

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:30 P.M. on February 20, 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:

Frank Whitchurch, RPh, Manager Prescription Solutions, Overland Park, KS, and Member of the Kansas Board of Pharmacy
Debra Billingsley, Kansas State Board of Pharmacy
Mike Larkin, Executive Director, Kansas Pharmacists Association
Julie Hein, Kansas Pharmacy Coalition
William W. Sneed, Legislative Counsel, Express Scripts
Steven Borel, Attorney-at Law, Kansas Association for Justice
Mark W. Stafford, General Counsel, Kansas Board of Healing Arts
Jerry Slaughter, Kansas Medical Society

Others attending:

See attached list.

SB 549 - Pharmacy Continuous Quality Improvement (CQI) Programs and Non-resident Pharmacy Regulations

Senator Barnett opened the meeting recognizing Nobuko Folmsbee who briefed those attending on SB 549. The proposed legislation creates a continuous quality improvement program in each pharmacy for the purpose of identifying, recording, and developing action plans to address errors that occur in dispensing prescription medications. Records generated by such programs are confidential and privileged peer review documents, and, thus, not subject to discovery, subpoena, or other legal compulsion. The Board of Pharmacy would provide oversight of the CQI Program. The bill also amends regulations on non-resident pharmacies in Kansas under KSA 65-1657, to include a designated "pharmacist-in-charge" (PIC) licensed in the State of Kansas through the Board of Pharmacy, and without a designated PIC, the non-resident pharmacy could only operate in the State of Kansas thirty (30) days. (Attachment 1)

Frank Whitchurch, RPh and member of the Kansas Board of Pharmacy spoke in support of SB 549. He outlined the proposed program would create a proactive approach focused on reducing errors, on routine review of processes, and on analyses of root causes involved in documented errors. Mr. Whitchurch mentioned sixteen (16) other states have similar programs, and with the burgeoning internet prescription-drug markets and out-of-state mail order pharmacies, it is believed this program can improve quality and safety for consumers. (Attachment 2)

Chairman Barnett recognized Debra Billingsley, Executive Secretary, Kansas Board of Pharmacy. Ms. Billingsley added that the proposed legislation provides to pharmacists the same peer review protection as is provided to other medical providers. (Attachment 3)

Mike Larkin, representing the Kansas Pharmacists Association, spoke in favor of SB 549. He added that his group requested an amendment that would implement a CQI program on July 1, 2009, (instead of January 1, 2009) to provide adequate time for education to pharmacists (Attachment 4). This attachment, therefore, becomes part of this record.

Julie Hein, representing the Kansas Pharmacy Coalition and the Kansas Association of Chain Drug Stores, spoke as a proponent of SB 549. However, Ms. Hein suggested that language mirroring KSA 650-4915 c) be added which specifies that any CQI reports, conclusions, records, or discussions be done only in closed sessions, and that pharmacists and pharmacy personnel participating in CQI programs are afforded the same protection as other peer review processes. Ms. Hein's testimony is attached, and therefore, is incorporated into this record. (Attachment 5)

Mr. William W. Sneed, Legislative Counsel, Express Scripts was recognized by Chairman Barnett. Mr. Sneed spoke in opposition to SB 549 in its current form. He suggested an amendment that would establish

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on February 20, 2008 in Room 136-N of the Capitol.

financial penalties on non-resident pharmacies when the Kansas Board of Pharmacy issues an inquiry to a non-resident pharmacy and the non-resident pharmacy does not respond. This amendment would eliminate the non-resident pharmacy requirement for a pharmacist-in-charge (PIC) licensed in the State of Kansas through the Board of Pharmacy. Mr. Sneed's testimony is attached and made part of these minutes. (Attachment 6)

Mr. Steven J. Borel, Attorney at Law, Kansas Association for Justice, spoke in opposition to SB 549 citing the Supreme Court Decision of Adams v. St. Francis Medical Center which held that citizens have a constitutional right to factual information related to their case and such information cannot be shielded by the peer review process. Mr. Borel suggested an amendment to clarify that the Supreme Court's decision applies to pharmacy CQI programs. Mr. Borel's testimony is attached, and therefore, becomes part of this record (Attachment 7). In addition, Mr. Borel discussed his concerns related to the minutes of the "Continuous Quality Improvement Task Force" of the Kansas Pharmacists Association which suggested revocation of the incident reporting regulation (Attachment 8).

Questions were asked by Senators Palmer, Wagle, and Brungardt relating to prescriptions dispensed by internet providers and those from outside the United States, pharmacy license reciprocity, and accountability for protecting Kansas citizens. Chairman Barnett indicated that in the interest of time and since SB 596 was also on the agenda, further discussion on SB 549 would be heard on Thursday, February 21, 2008.

SB 596 - Board of healing arts; cosmetic or aesthetic purpose included in the practice

Mark Stafford, General Counsel, Kansas State Board of Healing Arts, spoke in support of SB 596, that was initially introduced by the Board of Healing Arts. The bill was introduced to eliminate procedures and services that are aesthetic or cosmetic in nature being performed by persons who are not licensed to practice medicine or surgery. Mr. Stafford's testimony is attached and incorporated into this record (Attachment 9).

Jerry Slaughter, Executive Director of the Kansas Medical Society, distributed testimony (Attachment 10) offering an additional amendment defining surgery, and he indicated his support of SB 596. A copy of the balloon amendment was distributed to those attending the meeting (Attachment 11).

Chairman Barnett indicated continued discussion and possible final action will be heard on Thursday, February 21, 2008.

Minutes of the February 13 and 14, 2008, meetings were distributed and reviewed by Committee members. Senator Haley moved to accept the minutes as submitted; Senator Schmidt seconded the motion. The motion passed.

Senator Barnett adjourned the meeting at 2:35pm.