center's 2006 National Drug Threat Survey (NDTS), 78.8 percent of state and local law enforcement agencies surveyed reported a high availability of illegally diverted pharmaceuticals[4]. The 2006 National Survey on Drug Use and Health (NSDUH) reported that nearly 7 million Americans aged 12 and older reported current (past month) use of psychotherapeutic drugs for non-medical purposes. In addition, the survey reported that 2.2 million people aged 12 or older initiated non-medical use of prescription pain relievers within the past year.

I would now like to focus on some Kansas facts. On your handout you will see a graph concerning narcotic analgesics distributed in Kansas from 2000-2006:

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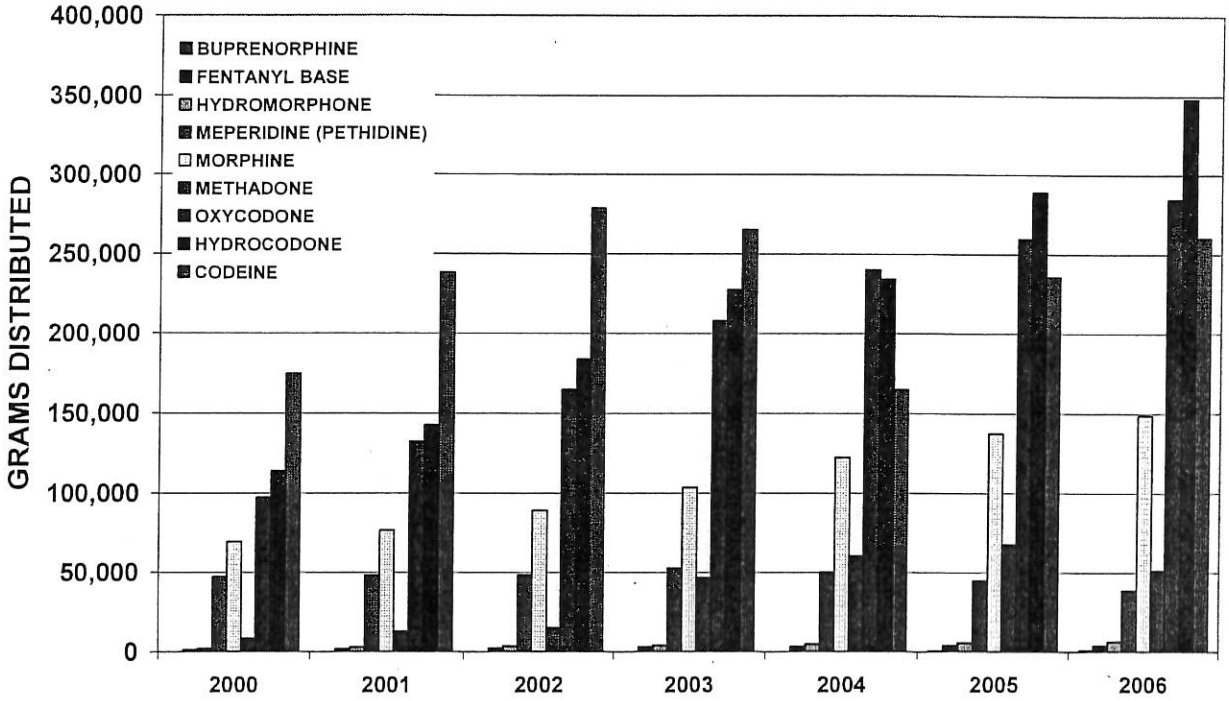
[1] National Institute on Drug Abuses (NIDA) research report Prescription Drugs: Abuses and Addiction
[2] Office of National Drug Control Policy, Synthetic Drug Control Strategy: A focus on Methamphetamine and Prescription Drug Abuse, May 2006
[3] National Institute on Drug Abuses (NIDA) research report Prescription Drugs: Abuses and Addiction
[4] National Drug Intelligence Center, National Drug Threat Assessment 2007,

Narcotic Analgesics Distributed in Kansas, in GRAMS, 2000-2006



During those years, the amount of hydrocodone imported into Kansas rose from approximately 110,000 grams to 350,000 grams representing a 314 percent increase; Codeine increased from approximately 175,000 grams to 250,000 grams; Oxycodone rose from approximately 97,000 grams to 280,000 grams representing a 346 percent increase; Morphine increased from 65,000 grams to 150,000 grams; and Methadone increased from less than 10,000 grams to 50,000 grams.

But the number one threat of all concerns illicit drug use. Since 1975, the National Institute on Drug Abuse (NIDA) has conducted an annual Monitoring the Future (MTF) survey to measure the extent of drug use among 8th, 10th and12th graders. The survey shows that other than non-medical use of prescription medications, the use of illicit drugs by youth has steadily decreased since the highest levels in the 1990s. Unfortunately, illicit use of prescription medications is increasing. The 2006 survey published: "Past year abuses of OxyContin and Vicodin, first measured in 2002, continued at levels that raise concern. Past year abuses of Vicodin was 3 percent among 8th graders, 7 percent among 10th graders, and 9.7 percent among 12th graders. Despite a drop in the past year abuse of OxyContin among 12th graders, abuse among 8th graders has nearly doubled since 2002 from 1.3 percent to 2.6 percent."

In their 2005 Teen Drug Trends report, the Partnership for a Drug Free America stated:

- Abuse of Rx/OTC medicines are now so prevalent it is "normalized" among teens.
- Nearly 1 in 5 teens (19 percent or 4.5 million) report abusing prescription medications to get high; and,

- One in 10 (10 percent or 2.4 million) report abusing cough medicine to get high.

When asked why teens would abuse prescription pain relievers, their responses were:

- More than 3 in 5 (62 percent or 14.6 million) say prescription pain relievers are easy to get from parents' medicine cabinets;
- Half of teens (50 percent or 11.9 million) say prescription pain relievers are easy to get through other people's prescriptions; and,
- More than half of teens (52 percent or 12.3 million) say prescription pain relievers are "available everywhere."

Methods of diversion include but are not limited too:

1. Doctor shopping -- an individual visits numerous doctors to acquire prescriptions for controlled medications. Many have legitimate aliments but visit numerous doctors to receive multiple prescriptions, oftentimes to be sold on the streets.

2. Forgery -- an individual takes a written prescription and either changes the dosage unit, number of dosage units, refills, or obtains a blank prescription pad, signs the doctor's name and writes the prescription for the medication sought.

3. Call-in-Prescriptions -- Schedule III drugs can be prescribed over the telephone and called into a pharmacy. Individuals can fraudulently call a pharmacy and prescribe a controlled medication for themselves.

4. Robbery, theft, and burglary of pharmaceuticals – These can encompass counter-jumping to armed robberies of pharmacies to burglaries of pharmacy buildings.

5. Unscrupulous health care professionals writing prescriptions for profit – these can include pharmacists diverting medications or nurses taking medication from patients and controlled cabinets. Oftentimes the health care professionals become addicted.

6. Internet pharmacies – This group is the fastest growing and perhaps largest future threat to diverting prescription medications. In 2007, a research study concerning internet pharmacies was conducted on behalf of the National Center on Addiction and Substance Abuse (CASA) at Columbia University. Of the 187 internet sites reviewed in the study, 157 or 84 percent did not require any prescription. Of these, 52 or 33 percent clearly stated no prescription was needed, 83 or 53 percent offered on-line consultation, and 22 or 14 percent made no mention of a prescription requirement.

A Prescription Monitoring Program is the first step in providing safety for our citizens. A PMP will assist in reducing the diversion of prescription medications. PMP's are very successful in identifying Doctor Shoppers and Forgeries.

Health care professionals do not need to fear safeguards that are put in place which will ultimately protect our citizens. Systems that incorporate a strong partnership with a PDMP, regulators and law enforcement have benefited from the appropriate practice of prescribed medications for the treatment of acute/chronic pain and other medical conditions. I hope that together we can derail this threat to our citizens, a threat that is escalating and increasingly affecting our youth.

Thank you for allowing me to speak to you today about the important issue of the non-medical use and abuse of prescription medications.

Testimony to the House Health and Human Services Committee In Support of SB491

March 19, 2008

The Kansas Association of Chiefs of Police supports the provisions of SB491 and the implementation of the Prescription Monitoring Program. We also support the creation of the Methamphetamine Precursor Scheduling Task Force and the Veterinary Prescription Monitoring Program Task Force.

Prescription Monitoring Program

The development of a prescription monitoring program was one of the legislative priorities for the three law enforcement associations as determined at the Law Enforcement Legislative Conference in February. It is well established that a significant number of people who are abusing drugs abuse prescription drugs. These abused prescription drugs are frequently obtained through prescription fraud or by seeking prescriptions through multiple physicians.

The prescription monitoring program will provide opportunities to reduce this form of drug abuse. The first opportunity is provided by allowing physicians a platform to check for multiple prescriptions or attempts to obtain multiple prescriptions prior to providing another prescription to the addicted person. The second opportunity is provided by allowing the pharmacists a platform to check for multiple prescriptions prior to filling a prescription authorized by a physician. The third opportunity is provided by allowing investigators access to the information to facilitate an investigation when there is reason to believe a person has fraudulently or illegally obtained prescription drugs.

We see this program as not only being effective in determining when prescription drugs are fraudulently or illegally obtained, but also—and perhaps even more importantly—as a deterrent to those who may attempt to feed an addiction through this method. When people know they are likely to be caught breaking the law, they are less likely to commit the offense. Hopefully, the program will prevent the access to the prescription drugs that create the addiction in the first place.

Health & Human Services Committee

Date: 3-24-08

Attachment: 6

Methamphetamine Precursor Scheduling Task Force

When the idea of making methamphetamine precursors scheduled drugs was first brought to our association, it sounded reasonable. But as time went on many questions were raised. Will it drive up the costs of these drugs? Will it create situations where some people no longer have access to them because they can't afford going to the doctor to get the prescription? Will it cause low income people more distress by imposing additional costs to obtain the drugs because of the additional cost of a doctor visit to obtain the prescription? Will those costs impact state programs for assisting the low income families and the elderly with medical costs? Does the access of the precursors remain a problem in Kansas for methamphetamine manufacturing? Those are all serious questions that must be answered by the industry professionals before making such changes.

We support the effort to provide insight into all of these questions. This task force will provide those answers so an informed decision can be made on the proposal to make these precursors scheduled drugs.

Veterinary Prescription Monitoring Program Task Force

Law enforcement is also aware of the potential for abuse of drugs obtained through veterinarian services. We also support this task force who include the professionals to determine first if such a monitoring program for veterinarian prescribed drugs is needed. We also recognized the value of such a task force to determine how this can best be accomplished if it is determined to be helpful to address prescription drug abuses.

To be clear, we are not supporting making methamphetamine precursors scheduled drugs nor are we supporting a veterinary prescription monitoring program at this time. But our minds are open to the possibilities and we look forward to guidance from these task forces.

We encourage you to recommend this bill favorably for passage.

Ed Klumpp
Chief of Police-Retired, Topeka Police Department
Legislative Committee Chair, Kansas Association of Chiefs of Police
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Kansas Peace Officers' Association

INCORPORATED
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P.O. BOX 2592 · WICHITA, KANSAS 67201

Testimony to the House Health and Human Services Committee In Support of SB491

March 19, 2008

The Kansas Peace Officers Association supports the provisions of SB491. In February at the annual law enforcement legislative conference, the three law enforcement associations determined a prescription monitoring program should be one of our legislative priorities.

There is no doubt a problem exists with people who are abusing prescription drugs. These abused prescription drugs are frequently obtained through prescription fraud or by seeking prescriptions through multiple physicians.

It is our belief the prescription monitoring program will reduce this form of drug abuse. It will accomplish this through:

- Allowing physicians to check for persons with multiple prescriptions or attempting to obtain multiple prescriptions.
- Allowing the pharmacists to check for persons with multiple prescriptions for the same drug.
- Allowing investigators an investigative tool to facilitate an investigation when there is reason to believe a person has fraudulently or illegally obtained prescription drugs.

We also believe this will provide a deterrent effect to those who may attempt to abuse the prescription drug system and to prevent the access to the abused prescription drugs.

We also support the creation of the Methamphetamine Precursor Scheduling Task Force. There are many questions that need answered before any movement is made to place methamphetamine precursors on the drug schedules. The task force approach should engage the right people in exploring the need and the feasibility of such legislative action.

Health & Human Services Committee

Date: 3-24-08

Attachment: 7

In Unity There Is Strength

We are also aware of the potential for prescription drug abuse through veterinarian initiated prescriptions. Therefore, we also support the creation of the Veterinary Prescription Monitoring Program Task Force to explore the need, feasibility, and methodology to add veterinarian based prescriptions to the prescription monitoring strategy.

While we are not supporting making methamphetamine precursors scheduled drugs or supporting a veterinary prescription monitoring program at this time, we need to explore the pros and cons of each concept on which the legislature can base future decisions.

We encourage you to recommend this bill favorably for passage.

Ed Klumpp
Chief of Police-Retired, Topeka Police Department
Legislative Committee Chair
E-mail: eklumpp@cox.net
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To: House Committee on Health and Human Services

From: Dan Morin
Director of Government Affairs

Date: March 19, 2008

Subject: Sub for SB 491; An act concerning controlled substances; enacting the prescription monitoring program act

The Kansas Medical Society appreciates the opportunity to submit the following comments in support of Sub for SB 491 which would enact the prescription monitoring program for the State of Kansas. The time is probably right for such a system. Thirty-five states currently have prescription monitoring programs or have enacted legislation to initiate the process and 14 additional states, including Kansas, are in the process of proposing and/or considering legislation. In addition, the Kansas Medical Society House of Delegates in 2006 approved a resolution supporting the establishment of a statewide controlled substances prescription monitoring program.

Let me say at the outset, that like all Kansans, we believe that law enforcement goals of identifying and investigating illegal drug use and diversion is an important priority. We do believe inappropriate use of prescription drugs should be identified; however, we hope it will not impede access to clinically appropriate patient treatment or have a negative impact on a physician's ability to help patients manage their pain. One concern we do have is the potential to mistakenly identify high-frequency, high-volume use or prescribing of controlled substances as inappropriate leading to increased regulatory or law enforcement oversight activity. A well formulated program should primarily focus on providing a useful and valuable tool to physicians and other clinicians as they assess the appropriateness of prescribing and dispensing controlled substances, particularly for unfamiliar patients and also for monitoring the prescription histories of long-term patients.

It is important to note that health care providers, law enforcement officials, and regulatory boards should not be privy to any additional information than they are already able to receive. The only difference will be that an effective monitoring program should provide such clinically useful information in a ready accessible and user friendly way. The Kansas Medical Society would like to commend the efforts of the Controlled Substances Monitoring Task Force and its work in drafting the legislation now before you, especially the inclusion of important safeguards to protect patient confidentiality, appropriate access to controlled substance prescription information, and the timely destruction of unnecessary data.

One of the strong points we see in the current bill has to do with the creation of an advisory committee which will be responsible for monitoring operation of the program subject to oversight of Kansas State Board of Pharmacy. It is vital that a committee made up of professionals participating in any monitoring program be made up of qualified individuals who are in the same, or similar, professions and have the appropriate education and training to review the effectiveness of the monitoring program and whether program goals are being met.

We do have one technical amendment to Sub for SB 491. We respectfully urge the committee to amend the following language in order to reflect the intentions of the Senate Committee on Public Health and Welfare. I've attached a copy of the adopted amendment as approved by the committee.

Page 3, lines 27-34

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern; ~~subject to the requirements in K.S.A. 22-2502, and amendments thereto;~~

(4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern; **subject to the requirements in K.S.A. 22-2502, and amendments thereto;**

Thank you for your attention and consideration of our comments.

KANSAS

KATHLEEN SEBELIUS
GOVERNOR

STATE BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

MEMORANDUM

TO: House Health and Human Services Committee

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: March 19, 2008

RE: **Substitute for S.B. No. 491**

Thank you for the opportunity to appear before you on behalf of the State Board of Healing Arts in support of Substitute for S.B. No. 491. The bill strikes a balance among a number of different interests by providing: (1) protection of patient privacy; (2) a diagnostic and treatment tool for physicians; and (3) access by state regulatory bodies to potential practice act violations. The Board believes, however, there was an error in the drafting of Substitute for S.B. No. 491 at page 3, lines 30 and 31 and a technical amendment is appropriate. The Board believes that the phrase "subject to the requirements in K.S.A. 22-2502, and amendments thereto" should be deleted and inserted at page 3, line 34. Professional licensing, certification and regulatory agencies do not request the issuance of search warrants. Section 5(d) of S.B. No. 491, as introduced, provided authority to release data to law enforcement officials "only if such request relates to a person who is the subject of an active investigation being conducted by the officer's employing government entity and such request contains an approval by a supervisor of the officer's employing government entity". We believe that the language on page 3, lines 30 and 31 was intended to replace the language in Section 5(d) of the original bill and apply to law enforcement officials and not to professional licensing and regulatory agencies.

Initially, the Board expresses its appreciation to the Controlled Substances Monitoring Task Force for its hard work and willingness to receive input from a diverse group of individuals and organizations that were not formal members of the Task Force. As a result, Substitute for S.B. No. 491 will result in substantial protection to the health and safety of Kansans.

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The recent case of a Haysville physician that has received extensive publicity is an extraordinary example of the benefits that can be derived from a prescription monitoring database. This case involves patients receiving prescriptions from a number of prescribers and from more than 40 pharmacies located in the vicinity of Haysville. Board investigators have been required to obtain, through subpoena, prescription information

from pharmacies that maintain the data in a number of different formats. As a result, Board staff has been required to manually sort through the prescription records and then input the data into a readily accessible and searchable format. The prescription monitoring program database would eliminate this tedious process and allow investigators to obtain pharmacy data from multiple locations involving multiple patients and prescribers without the need to issue subpoenas and obtain the information from every pharmacy.

The Board believes that a centralized database will stem the epidemic of deaths from unintentional drug overdoses from legal drugs. The conscious and more prevalent unconscious misuse of controlled substances can be substantially reduced. The data can also be used to identify many types of illegal activity including prescription forgery, indiscriminate prescribing, and "doctor shopping". Physicians who suspect that a patient is abusing and/or diverting controlled substances will have a way to verify use and curb abuse.

The Board asks that you make the above-requested technical amendment to Substitute for S.B. No. 491 and that the Committee act to pass the bill, as amended, with the recommendation that it be favorably considered by the House as a whole.

Thank you for the opportunity to appear before you in support of Substitute for S.B. No. 491 on behalf of the State Board of Healing Arts and I would be happy to respond to any questions.

Hello,

My name is Linda Barefoot and I am the Regional Director of State Government Affairs with Purdue Pharma L.P. Purdue manufactures and distributes controlled and non controlled prescription medication and over the counter products. We are in support of appropriately designed State Prescription Monitoring Programs and believe that Kansas SB 491 is an example of such a program. We would like to go on record expressing our support of this proposed legislation.

Thank You.

Linda Barefoot
Senior Director, State Government Affairs
Purdue Pharma LP
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Email: Linda.barefoot@pharma.com

Health & Human Services Committee

Date: 3-24-08

Attachment: 10

K A O M

Kansas Association of Osteopathic Medicine
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TESTIMONY

House Health and Human Services Committee
SB 491
March 19, 2008

My name is Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine. Thank you for this opportunity to address the House Health and Human Services Committee regarding SB 491.

SB 491 would establish the Prescription Monitoring Program and the Prescription Monitoring Advisory Committee. KAOM supports SB 491. Our concerns were addressed during task force meetings in the summer. Establishing a Prescription Monitoring Program, as outlined in the bill, will assist physicians with meeting the needs of their patients and community.

We encourage the Committee to support SB 491.

Thank you.

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

On behalf of the approximately 339 chain pharmacies operating in the state of Kansas, the National Association of Chain Drug Stores (NACDS) thanks the House Health and Human Services Committee for considering our comments on Senate Bill 491. Chain pharmacy is committed to curbing prescription drug diversion and abuse. We support implementation of a prescription drug monitoring program to monitor controlled substances dispensed to Kansas residents as a tool to accomplish this goal. NACDS applauds Senator Schmidt, the Committee, and other esteemed members of the Kansas Legislature for working on this important matter. We believe this bill will allow the proposed prescription drug monitoring program to meet its intended purpose without imposing burdensome requirements on pharmacies.

While chain pharmacy fully supports the provisions of Senate Bill 491 relating to creation of a prescription monitoring program, we do have concerns with the provisions of the bill that create a task force to study possibility and practicability of making methamphetamine precursors schedule III or IV drugs. NACDS opposes scheduling over-the-counter pseudoephedrine products as schedule III or IV drugs. This change would require a consumer to obtain a written prescription in order to purchase a pseudoephedrine product from a pharmacy. Considering both the high cost of healthcare visits, especially for individuals who do not have insurance, and the busy schedules of doctors, not all patients would be able to see a doctor every time they catch a cold. The unfortunate consequence of this restriction would be limited access to legitimate healthcare products for consumers who need them. NACDS respectfully urges the members of the House Health and Human Services Committee to carefully consider the negative impact that this provision will have on the citizens of Kansas.

Chain pharmacy appreciates your consideration of our comments. Thank you again.

Respectfully submitted,

Carey Potter

Health & Human Services Committee

Date: 3-24-08

Attachment: 12

Carey Potter, Regional Director State Government Affairs
National Association of Chain Drug Stores

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To: **Senate Public Health and Welfare**
Senator Barnett, Committee Chairman
Senator Vicki Schmidt, Vice Chair

From: **Dana Ketterling**

Re: **Support for SB 491**

Date: **March 19, 2008**

Chairman Barnett and Committee Members:

Thank you for the opportunity to submit my testimony as a strong proponent of SB491. I am a mother who has a son with a serious prescription drug addiction and I've seen first-hand the urgent need for a prescription drug monitoring system in Kansas. I witnessed my son, fill with ease, addictive medications; and doctor "shop" without difficulty, unable to do anything to stop it. I've experienced the horrors of finding my son, after having overdosed, and watch him nearly lose his life on multiple occasions. Until now, I've felt absolutely helpless to make a difference. I hope that by sharing my testimony, as well as my son's with you, we can make a difference.

Pain, anti-anxiety, and anti-depressant medications are readily available in our schools. My son was first exposed in his senior year in high school and his addiction started with medications such as Xanax, Valium , Adderall, Hydrocodone, and then Oxycontin. My son had never been in any kind of trouble until he began experimenting with prescription drugs, along with many of his friends. Not only do our kids experiment with these medications taking them by mouth, but, as their addiction progresses, they can even begin to inject these, such as Oxycontin; one of the most difficult medications to break free of once you become Opiate-dependent. My son asked for help long before ever entering the legal system, recognizing his need for treatment to save his own life. In the past two years, he has entered and completed treatment programs trying to break the chain of addiction. He also now suffers from severe bi-polar depression, further complicating his recovery.

Through personal funds, insurance costs and reimbursements, the investment in his recovery from prescription drug addiction to date is already in excess of $100,000. As you can see, one family's cost could begin to rival the state-wide annual operating cost for this safeguard. My son's life is at stake and my situation is not isolated. I've seen the devastation of addiction in literally a hundred families I've come in contact with. With no system in place, addiction will grow out of control for generations to come unless we do something now to stop it.

My son wanted to be here himself to give you his personal testimony, but, he is incarcerated at the age of 20, which began a little over a year ago with attempted

prescription drug fraud, a misdemeanor charge.
Page 2
Testimony – SB 491
Dana Ketterling

My son wants to use his own experience to demonstrate the need for a monitoring system and wanted to also give you his testimony, which I obtained on February 6th, during a visit with him at his detention center.

Following are his own words and he thanks all of you for the opportunity to hopefully make a difference. He will address what he has observed as "loop holes" during his journey. If he were here today he would present himself as a young man with incredible potential and you'd never suspect that he suffered from addiction. I now offer his thoughts and insights.

"The gaps between the privately owned and operated pharmacies need to be closed. They need to electronically link the pharmacies together so you can't go to three pharmacies in Kansas and then cross the state line into Missouri and hit two or three more the same day. If you do it all in one day, they have no clue what's hitting them. Pharmacies should also require I.D.'s, but, they don't. A mom I know was prescribed Oxycontin. All her daughter had to know was her birthday and she picked up the entire prescription. I've known parents who actually fill these types of prescriptions and give it to their kids, who have also become addicts."

"Another thing that needs to happen in my opinion, is for doctors to be more careful with their prescription pads, i.e., leaving them in the exam rooms where anyone can just tear some off, or even take the entire pad with them. They also have their DEA numbers printed right on them making it easy. I've known people who have done this. All you have to do is go to "Google," for example, to learn how to write prescriptions. One person can get a prescription pad and sell the individual sheets or copy them."

"There needs to be a system where you can also input a person's name to see if they have any prescription fraud or drug charges and are presently in the legal system; i.e., almost like a background check. They also need to be able to look at their history to see what prescriptions they are filling and when. If you are doctor shopping, then you can literally go from one doctor to get one prescription and then go to another doctor and get a different milligram or different dosage of the same prescribed medicine."

"They also need to be able to link hospitals and emergency rooms together for the same reason. You can literally go from ER to ER and granted you may have a legitimate reason to get the medication, but it is obvious you are addicted to it because you run out early, thus making it necessary to fill it again before you experience the horrible withdrawal (especially from Opiates). Kansas and Missouri need a cooperative effort in this area. They need a bond to say that they are going to both have the system in place

(for obvious reasons)."

(cont'd)

"I'm focusing a lot of this off of addicts, but there are such bad gaps in the present system that it makes it very easy to fall into addiction and then you are trapped. Anyone can become addicted to prescription medication without even trying to. It has literally ruined my life. I would have loved to tell you this in person, but I'm incarcerated because of my addiction to prescription drugs. I'm fortunate that a pharmacy system did catch me. However, without intervention, it could have cost me my life and I'm only 20 years old."

"My mom has literally spent tens of thousands of dollars on treatment for me, but, I wish the system wouldn't have made it so easy to become an addict and stay in addiction. The system you are proposing would make a difference and I hope and pray that every state joins in so that kids like me don't become victims of prescription drug abuse."

"There also needs to be more community education and help. Parents and/or grandparents who get prescribed these addictive medications leave the unused pills in their medicine cabinets where children and grandchildren have easy access. There should also be consideration given to funding programs for Opiate pain medication dependence because people stay sick because they can't afford to get well. Medication therapy, such as Suboxone is almost $300 after insurance coverage. Medication therapy such as this makes Opiate withdrawal more tolerable and your success of breaking free of addiction with this kind of therapy is much more likely. People in the new system need to be able to be flagged if they've had a drug charge or prescription fraud charge, so that it can be accessed to help inform pharmacies and doctors. I hope I'm already flagged in the system for my own good."

He goes on to say, "In my closing thoughts, if this issue is not taken seriously, it is your children and your grandchildren in the next generation who could pay the price, just like me."

I hope that my son's own words are valuable in vividly conveying the real life impact of this clear and present danger that exists in our state. Your thoughtful consideration of passing this Bill would mean so much to me as a mother, who loves her son, and who wants to help other people avoid this tragedy in their families.

I'm also providing you with the testimony of Debra Culala, Director of Cypress Recovery, which is attached for your consideration as well.

Thank you for this opportunity and for your efforts with regard to SB 491. If there is ever anything I can do to help in any way, please let me know.

To: **Senate Public Health and Welfare**
Senator Barnett, Committee Chairman
Senator Vicki Schmidt, Vice Chair

From: **Debra Culala, Director**
Cypress Recovery, Olathe, Kansas

Re: **Support for SB491**

Date: **March 19, 2008**

"I am in support of the senate bill regarding monitoring of prescription medications. We, at Cypress Recovery, Inc. have evidenced the pain and devastation of those addicted to prescribed medications, in which these individuals "unknowingly" became addicted to medications that they believed would benefit their lives. As tolerance builds, the need to feed the addiction increases, causing "doctor hopping," emergency room visits to different hospitals, pharmacy hopping, stealing prescription medications out of family and neighbors medicine cabinets, stealing prescription pads to forge their own scripts, and mixing of medications. The withdrawal from prescription medications causes many individuals to "give up" prior to completing the detoxification process stating, "I felt like I was going to crawl out of my skin, I wanted to die, I couldn't take it" creating another roadblock in being able to manage prescription medication addiction effectively. Anything we can do as a community and State towards early intervention and recognition of a potential problem, the greater opportunity we have towards a Drug-free Kansas and allowing individuals "a chance for a lifetime…".
Sincerely,
Debra Culala, Director of Cypress Recovery, Inc.
ACRPS, RAODAC, CADC, SRS/AAPS Regis. a/d counselor, KCGC

Health & Human Services Committee

Date: 3-24-08

Attachment: 14

CHPA

founded 1881

March 19, 2008

CHPA Comments on Sub. S.B. 491

Members of the House Health and Human Services Committee:

Thank you for this opportunity to comment on Sub. S.B. 491. This bill establishes a methamphetamine precursor scheduling task force to study the possibility and practicability of making methamphetamine precursors Schedule III or IV drugs and its impact on consumer access and cost. This bill follows a recommendation from the Controlled Substance Monitoring Task Force that pseudoephedrine (PSE), a methamphetamine precursor, be rescheduled to Schedule III so that it would be tracked by a prescription monitoring program established under Sub. S.B. 491.

The Consumer Healthcare Products Association (CHPA) is the 126 year old trade association representing the major manufacturers of over-the-counter (OTC) medicines, including products containing PSE. While we do not oppose programs that allow electronic tracking of PSE sales, we are opposed to placing PSE on Schedule III, which would require a consumer to obtain a prescription for PSE purchases.

OTC pseudoephedrine is central to the safe and effective self-treatment of colds, allergies, and sinus problems—the single largest category of health problems treated with OTC medicines. PSE is approved by the U.S. Food and Drug Administration for sale without a prescription because it does not require a doctor's intervention for safe and effective use. Making PSE available only by prescription will substantially increase costs to the healthcare system by requiring consumers to visit a doctor before treating a common cold or allergies. We are encouraged by the inclusion of consideration of cost and access for consumers in the task force's directive.

We are concerned, however, with the Controlled Substance Monitoring Task Force's characterization of PSE as an abusable drug. Federal and state laws restrict access to PSE not because it is being abused, but because it can be used to create an illegal drug. Kansas already goes beyond the federal requirements of the Combat Methamphetamine Epidemic Act (CMEA), which requires that all PSE products remain stored behind the counter or in a locked case where consumers do not have direct access. Clandestine meth lab incidents have been cut in half every year in Kansas since similar state restrictions were enacted in 2005. Kansas is one of 17 states that require PSE products to be sold in pharmacies. In 32 states, any retail

Consumer Healthcare Products Association
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establishment, not just pharmacies, can sell PSE products as long as they are kept behind the counter. Only one state currently requires a prescription for PSE.

Several states are considering or have considered electronic logbooks for tracking PSE sales, including Hawaii, Oklahoma, Missouri, Kentucky, Virginia, Maryland, and Iowa. But no state has placed PSE on prescription-only status to facilitate tracking of sales, and there is no legislation being considered in any of those states that would move PSE to prescription-only status. Hawaii is creating a tracking system that is endorsed by the Department of Public Safety, without requiring a prescription or even moving PSE sales to pharmacies. All of Hawaii's 1,883 retail stores, not just pharmacies, can sell PSE products.

CHPA encourages the task force to consider alternatives to prescription-only status for PSE that would allow electronic tracking of sales without unduly restricting consumer access to this safe and effective medicine.

Respectfully submitted by Mandy Hagan, Director, State Government Relations

VICKI SCHMIDT
SENATOR, 20TH DISTRICT
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STATE OF KANSAS

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
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TRANSPORTATION
WAYS AND MEANS

Testimony Presented to The House Health and Human Services Committee By Senator Vicki Schmidt March 19, 2008 Concerning Substitute for SB 549

Chairperson Landwehr, Vice-Chair Mast, Ranking Minority Flaharty and distinguished members of the House Health and Human Services Committee:

Thank you for the opportunity to provide testimony on Substitute for SB 549. This bill would require that each pharmacy in Kansas establish a continuous quality improvement program (CQI). The purpose is to allow pharmacies to assess errors in dispensing in order for the pharmacy to take appropriate action to prevent a recurrence of any errors.

The National Association of Chain Drug Stores wrote a letter to each Senator after passage of this bill out of committee. They made some specific points, which I would like to call to your attention. Almost ten years ago, the Institute of Medicine (IOM) focused national attention on the need to reduce preventable medical errors. The IOM has recognized that for any quality improvement program to be successful, health care providers who evaluate errors must feel safe to do their assessment. This requires creation of a confidential, non-punitive environment with all of the needed legal protections. These legal protections must assure that the documents, records, proceedings, information and participants in the programs remain confidential, and are protected from any means of legal discovery or use as evidence in civil lawsuits or administrative proceedings. The provisions of this bill establish such legal protections, which are **essential** to the success of the pharmacy CQI programs required in this legislation. Notably, these are the same spectrum of protections that are given to other healthcare providers in the section 65-4915 (c) of the existing Kansas peer review laws.

Errors are mistakes, not intentional acts, and should be treated with a non-punitive approach that uses the lessons learned from the error to prevent future errors. Successful patient safety programs depend on encouraging health care providers to voluntarily discuss and learn from their mistakes. Establishing adequate legal protections for the documents, records, proceedings and participants in pharmacy CQI programs are needed as a prerequisite before requiring these beneficial programs so that health care providers feel safe to speak candidly while participating in these programs.

I understand that the Kansas Association for Justice will be seeking an amendment to Substitute for SB 549 that would practically remove the important legal protections created under this bill. Their amendment will seek to codify into statute Kansas case law (264 Kan. 144, 955 P.2d. 1169 (1998) – Adams v. St. Francis Regional Medical Center). The Adams decision was applicable to situations relevant to that case. Please do not allow the Adams decision to be codified into statute and be broadly applied to all peer reviewed CQI programs. Doing so would essentially remove the necessary legal protections for these programs, thus rendering them useless.

I thank you for your consideration and ask that you pass Substitute for SB 549 out of your committee favorably. I am happy to stand for questions at the appropriate time.

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Health & Human Services Committee
Date: 3-24-08
Attachment: 16

EXPLANATION OF VOTE
SB 549
February 27, 2008

This bill will grant a peer review privilege to pharmacists, who are members of the health care community, to promote greater competency and improve the quality of medical care by encouraging frank and open discussion about care rendered and ways to improve the system. Courts have always recognized the strong state interest in creating a peer review privilege, but that privilege is also balanced against a plaintiff's need to have access to all relevant facts about their care. In our state, the forms and documents containing factual information about a patient's care are not protected from discovery by the peer review statutes. But information generated by a peer review committee, including the opinions, decision-making process and conclusions of committee members or officers are protected from discovery. When documents contain both types of information – protected and unprotected – it is the job of the court to remove (redact) protected information, and grant plaintiffs access to the portions containing relevant facts. The law, as clarified by the Kansas Supreme Court in the *Adams v. St. Francis Regional Medical Center* case, does a good job of balancing these competing interests. The citizens of Kansas will be well served by granting this peer review privilege to Kansas pharmacists.

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

Testimony concerning SB 549: Continuous Quality Improvement
House Health and Human Services
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
March 19, 2008

Chairperson Landwehr and Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom is appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public. They are charged with protecting the health, safety and welfare of the citizens of Kansas and to educate and promote an understanding of pharmacy practices in Kansas.

The Board of Pharmacy supports SB 549 as a proactive measure to guard against errors that occur in pharmacy. Pharmacies have spent billions of dollars on safety technology and other improvements but as long as there is a human factor involved in filling prescriptions there are going to be errors. The National Association of Boards of Pharmacy recommended last year, through a resolution supported by all 50 states, that each state Board implement quality improvement programs.

Traditionally Board's have been reactive to errors and impose sanctions after an error has been made and a complaint received. Continuous quality assuarance (CQI) is a non-punitive approach that redefines accountability and directs it in a productive and useful manner. New factors are constantly introduced in the pharmacy practice system and there will always be room for improvement. We are trying to reach out to the pharmacies by providing them with standards and procedures that will help improve their performance. This bill institutes a quarterly review of incidents in a pharmacy. The pharmacy will look at each error and analyze how the problem occurred and what can be done in the future to correct the problem. They would then use the findings to formulate an appropriate response and develop pharmacy systems and workflow processes designed to prevent errors.

The pharmacy would be required to keep records of its CQI program on the pharmacy premises. Once a meeting has been held the pharmacy must create a summarization document that contains an analysis of remedial measures that are undertaken following the event. The purpose of the document is not to learn who is at fault or who is to blame. The focus is on what is being done in the future to correct the problems.

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The Board would through its annual inspection process track how the pharmacy has formalized their CQI team. The pharmacy would be required to publicize changes to their pharmacy staff based on the CQI meetings. The pharmacy should improve their policies and procedures continually based on what they have learned through reviewing quality related events.

There are sixteen states that have taken these steps to ensure additional safety in the dispensing of prescription drugs. The Board of Pharmacy recommends this evaluation opportunity for measuring pharmacy performance in a positive manner. This is merely a peer review process and as such should be protected from discovery as are other peer review processes. The Board of Pharmacy opposes the recommendations made by the Kansas Association of Justice. The attorneys are currently able to obtain factual information related to errors and this bill would not affect that ability. The Board is asking that each pharmacy be required to study their errors and this information should not be discoverable.

The second portion of the bill relates to requirements placed on non-resident pharmacies licensed in Kansas. The new language gives the Board additional authority to access a civil fine against any nonresident pharmacy, not to exceed $5000, when the pharmacy fails to respond to the Board in a timely manner. The Board has had instances in which we were unable to obtain a response from either the licensee or the State Board of Pharmacy where the non-resident pharmacy was located. This language would motivate a nonresident pharmacy to respond to the Board's inquiries in a timely manner and if they failed they could be fined. The Board believes that this additional language will ensure compliance when the Board is conducting an investigation.

Thank you for permitting me to testify regarding this bill. I will be happy to yield to questions that anyone may have.

Testimony in Support
Of
Senate Bill 549
Presented by Frank Whitchurch, RPh
Member of the Kansas Board of Pharmacy

Chairperson Landwehr,
Members of the House Health and Human Services Committee

I wish to begin by expressing my thanks to Chairperson Landwehr and members of the committee for allowing me the opportunity to speak in support of this legislation. My testimony will provide the committee with useful information concerning this bill, its genesis and more importantly why we at the board of pharmacy consider this legislation to be one of the most important bills affecting public health in years.

My name is Frank Whitchurch. I am a licensed Kansas pharmacist with over 30 years of practice experience. I am currently serving my second term on the board of pharmacy.

My current practice setting is as Manager of Pharmacy Operations and Pharmacist in Charge at Prescription Solutions in Overland Park Kansas. Prescription Solutions is a division of United Health Care.

Senate Bill 549 addresses two areas of great concern to the board. Implementation of this bill will dramatically and positively impact the health of Kansas citizens

Section 1 will improve the health of all Kansans by providing for the implementation of a Continuous Quality Improvement program which will lead to a reduction in errors in all pharmacies in our state.

Section 2 will allow the people of Kansas, acting thru their board of pharmacy, to demand that non resident pharmacies respond to a request for information needed to complete a board investigation by enabling the board to assess a civil fine for non compliance with a request for information sent by certified mail.

The question that needs to be asked of and answered by the board is if this legislation is necessary.

The answer is emphatically YES! Enactment of this bill is absolutely necessary in today's pharmacy practice environment which involves high volume dispensing of very potent medications.

Please allow me to comment further.

One of the characteristics of highly successful organizations is the ability to not only be reactive but to be proactive as it seeks to successfully complete its mission.

I am very happy to report to you that this board is not only concerned with reacting to errors but wants to actively take steps to prevent them. We have reviewed the best of the latest thinking on prevention of errors and incorporated it in section one of this bill.

Implementation of a Continuous Quality Improvement Program in Kansas pharmacies will reduce errors by mandating that each practice setting review its dispensing process on a regular basis, seek to determine the root cause of all errors and make process changes to avoid a repetition of the error. It will greatly encourage the reporting of all errors great and small discovered internally or reported by a patient. Honest reporting of all errors is key to process improvement with root cause analysis and reconciliation as the final step. It is only possible in a non punitive environment with deliberations centered around process improvement that are protected from discovery or other legal processes.

Current statute and regulation does NOT mandate this approach to process improvement or regular dispensing process review meetings. This legislation will allow the board to mandate that these events occur on a regular basis with the winner being the citizens of Kansas

When we implement this section of the legislation we will be joining with 16 other states and counting that are mandating a Continuous Quality Improvement program. We will be counted among those that want the highest level of patient protection, that understand that great strides in patient safety can be made with minimal costs, and be numbered among those willing to take the extra step to protect our citizens.

The second provision of this bill asks for a minor change in a current statute to allow the board to better regulate non resident pharmacies. It asks that the board be given the authority to assess a civil fine for failure of the non resident pharmacy to respond to a request for information needed by the board to complete the investigation of a complaint filed by a Kansas patient. Under current statute the board does not have the means to get the needed information in a timely manner. It is not unusual for non resident pharmacies to ignore requests for information. This legislation, by giving the board the ability to assess a fine will greatly facilitate the flow of needed information.

Please help your board of pharmacy improve the service it provides our citizens. I now stand ready to answer any questions the committee may have on this matter.

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Testimony re: SB 549
House Health and Human Services Committee
Presented by Julie J. Hein
on behalf of
Kansas Pharmacy Coalition
March 19, 2008

Madam Chairman, Members of the Committee:

My name is Julie Hein, and I am government affairs consultant for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

The Kansas Pharmacy Coalition shares the public's interest in patient safety and reducing preventable errors. We recognize that pharmacy CQI programs can serve to meet this important goal.

Pharmacy CQI program participants must feel free to candidly discuss incidents without fear of punitive repercussions. In order for pharmacy CQI programs to serve the intended purpose of "assess[ing] errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence," participants of CQI programs must feel free to candidly discuss incidents without fear of punitive repercussions. Such an environment is essential for any pharmacy CQI program to be effective. By enabling pharmacy personnel to focus on the lessons and information learned, both the public and the practice of pharmacy will benefit from the resulting improvements.

This bill provides that the Pharmacy CQI programs and the pharmacy personnel who participate in such programs have the same peer review protections that are provided to other healthcare providers under existing Kansas Statute 65-4915. Healthcare providers covered under peer review statutes include doctors, dentists, dental hygienists, nurses, practical nurses, mental health technicians, physical therapists, physical therapist assistants, etc. This bill also provides that such licensing boards may not use CQI proceedings as the sole source of evidence for bringing administrative actions against a licensee. The protections included in this bill for CQI mirror the protections for other healthcare providers in the peer review statutes.

Continuous quality improvement programs will assist in reducing errors by allowing pharmacies to review the dispensing process on a regular basis and make procedural changes to avoid errors in a non-punitive environment. We ask that you support SB 549.

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

KPhA Kansas Pharmacists Association
KSHP
KNPN

Kansas Pharmacists Association
Kansas Society of Health-System Pharmacists
Kansas New Practitioners Network
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TESTIMONY

Concerning Senate Bill 549

Continuous Quality Improvement

House Health and Human Services Committee

Prepared by Michael F. Larkin, Executive Director

KANSAS PHARMACISTS ASSOCIATION

March 19, 2008

Madam Chair and Members of the Committee:

The Kansas Pharmacists Association is a state professional society of pharmacists, united for, and dedicated to, the advancement and promotion of quality public health. The Kansas pharmacists Association is the only state-wide Association that represents Kansas pharmacists within all practice settings. The Kansas Pharmacists Association is also a member of the Kansas Pharmacy Coalition, an organization that is comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

I am writing you today to urge your approval of Senate Bill 549 in its current form. One of the reasons for the existence of the Association is a commitment by member pharmacists to protect and advance the interests of the citizens of Kansas in the area of pharmacotherapy. Everyone in pharmacy recognizes the need to reduce prescription errors to the lowest possible level. Almost everyone accepts that to do so, the pharmacy needs to adopt a best practices plan. We feel that Senate Bill 549 as it is before you today greatly assists us in this endeavor. The bill as written allows pharmacies to assess the errors that occur in the pharmacy free of being subject to punitive action that otherwise may be allowed through discovery. The Association feels this aspect of the bill is crucial to its success.

Thank you for considering my comments as you deliberate this bill.

Sincerely,

Michael F Larkin

Michael F. Larkin
Executive Director

Health & Human Services Committee

Date: 3-24-08

Attachment: 20

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

On behalf of the approximately 339 chain pharmacies operating in the state of Kansas, the National Association of Chain Drug Stores (NACDS) thanks the House Health and Human Services Committee for considering our comments on Senate Bill 549, requiring pharmacies to establish continuous quality improvement (CQI) programs and creating legal protections that maintain the confidentiality of program activities, proceedings and reports. Chain pharmacy is committed to patient safety and continuously improving the quality of the pharmacy services we provide. NACDS strongly believes that this bill, as currently written, serves these important goals.

Almost ten years ago, the Institute of Medicine (IOM) focused national attention on the need to reduce preventable medical errors through quality improvement programs. The IOM has recognized that for any quality improvement program to be successful, health care providers who evaluate errors must feel safe to do their assessment. This requires creation of a confidential, non-punitive environment with all of the needed legal protections. These legal protections must assure that the documents, records, proceedings, information and participants in the programs remain confidential, and are protected from any means of legal discovery or use as evidence in civil lawsuits or administrative proceedings. The provisions of this bill establish such legal protections, which are essential to the success of the pharmacy CQI programs required in this legislation. Notably, these are the same spectrum of protections that are already provided to other healthcare providers in the section 65-4915 (c) of the existing Kansas peer review laws.

Errors are mistakes, not intentional acts, and should be treated with a non-punitive approach that uses the lessons learned from the error to prevent future errors. Successful patient safety programs depend on encouraging health care providers to voluntarily discuss and learn from their mistakes. Establishing adequate legal protections for the documents, records, proceedings and participants in pharmacy CQI programs are needed as a prerequisite before requiring these beneficial programs so that health care providers feel safe to speak candidly while participating in these programs.

NACDS respectfully urges members of the House Health and Human Services Committee to vote in support of this bill in its current form, without any changes. If

House Health + Human Services Committee
3-24-08
Attachment 7-1

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enacted, this important piece of legislation will serve to improve delivery of healthcare to the citizens of Kansas.

NACDS appreciates your consideration of our comments. Thank you again.

Respectfully submitted,

Carey Potter, Regional Director State Government Affairs

National Association of Chain Drug Stores

KANSAS ASSOCIATION FOR JUSTICE

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To: Representative Brenda Landwehr, Chairperson
Members of the House Health & Human Services Committee

From: Steven J. Borel, Attorney at Law
On behalf of the Kansas Association for Justice

Date: March 19, 2008

Re: SB 549 Pharmacy CQI Programs—**OPPOSE**

The Kansas Association for Justice is a statewide, nonprofit organization of attorneys that serve Kansans seeking justice. I appreciate the opportunity to testify on behalf of KsAJ on SB 549 as amended by the Senate. KsAJ is opposed to SB 549, without the adoption of clarifying amendments.

KsAJ supports the underlying goal of SB 549 of improving the quality of patient care and reducing patient injury. However, SB 549 must be clarified to reflect the constitutional right to information established in Kansas case law and to expedite the resolution of disputes between pharmacies and Kansas health care consumers. Adding clarification will not reduce the confidentiality of the peer review process, but will eliminate confusion for both parties to a dispute, potentially reducing the length of litigation.

SB 549 establishes a peer review privilege for pharmacists, similar to the privilege established for physicians and other health care providers in KSA 65-4915. Under the peer review privilege as it applies to physicians, documents and information generated as part of the peer review process are confidential and not subject to discovery in litigation. What this means is that privileged peer review documents are hidden from public view, including from the court and the jury, even if they contain evidence of medical negligence or a deviation from the standard of care.

However, the peer review privilege contains an important exception. In the Kansas Supreme Court decision of *Adams v. St. Francis Regional Medical Center*, 264 Kan. 144, 955 P.2d 1169 (1998), the court held that citizens have a constitutional right to factual information related to their case, and such information cannot be shielded by the peer

Health & Human Services Committee

Date: 3-24-08

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review privilege. The decision makes sense: if there were no limits on the peer review privilege, an incompetent, unethical, or negligent health care provider could intentionally hide all evidence of their actions from the patients that they injured to avoid accountability.

SB 549 does not currently reflect the important exception established in the *Adams* case. Without clarification, SB 549 will create confusion about the discoverability of all the factual information normally included in a standard pharmacy incident report and all other factual information provided under the CQI program. This confusion would result in more litigation, which would not benefit either Kansas pharmacists or Kansas patients.

We propose the following amendment to clarify that the constitutional right to information confirmed in the *Adams* case also applies to pharmacy CQI programs: replace the final sentence at the end of new section 1, subsection (b) with the following language: "Nothing in this act shall affect the discoverability of facts relevant to any civil action for damages arising out of an incident or adverse event."

SB 549 as currently drafted will create confusion and will result in more litigation. Without our amendment, which we believe is a reasonable and responsible clarification of current law, we must oppose SB 549. We have attempted to reach consensus with the Board of Pharmacy and the Kansas Pharmacists Association on this important issue and they have rejected our proposed amendments.

We note that, in considering the policy of SB 549, the Legislature must make an important decision regarding whether to extend a peer review privilege to pharmacists, such as that created in section 1, subsection (b) of SB 549. The "peanut" of SB 549 is to establish peer review protections for pharmacists, since the Board of Pharmacy could otherwise require a CQI program through rule and regulation and without legislation. But the Legislature has not chosen to include pharmacists in the list of healthcare providers covered by the Kansas statute that establishes the rules and the terms of peer review privileges for healthcare providers (KSA 65-4915).

KsAJ believes a broad application of the peer review privilege is not in the best interests of Kansas health care consumers and in fact would be very dangerous. We believe the current peer review statute is already too broad: it includes mental health technicians, physical therapists and physical therapist assistants, occupational therapists and occupational therapist assistants, respiratory therapists, physician assistants, and attendants and ambulance services. We believe these professionals, who neither diagnose nor treat patients, are clearly unlike physicians.

KsAJ is firmly opposed to a broad expansion of the peer review privilege across the spectrum of the health care industry. Not all health care professionals, or those in the health care industry, require a peer review privilege to improve the quality of their services to the public. The peer review privilege is an enormous barrier to transparency and infringes upon the public's right to information. By extending a peer review privilege to

pharmacists, the Legislature will open the door to a broader section of the health care industry including nursing homes that will also want a peer review privilege.

We ask that the Committee proceed cautiously in advancing SB 549 given this important public policy issue and the potential to create a "slippery slope" that would hurt Kansas patients. We respectfully request that if the bill advances that it be amended to include our proposed amendment.

Thank you for the opportunity to present testimony.

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Addendum to Testimony

Steven J. Borel
On behalf of the Kansas Association for Justice

Hearing on Sub for SB 549 Pharmacy CQI
House Health & Human Services Committee

March 24, 2008

Health & Human Services Committee

Date: 3-24-08

Attachment: 23

3/19/08

Proposed Amendment No. 2

Replace the final sentence at the end of new Section 1, subsection(b) with the following language: "Nothing in this act shall affect the discoverability of facts relevant to any civil action for damages arising out of an incident or adverse event. The word "facts" as used in this subsection does not include the deliberations and conclusions of persons involved in a peer review process. A court having jurisdiction of any dispute regarding the discoverability of facts may conduct an in camera inspection of documents and redact protected information or otherwise craft a protective order which will permit discoverability of relevant facts."

2-27-08

Sub SB 549, An act relating to the board of pharmacy; concerning continuous quality improvement programs and nonresident pharmacy; amending K.S.A. 65-1657 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Journey.

The substitute bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "no" on **Substitute for SB 549.** While the goal of the legislation and many of its components are important improvements to current law creating a program with great promise.**Substitute for SB 549** establishes a privilege for pharmacists during peer review of their practice for negligence that may hide that negligence as embodied in **Substitute for SB 549**. The bill's proponents' refusal to accept language that is clearly stated in Adams v. St. Francis 264 Kan. 144 will cause terrible expense to litigants in these cases as the court appeals process will surely occur and it is very likely that the Kansas Supreme Court will issue orders overruling of these provisions.—PHILLIP B. JOURNEY

MR. PRESIDENT: This bill will grant a peer review privilege to pharmacists, who are members of the health care community, to promote greater competency and improve the quality of medical care by encouraging frank and open discussion about care rendered and ways to improve the system. Courts have always recognized the strong state interest in creating a peer review privilege, but that privilege is also balanced against a plaintiff's need to have access to all relevant facts about their care. In our state, the forms and documents containing factual information about a patient's care are not protected from discovery by the peer review statutes. But information generated by a peer review committee, including the opinions, decision-making process and conclusions of committee members or officers are protected from discovery. When documents contain both types of information - protected and unprotected - it is the job of the court to remove (redact) protected information, and grant plaintiffs access to the portions containing relevant facts. The law, as clarified by the Kansas Supreme Court in the Adams v. St. Francis Regional Medical Center case, does a good job of balancing these competing interests. The citizens of Kansas will be well served by granting this peer review privilege to Kansas pharmacists.—VICKI SSHMIDT

Senators Barnett, Gilstrap, Lynn, Pine and Umbarger request the record to show they concur with the "Explanation of Vote" offered by Senator V. Schmidt on **SB 549.**