Approved: 02/13/08
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:30 P.M. on February 4, 2008 in Room 136-N of the Capitol.

All members were present.

Committee staff present:
Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Sara Zafar, Kansas Legislative Research Department
Nobuko Folmsbee, Revisor of Statutes
Renae Jefferies, Revisor of Statutes
Jan Lunn, Committee Secretary

Conferees appearing before the committee:
Senator Vicki Schmidt
Curtis L. Bock, DVM
Vern Otte, DVM, Board Member, Kansas Board of Veterinary Examiners
Gregory M. Dennis, Legal Counsel, Kansas Veterinary Medical Association

Others attending:
See attached list. In addition to those listed on the "Guest List" there were approximately 22 others attending.

Chairman Barnett introduced two bills for Senator Schmidt:

1) A committee bill for an act to create a school influenza vaccination pilot program and providing for a study.
2) A committee bill creating an act related to the Board of Pharmacy; concerning continuous quality improvement programs and nonresident pharmacy; amending K.S.A. 65-1657 and repealing the existing section.

Senator Brungardt moved the two bill introductions; Senator Haley seconded the motion. The motion passed unanimously.

SB 491 - Prescription monitoring program act

Ms. Emalene Correll briefed the bill to those attending. Ms. Correll explained that the bill provides for the establishment and maintenance of a prescription monitoring program for scheduled substances and drugs of concern dispensed in this state or dispensed to an address in this state. She reviewed all definitions and sections in the bill, offering a suggestion that when the phrase "controlled substances" are referenced in the bill, the phrase "drugs of concern" should also be added. Sec. 5. (c) (5) she suggested naming the designated representative from the Kansas Health Policy Authority as the Office of the Inspector General.

Chairman Barnett recognized Senator Vicki Schmidt, a sponsor of **SB 491**. Because Senator Schmidt suffered from laryngitis, Ms. Terri Weber, Legislative Research Department, summarized Senator Schmidt's testimony and highlighted salient points contained in the bill:

a. Confirm whether or not 'doctor shopping' is taking place in Kansas
b. Refer patients for substance abuse treatment
c. Have useful information about new patients and established patients.

Discussion was also heard on an important funding source for this program, the Harold Rogers Grant Program. Senator Schmidt's testimony is attached, and therefore, incorporated into these minutes (Attachment 1).

Dr. Curtis Bock, a veterinarian from Kansas City, Kansas, was recognized by Chairman Barnett. Dr. Bock spoke regarding the additional costs that would be incurred by veterinarians with the implementation of **SB 491**, particularly rural veterinary practices. He spoke regarding requirements from various governmental agencies and professional associations relative to the dispensing of drugs in the veterinary

practice environment. Therefore, Dr. Bock requested veterinarians be excluded from **SB 491.** Dr. Bock's testimony is attached and is considered to be part of this record. (Attachment 2)

Chairman Barnett recognized Dr. Vern Otte from Leawood, Kansas, a representative from the Kansas Board of Veterinary Examiners. Dr. Otte indicated that the Kansas Board of Veterinary Examiners inspects all veterinary hospitals within the state every two years. A component of that inspection includes examination of the veterinarian's controlled drugs/substances log. Dr. Otte discussed the patient information requirements contained in **SB 491** as well as the sanctions contained in the bill. Dr. Otte recommended veterinarian exemption from **SB 491.** Dr. Otte's testimony is attached (Attachment 3), and is considered to be part of this record.

Mr. Gregory M. Dennis, Legal Counsel, representing the Kansas Veterinary Medical Association, was recognized by Chairman Barnett. Mr. Dennis reviewed **SB 491** requirements from the perspective of a food-animal veterinarian. Mr. Dennis stated that while he appreciates the bill, he requested licensed veterinarians be excluded in the prescription monitoring program. Mr. Dennis proposed amended language that is contained in his testimony (Attachment 4), which is considered to be included as part of this record.

Mr. Mike Coast, registered pharmacist and current President of the Kansas Board of Pharmacy, briefly spoke relative to the importance of the bill and indicated his support for **SB 491** (no written testimony).

Written testimony was submitted from the following individuals, and therefore, is incorporated into these minutes:

Carey Potter, Regional Director State Government Affairs, National Association of Chain Drug Stores (Attachment 5)
Duane M. Henrikson, DVM (Attachment 6)
Doug Smith, Executive Director, Kansas Academy of Physician Assistants (Attachment 7)
Bob Williams, Executive Director, Kansas Association of Osteopathic Medicine (Attachment 8)
Frank Whitchurch, RPh, Member of the Kansas Board of Pharmacy, (Attachment 9)

The minutes of the meeting held January 30, 2008, were reviewed by committee members. Senator Haley moved to accept the minutes as submitted. Senator Wagle seconded the motion. The motion passed.

The meeting was adjourned at 2:26pm.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: February 4, 2008

NAME	REPRESENTING
Jon ROSELL	Medical Society Sedgwick County
Bob Williams	Ks. Assoc. Osteopathic Medicine
Debra Billingsley	KS Bd of Pharmacy
Mike Coast, R.Ph	KS Bd of Pharmacy
Dustin Meyer	Finger, Smith
Michelle Peterson	Capitol Strategies
JERRY SLAUGHTER	KAHC
Gregory M. DENNIS	Private Veterinarians
Vern Otte DVM	Ks Bd of Vet Examiners
Gary Reser	Kansas Veterinary Med. Assn.
Julie Heen	KS Pharmacy Coalition
CURTIS BOCK	Ks Vet Med Assoc
KEVIN ROBERTSON	KS DENTAL ASSN

VICKI SCHMIDT
SENATOR, 20TH DISTRICT
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STATE OF KANSAS

SENATE CHAMBER

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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
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WAYS AND MEANS

SB 491 – Prescription Monitoring Program
Public Health and Welfare Committee
Hearing – February 4, 2008

Chairman Barnett and Members of the Committee:

Thank you for the opportunity to provide testimony today on SB 491. Staff has already done an excellent job outlining the proposal. Thank you.

I would like to provide a brief history of 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 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, 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

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STATE OFFICE

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.

As far as item (2) is concerned, please allow me to offer this. The task force sent a letter regarding the task force recommendations to the President of the Senate and the Speaker of the House. While they submitted a draft bill has been introduced, SB 503, I would respectfully request that an amendment be drafted to SB 491 regarding this issue. The task force discussed the option of changing the scheduling of pseudoephedrine, ephedrine and phenylpropanolamine to a controlled substance III or IV. In doing this, these abusable drugs would then require a prescription from a practitioner, and could be included in the prescription monitoring program, eliminating the need for two separate programs. Cost estimates from the task force for this all-inclusive program would BEGIN at $400,000 for the initial start-up. Oregon moved these products to Schedule III in July 2007. They have reported a 98% decrease in their methamphetamine labs since July 1, 2007.

I know that you will be receiving testimony in opposition to including veterinarians in the PMP bill. I would like to provide the following:

- Most states, 19, simply require "dispensers" to participate in their PMPs, which would include veterinarians with DEA numbers. I asked the National Alliance for Model State Drug Laws (NAMSDL) about this and they had not had time to review the specific definitional language of each state. The conclusion is based upon most state definitions of 'dispense' being derived from the definition found in the Uniform Controlled Substance Act, 21 USC Sec 802, which states in relevant part:
    - (10) the term **"dispense"** means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for such delivery. The term **"dispenser"** means a **practitioner** who so delivers a controlled substance to an ultimate user or research subject.
    - (21) The term **"practitioner"** means a physician, dentist, **veterinarian,** scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.
- Secondly, several states, 13, limit their PMP programs to just pharmacies, not dispenser or practitioners. So, presumably veterinarians would not be covered.
- Thirdly, two states specifically name veterinarians as covered professionals in their PMP statutes, Alabama and Michigan.
- Fourth, one state, Virginia, specifically excludes veterinarians from their PMP program.

One question that the veterinarians have asked of me is how the specific fields listed in Section 3 of the bill would be handled. The Alabama administrator advised that by rule veterinarians are supposed to get the name and date of birth of the owner, not the pet, but that some veterinarians do get that confused. In those cases, comparing the address given is the best way to identify possible suspicious multiple purchases, i.e., doctor (or veterinarian) shopping. Alabama also finds it helpful to have the name and species of the pet involved, as, in theory, one owner could have more than one animal that needs the prescription medication at the same time. Alabama did suggest that the fields in the report be designed to clarify this issue.

I do believe that the potential for 'doctor shopping' by addicts using veterinarians is just as real as with regular doctors. As prescription drugs become less available when the PMP becomes operational in Kansas, that likelihood will only increase. There have been stories of

addicts intentionally injuring animals to obtain prescription medication, something that surely veterinarians would find particularly abhorrent.

This bill is extremely important to Kansas and public health safety. I would not want to jeopardize this bill in any way. Therefore, I would like to suggest a compromise with the veterinarians. It will take approximately 18 months to two years for this important legislation to be implemented fully. A compromise would be to not mandate the veterinarians' participation for five years from the date of the bill. The veterinarians continue to update their electronic transmission methods and I believe they will be well on their way to electronic compliance in five years. I would be happy to have this drafted in acceptable to the committee.

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 am happy to answer any questions or concerns.

STATE OF KANSAS

VICKI SCHMIDT
SENATOR, 20TH DISTRICT
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SENATE CHAMBER

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SUPER BOWL ADS GET SERIOUS WITH TEEN Rx DRUG ABUSE MESSAGE

January 31, 2008

The quirky, imaginative, ultra-expensive ads that captivate TV viewers during the Super Bowl broadcast will be joined Sunday evening by a serious message from the White House Office of National Drug Control Policy asking parents to take action against teen prescription drug abuse. This starts a national campaign that is the first major federal effort to educate parents about the problem and is ONDCP's first paid TV advertising targeting parents in nearly two years.

The campaign will include broadcast, print, and online advertising; community outreach; and new print and online resources to help parents and communities intervene. ONDCP said $14 million spent on it will generate nearly $30 million in advertising, and that the ads were made in collaboration with the Partnership for a Drug-Free America with free creative provided by Draftfcb New York, an ad agency that also has produced ads for Taco Bell and Planters Nuts that will air during Sunday's Super Bowl XLII. (The ad agency was formed in a 2006 merger of two giants, one of which was the legendary Foote, Cone & Belding. For a timeline of its history and other information, visit www.draftfcb.com/flash/index.html.)

ONDCP says overall teen drug use is down nationwide, but more U.S. teens abuse prescription drugs than any other illicit drug except marijuana. "When used as prescribed, prescription painkillers can be tremendously beneficial. But their abuse is becoming a serious public health and addiction problem. We may be unintentionally providing our teens a new way to get high," said John P. Walters, the office's director. "Most teens who abuse prescription drugs say they get them from home or from friends and relatives. We need parents to recognize that not all drug threats to their teens come from the street corner. Prescription drugs are in practically every home, and parents can have an immediate impact on stopping teen prescription drug abuse."

The campaign will continue through May and will reach more than 90 percent of ONDCP's target parent audience with ads, a brochure, featured content on www.TheAntiDrug.com, and targeted messages on prescription information sheets for commonly abused substances in 15,000 pharmacies nationwide during February and March.

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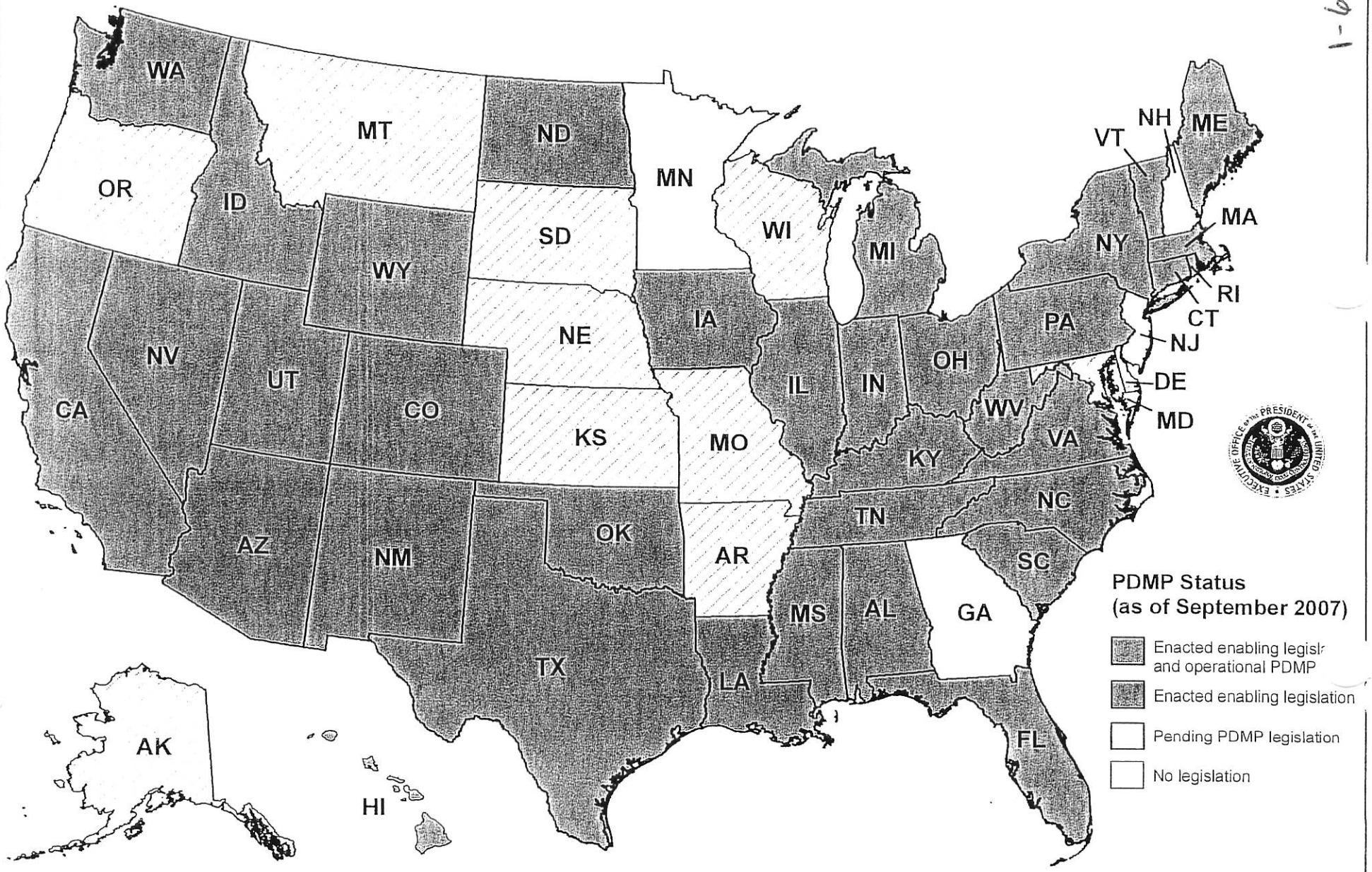
Percentages of Persons Aged 12 or Older, by State, with Nonmedical Use of Pain Relievers in the Past Year Percentages based on 2004 and 2005 National Surveys on Drug Use and Health	
STATE	**Percentage of Persons**
Alabama	5.05%
Alaska	5.61%
Arizona	4.67%
Arkansas	5.66%
California	4.63%
Colorado	5.83%
Connecticut	5.14%
Delaware	5.24%
District of Columbia	3.72%
Florida	5.06%
Georgia	4.30%
Hawaii	3.57%
Idaho	5.40%
Illinois	3.96%
Indiana	5.43%
Iowa	3.85%
Kansas	4.68%
Kentucky	6.03%
Louisiana	5.36%
Maine	4.93%
Maryland	3.62%
Massachusetts	4.71%
Michigan	5.27%
Minnesota	4.26%
Mississippi	4.11%
Missouri	4.94%
Montana	5.44%
Nebraska	3.98%
Nevada	5.77%
New Hampshire	4.66%
New Jersey	4.12%
New Mexico	5.20%
New York	4.32%
North Carolina	4.54%
North Dakota	4.33%
Ohio	5.00%
Oklahoma	5.84%
Oregon	5.68%
Pennsylvania	4.28%
Rhode Island	5.87%
South Carolina	4.91%
South Dakota	3.42%
Tennessee	5.50%
Texas	4.58%
Utah	6.50%
Vermont	4.85%
Virginia	4.44%
Washington	5.89%
West Virginia	5.44%
Wisconsin	4.83%
Wyoming	5.33%



Source: ONDCP, Office of State, Local and Tribal Affairs, September 2007

Prescription Drug Monitoring Program Status as of September 2007

Welborn Pet Hospital, PA

7860 Washington Avenue
Kansas City, KS 66112
(913) 334-6770
www.welbornpet.com

January 31, 2008

Written Testimony on S.B. 491
Senate Public Health and Welfare Committee
1:30 p.m. Monday, February 4, 2008

My name is Dr. Curtis Bock. I have practiced veterinary medicine for 33 years, 32 of those years in Kansas City, Kansas.

Please exempt veterinarians from the reporting requirements of S.B. 491.

I do not oppose the Senate prescription monitoring program, but I do oppose including veterinarians. As I understand it, meeting the requirements of S.B. 491 would be a duplication of records we are already mandated to keep for the DEA. In addition to the redundancy, S. B. 491 records would require a different format. We currently use two to four hours per day to record controlled medications we use or dispense. S.B. 491 would add significantly to those hours.

The medications concerned in the proposal are used to prevent seizures in dogs and cats, to treat urinary incontinence, and to control pain. We have never experienced an incident of clients "vet hopping" to obtain these medications. We dispense these medications out of our hospital primarily as a convenience to our clients. It is an income source for us, but not a significant one. Many veterinarians, rather than burden themselves with the requirements of S.B. 941, would choose to write prescriptions that clients would have to take to another location to have filled. The extra inconvenience and expense to the client will result in some animals doing without medications that would benefit them.

The approximate dollar cost to our hospital for the additional recordkeeping, as I calculate it, would be $200 per month. We are fortunate to have an office manager with computer skills to create a spreadsheet, but many practices do not have and cannot afford this resource. Our office manager already logs well more than 40 hours per week to accomplish his duties, and he is the only person we have capable of managing the task efficiently and accurately for us. The additional recordkeeping burdens of S.B. 491 will require more overtime or the hiring of additional personnel. Moreover, I do not believe the additional information obtained from veterinarians would be worthwhile or nearly worth the cost required to provide it.

I ask you to exempt veterinarians from the reporting requirements of Senate Bill 491.

Thank you for your consideration.

Curtis L. Bock, DVM

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SENATE PUBLIC HEALTH & WELFARE
DATE: 02/04/08
ATTACHMENT: 2

THE KANSAS BOARD OF VETERINARY EXAMINERS

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TESTIMONY

To: Kansas Senate Committee on Public Health and Welfare

By: Vern Otte, DVM, on behalf of the Members of the Kansas Board of Veterinary Examiners

Re: SB491, Requesting Exemption for Veterinarians

The members of the Kansas Board of Veterinary Examiners appreciate the legislature's recognition of the important public health benefits of the appropriate and legal medical use of controlled substances, and also the significant risk to public health that can arise due to the illegal diversion or abuse of such substances, as was promulgated in Senate Bill 302 of the 2006-2007 Legislative session.

Further, the Board would support the creation of a state Prescription Monitoring Program (PMP) as a way to address 'Doc hopping' and similar scenarios by which individuals obtain drugs from physicians and pharmacists for personal diversion or abuse ***as long as*** the program did not require reporting by Kansas licensed veterinarians.

The Board therefore requests that SB491 be amended to exempt veterinarians from being required to report to the PMP created by the bill. The Board believes exempting veterinarians from reporting requirements is in the best interest of the public health safety and welfare of the citizens of Kansas, as well as the success of the PMP itself. Following are supporting facts and statistics:

1. The Board believes the potential for 'Vet hopping' in a manner similar to 'Doc hopping' is very remote to non-existent. A client would have to fool multiple veterinarians into believing fabrications of symptoms their pet was at one time, but not presently, exhibiting in order to deceive the veterinarian into dispensing controlled substances for their pet which they themselves could take. Dosages of controlled substances for animals are typically too low to affect humans. Veterinarians will know whether or not their patients are ultimately receiving the drugs. There have been no known cases of this type of 'Vet hopping' in Kansas to date.

2. Effective oversight of Kansas veterinarians' dispensing of controlled substances is already being accomplished. In the last 24 months, 100% of the veterinary premises in Kansas have been audited by agency personnel, including oversight of their controlled substance inventories, ledgers, and medical records.

3. The National Alliance for Model State Drug Laws has a Model Interstate Compact to assist states in their efforts to share prescription information across state borders. Nationally, there appears to be an

objective to have state PMP databases interface with other state PMP databases. Collectively these interfaced databases will be a more useful tool.

Because the practice of veterinary medicine has dissimilarities to the practice of human medicine and pharmacy, the data fields that would be used in a database for each are also dissimilar. In SB491 Section 3(b), the data fields proposed clearly contemplate human medicine only. In fact, twelve of the fifteen fields proposed in SB491 in many cases are not applicable to veterinary medicine due to the dissimilarities of human versus veterinary medical practices. Forcing data reporting from such dissimilar practices into one single database will be complicated, confusing, and make output unreliable. Worse yet, the resulting database would be so dissimilar to the PMP databases of other states that it would not effectively interface with those databases. What could otherwise potentially be a very beneficial tool against drug diversion and abuse will be rendered of little useful value.

4. Most other states that have already PMPs have statutorily exempted veterinarians from reporting. In many of the states that have not statutorily exempted veterinarian reporting, the PMP entity is telling veterinarians not to report even though they are not statutorily exempted. The Board is aware of only one state in which veterinarians are actually being required to report; and in that state not one single incident of diversion by veterinarians, by their staff, or by their clients has been discovered as a result of this reporting requirement.

5. Even as a relatively new program, as of November 1, 2007 the Virginia prescription monitoring PMP database already had over 17.6 million records in it (without any veterinarians reporting). What would a start-up Kansas PMP do when 17.6 million records came flooding in? Who would do whatever it is that is to be done? Who would pay the costs associated? Would there not already be more data coming in than can be handled without requiring veterinary reporting being added? Wouldn't the costs associated with requiring veterinarians to report to the PMP be exorbitant considering the lack of any benefit gained?

6. Requiring veterinary reporting combined with felony sanctions for failure to comply may be a deterrent to new food animal practitioners who might otherwise choose to come to Kansas to practice. The state already faces a shortage of such food animal production veterinarians.

7. Reporting requirements combined with felony sanctions for failure to comply will also serve as a deterrent to practitioners who might otherwise use controlled substances for pain management in surgical and medical cases. Public health, safety, and welfare may ultimately be compromised if veterinarians forgo certain pain treatments because of the cost and burden of additional reporting requirements.

8. Many Kansas veterinary practices are not automated for electronic transmission of data. Requiring electronic transmission of data will cause an economic hardship which will ultimately be passed on to Kansas consumers of veterinary services. Manual processing of reported information will be an excessive financial burden to the PMP.

In the interest of public health safety and welfare, as well as the success of the PMP itself, ***the Board asks that the Legislature amend SB491to statutorily exempt veterinarians from reporting requirements***, as provided for in the attached proposed amendment.

Thank you for this opportunity to present the Kansas Board of Veterinary Examiner's request.

Gregory M. Dennis
Admitted in Kansas & Missouri

KENT T. PERRY
& CO., L.C.
Attorneys and Counselors

February 1, 2008

The Honorable Jim Barnett, Chair
Committee on Public Health & Welfare
State Capitol, Room 120-S
Topeka, Kansas 66612

The Honorable Vicki Schmidt, Vice-Chair
Committee on Public Health & Welfare
State Capitol, Room 142-E
Topeka, Kansas 66612

Re: **Senate Bill 491 (2008)**: Enacting a prescription monitoring program act; Veterinarians

Dear Senators Barnett & Schmidt:

In tender this letter in connection with the hearing currently scheduled for **1:30 p.m., Monday, February 4, 2008** before the **Senate Committee on Public Health & Welfare** on **Senate Bill 491**, to enact a prescription monitoring act.

While I am Legal Counsel for the Kansas Veterinary Medical Association, I submit this letter as an attorney who has represented Kansas veterinarians on numerous matters affecting their practices. I have represented veterinarians now for nearly twenty-five years. During this time, I have never met a Kansas veterinarian who does not put the well-being of his or her patients, and concern for his or clients, first.

Many Kansas veterinary practices are small, with a limited staff. It is not uncommon to see a practice where one spouse is the veterinarian and the other is the "staff" having to deal with the business and governmental paper work. Unfortunately, there is now so much paper work and government compliance that many veterinarians who are sole or small veterinary practices, are having to join their small staff, or spouse, in such activities. Doing so, they are taken away from providing patient-care not only to companion, but agricultural animals as well. Additionally, being an agricultural state, good animal health has always been very important to the Kansas economy.

While appreciative of **Senate Bill 491 (2008)**, I request that licensed veterinarians not be included in the prescription monitoring program.

Though there is a problem with individuals "doctor-shopping" or "doctor-hopping" for controlled substances, I have not been able to find any case of "veterinarian-shopping," "vet-shopping," "veterinary hopping", "veterinarian-hopping," "veterinary hopping," "vet-hopping." If this was a problem in veterinary

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SENATE PUBLIC HEALTH & WELFARE
DATE: 02/04/08
ATTACHMENT: 4

medicine, I would expect such to be appearing in computer legal services or on the internet. Consequently, I respectively ask that licensed veterinarians to be excluded from **Senate Bill 491**.

This could be achieved by adding to **Sec. 2(c)**, something to the effect of an exemption for a veterinarian licensed by the Board of Veterinary Examiners who dispenses or prescribes a controlled substance or drug of concern to a client within the scope of a veterinary-client-patient relationship. A "veterinary-client-patient relationship" is a statutorily defined by **K.S.A. 2006 Supp. 47-816(n)**.[1] Also, deleting "or animal" from the definition of patient in **Sec. 2(e)**. Under Kansas and federal law, veterinarians cannot prescribe or dispense without there first being a valid veterinary-client-patient relationship. See, e.g., **K.S.A. 47-830(r)**;[2] ***United States v. Blease***, 1987-1988 FDLI Jud. Rec. 223, 1988 U.S. Dist. *LEXIS* 9494 (D.N.J. 1988).

Finally, attached are some other reasons why veterinarians should or need not be included in **Senate Bill 491**.

Sincerely

KENT T. PERRY & CO, L.C.

Gregory M. Dennis

GMD/gd

Endnotes

1. **K.S.A. 47-816(n)**--"Veterinary-client-patient relationship" means:

(1) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal or animals and the need for medical treatment, and the client, owner or other caretaker has agreed to follow the instruction of the veterinarian;

(2) there is sufficient knowledge of the animal or animals by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal or animals. This means that the veterinarian has recently seen or is personally acquainted with the keeping and care of the animal or animals by virtue of an examination of the animal or animals, or by medically appropriate and timely visits to the premises where the animal or animals are kept, or both; and

(3) the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

2. **K.S.A. 47-830**--"The board, in accordance with the provisions of the Kansas administrative procedure act, may refuse to issue a license, revoke, suspend, limit, condition, reprimand or restrict a license to practice veterinary medicine for any of the following reasons:

. . .

(r) the use, prescription, administration, dispensation or sale of any veterinary prescription drug or the prescription of an extra-label use of any over-the-counter drug in the absence of a valid veterinary-client-patient relationship; . . . .

Other Reasons for Exempting Veterinarians from Senate Bill 491

- **2007's Senate Bill 302**, which established the Controlled Substance Task Force, did not include veterinarians nor any representative from the Board of Veterinary Examiners and/or the Kansas Veterinary Medical Association.

- Items to be reported to the Kansas Board of Pharmacy are written with regard to human patients, not animal patients. Not all of the identified pertinent information for human patients is relevant to or even used in veterinary medicine. For instance, while humans have a known precise date of birth, many animals do not. If some individual was really "vet-shopping" it would be no problem to identify the animal patient's name at one clinic as "Buffy" and then, at another, "Fluffy." Given the differences between human and veterinary medicine, the value of any veterinary information to the program will be further reduced and cause confusion *viz-a-via* human information.

- Including veterinarians in the prescription monitoring program would be a noticeable burden upon veterinarians and would be of little or no benefit. Kansas veterinarians already report about controlled substances to the D.E.A. and the Board of Veterinary Examiners. Federal and Kansas law enforcement has ready access to this information.

- Dosages of controlled substances used by veterinarians are typically too low to affect humans. Also, veterinarians typically assess therapeutic response and will know if their patient(s) are, in fact, receiving the drugs.

- Animal welfare may ultimately be compromised if Kansas veterinarians decide to forgo certain pain treatments because of the cost, burden and time of additional reporting requirements. Forgoing such treatments could have an adverse effect on Kansas' agricultural economy.

- Thirteen-of-the-thirty-five states enacting prescription monitoring programs have excluded veterinarians. Many of the remaining twenty-two have simply told their veterinarians not to report.

- Virginia had 17.6 million records in its prescription monitoring data base since November 1, 2007. While there are 2.7 million Kansans, compared too just over seven million Virginians, this projects to more than six million like records for Kansas. Including Kansas veterinarians will add more to this amount. How will Kansas handle so many responses, properly, timely and effectively, and where will a trained staff, and at what cost, come from to do this?

- Many Kansas veterinary practices are not automated for electronic transmission of data. Electronic transmission of data will cause an economic hardship on these practices, with a resulting increase in the cost of veterinary services to Kansans. Manual reporting will also require more time, employee expense and/or absence from patient care.

- Succinctly, including veterinarians in **Senate Bill 491** will add to the cost of veterinary care, inconvenience to veterinary clients, and possibly cause some animals and herds to go without necessary and beneficial care, in return for no known instances of "vet-hopping" being reported.

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

Dear Senate Public Health and Welfare Committee Members,

On behalf of the approximately 339 chain pharmacies operating in the state of Kansas, the National Association of Chain Drug Stores (NACDS) thanks the Senate Public Health and Welfare Committee for considering our comments on Senate Bill 491 establishing a program to monitor controlled substances dispensed to Kansas residents. Chain pharmacy is committed to curbing prescription drug diversion and abuse. We support implementation of prescription drug monitoring programs as a tool to accomplish this goal. However, we do have some concerns with the proposed legislation. While we intend to work through the majority of these matters with the Kansas Board of Pharmacy as part of the regulatory process, we feel it necessary to address several concerns directly in this legislation. As such, we respectfully ask the committee to consider our concerns and to further amend the bill to address these items.

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P.O. Box 1417-D49
Alexandria, Virginia
22313-1480

1. Strike item (b) (14) in Section 3, deleting the requirement to identify in the prescription monitoring program data "the person who receives the prescription from the dispenser, if other than the patient."

The requirement to submit the identity of the person receiving the prescription from the dispenser (if other than the patient) would place an incredible burden on pharmacies. To comply, pharmacies would have to check the IDs of everyone dropping off and picking up prescriptions. This practice would be disruptive to the pharmacy workflow. Because prescription monitoring program data is entered into the pharmacy computer system during the prescription filling process, pharmacy personnel would be forced to deviate from normal filling and dispensing processes to enter this information into the record at the point of delivery. Such disruptions could inadvertently create risk for pharmacy errors.

Although some may suggest that ID checks at the point of delivery serve to identify individuals who may try to impersonate and pick up the prescriptions of legitimate patients, we and our members believe that this is actually an *extremely* rare

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occurrence. The majority of persons intent on diverting controlled substances do not attempt to impersonate legitimate patients waiting for their prescriptions to be filled. This is because the chance of getting caught is high, and the dishonest person would somehow have to identify a patient filling the prescription drug they are seeking, and then have intimate knowledge (date of birth, address, etc.) before the pharmacy would dispense the drug to that person. For these reasons, the burdens of collecting ID at point of delivery far outweigh the need to identify a minuscule number of individuals.

Furthermore, this data element is not supported by the prescription monitoring program data submission industry standards used by pharmacies nationally. It is imperative that the data required to be reported for prescription monitoring program purposes does not deviate from the nationally used industry standard because doing so would force chain pharmacies operating in multiple states to rewrite well-established software programs and make hardware system changes, both of which would be costly undertakings.

2. Strike the Section 9 in its entirety, deleting the language that would require "Every prescription for a controlled substance dispensed in this state or dispensed to an address in this state may contain a notice to the patient that information regarding their prescription has been submitted to the prescription monitoring program and that the patient may obtain such information from the board upon request."

The requirement to provide consumers with a notice that their prescription has been submitted to the prescription monitoring program and that they may obtain information from the Board of Pharmacy on their prescription history would impose an unnecessarily obligation on pharmacy operators. This requirement would result in additional cost (printing and preparation) that pharmacy operators would be forced to absorb. Furthermore, it is doubtful that the overwhelming majority of recipients would even care that this practice was occurring. While we most certainly do not oppose

alerting consumers about the prescription monitoring program, we do not believe that the responsibility to inform consumers should be placed on pharmacies.

3. Insert language into item (b) in Section 3 to clarify that "the board shall promulgate rules and regulations specifying the nationally recognized telecommunications format to be used for submission of information that each dispenser must submit to the board…"

It is important to establish that prescription monitoring program data be submitted in a nationally recognized telecommunications format. Currently, the American Society for Automation in Pharmacy (ASAP) standard is the *only* industry standard for prescription monitoring programs. Of the over 30 states currently operating prescription monitoring programs, all use either the ASAP 95 or ASAP 2005 standards. Adding language to clarify that the Board shall use a "nationally recognized telecommunications format" for data submission will ensure that chain pharmacies operating in multiple states do not have to unnecessarily expend resources to purchase and undergo software and hardware changes in order to meet a new and unfamiliar standard. Notably, this language would not prevent the Board from adopting a different data submission standard should another nationally recognized standard be developed in the future.

We have attached our recommended amendments to this legislation and appreciate the Committee's consideration of our comments and amendments that we believe will allow the prescription monitoring program to meet its intended purpose without imposing burdensome requirements on pharmacies. Chain pharmacy appreciates your consideration of the concerns that we present before you and look forward to working with you on this legislation. Thank you again.

Carey Potter

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

Requested Amendments to S.B. 491

1. Strike item (b) (14) in Section 3, and renumber section (b) accordingly.

Sec. 3 (b) (14) ~~the person who receives the prescription from the dispenser, if other than the patient; and~~

2. Strike the Section 9 in its entirety, and renumber the remaining sections accordingly.

Sec. 9. ~~For every prescription for a controlled substance dispensed in this state or dispensed to an address in this state, notice shall be provided to the patient that information regarding their prescription has been submitted to the prescription monitoring program and that the patient may obtain such information from the board upon request. The board shall promulgate rules and regulations specifying the form of such notice.~~

3. Insert language into item (b) in Section 3 to clarify that "the board shall promulgate rules and regulations specifying the <u>nationally recognized telecommunications format to be used for submission of</u> information that each dispenser must submit to the board…"

Sec. 3. (b) Each dispenser shall submit to the board by electronic means information required by the board regarding each prescription dispensed for a substance included under subsection (a). The board shall promulgate rules and regulations specifying the **<u>nationally recognized telecommunications format to be used for submission of</u>** information that each dispenser shall submit to the board. Such information may include, but not be limited to:

February 4, 2008

Dr. Jim Barnett
Room 120 S
Kansas State Capitol
Topeka, KS

Re: Prescription monitoring—SB 491

Senator Jim,

I am writing this letter in behalf of the Kansas Veterinary Medical Association in regards to the proposed legislation on prescription monitoring and the possible hardship this legislation could inflict on veterinarians in the state of Kansas.

Veterinarians in the state of Kansas that have Controlled Substance Registration Certificates from the Drug Enforcement Administration are required to provide our suppliers a DEA number and provide order forms to the supplier for the purchase of any drugs in class I or II. Veterinarians holding the DEA Certificate are also required to keep logs of class III and above drugs. Some Kansas veterinarians do not have DEA certificates because of the extra time and effort it requires to keep records for the Drug Enforcement Administration and many have a DEA certificate but do not carry any inventories of scheduled drugs but prescribe them from a local pharmacy.

The additional paperwork, reporting, and professional time seems to be counter-productive for veterinarians and does little to prevent misuse of drugs in the general population.

The two products that I am aware of that our practice uses that may fall into the "methamphetamine precursor" category are Proin (phenylpropanolamine) and Tri-Hist Granules (pseudoephedrine HCl). Proin is used to treat neutered female bladder incontinence and Tri Hist Granuels are used to treat COPD or allergic upper respiratory conditions in horses. The usage of these drugs is minimal in our practice and to report the usage of them would be a hardship.

In a time when we are concerned about increasing the size of governmental agencies because of decreasing revenues, increasing taxes, and so forth, I feel this is one of those items that would not be productive and not accomplish its goal. Veterinarians are already held accountable to the DEA for the use of scheduled drugs, to the Kansas State Board of Veterinary Examiners for the proper prescription of controlled drugs, the establishment of a veterinary/patient/client in order to prescribe a drug, and to the ethics of our profession. Additional regulation is counter productive to the veterinary profession.

I am against including veterinarians in SB 491 and would request that they be excluded from the regulation.

Sincerely,

Duane M. Henrikson, DVM

Kansas Academy of Physician Assistants

Post Office Box 597 • Topeka • Kansas • 66601-0597 • 785-235-5065

Testimony on

Senate Bill No. 491

Senate Public Health and Welfare Judiciary Committee

February 4, 2008

Chairman Barnett and Members of the Senate Committee:

The Kansas Academy of Physician Assistants (KAPA) serves as the official representative voice for the Physician Assistants (PA) in Kansas. Our purpose is to enhance the quality of medical care of the citizens of Kansas by providing medical education to physician assistants, other health professionals, the legislature, governing bodies and to the public. In Kansas, there are more than 660 Physician Assistants licensed by the State Board of Healing Arts. The Kansas Academy of Physician Assistants membership includes 325+ licensed and practicing PAs and student members.

A Physician Assistant serves as an integral part in the practice of medicine by providing needed health care services across this state. Without the use of Physician Assistant the accessibility to medical care can be limited, particularly in rural areas.

Increased abuse and the illegal use of controlled substances by individuals is becoming a considerable public health and safety problem, both nationally and here in Kansas. **KAPA supports Senate Bill No. 491 and the creation of an electronic Prescription Monitoring Program to be administered by the Kansas Board of Pharmacy.**

We appreciate your consideration and encourage your favorable action on Senate Bill No. 491.

Thank you.

Doug Smith
Executive Director
Kansas Academy of Physician Assistants

KAOM

Kansas Association of Osteopathic Medicine
1260 SW Topeka Boulevard
Topeka, Kansas 66612

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February 1, 2008

Senator Jim Barnett
Chairman, Senate Public Health and Welfare Committee
Room 120 South
State Capitol
300 SW 10th St.
Topeka, Kansas 66612

Dear Senator Barnett:

This letter is in regards to Senate Bill 491. The Kansas Association of Osteopathic Medicine is in support of Senate Bill 491. Our issues and concerns were satisfactorily dealt with during the task force meetings. However, it is duly noted that, while there is a provision for the Kansas Medical Society to nominate two physicians to the advisory committee, there is no provision for KAOM to nominate a Doctor of Osteopathic Medicine to the advisory committee. Regardless, we are hopeful the Kansas Medical Society will take this under consideration when nominating physicians to the advisory committee.

Please let me know if you have any questions.

Sincerely,

Bob Williams
Executive Director

SENATE PUBLIC HEALTH & WELFARE
DATE: 02/04/08
ATTACHMENT: 8

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

Chairman Barnett and
Members of the Senate Public Health and Welfare 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

I have been privileged to be in the audience when Chairman Sarvis conducted meetings centered 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 regret that I could not be present in person to express my support for this bill but hope the committee will accept my written remarks as sufficient evidence of my strong support of this legislation.