

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 5, 2001 in Room 210 Memorial Hall

All members were present except: Representative Geraldine Flaharty, Excused  
Representative Lana Gordon, Excused

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Renaë Jefferies, Revisor of Statute's Office  
June Evans, Secretary

Conferees appearing before the committee: Chris Collins, Director of Government Affairs, Kansas Medical Society  
Dwight Allen, Executive Director, Medical Society of Sedgwick County  
Kevin J. Robertson, CAE, Executive Director  
Michael C. Helbert, Attorney, Emporia, KS

Others attending: See Attached Sheet

The Chairperson welcomed Representative Frank Miller who replaced Representative Brenda Landwehr on the committee.

The Chairperson opened the hearing on **HB 2456 - Physician-patient privilege where attempt is made to obtain prescription-only drugs through fraudulent means.**

Dr. Bill Wolff, Legislative Research Department, gave a briefing on **HB 2456.**

Chris Collins, Director of Government Affairs, Associate General Counsel, Kansas Medical Society, testified as a proponent to **HB 2456** at the behest of the Sedgwick County Medical Society in order to clarify existing privilege laws. Fraudulent prescription drug seekers are a pervasive problem for physicians and other health care providers. Individuals steal prescription pads, seek pain medications from multiple health care providers and pharmacies, falsely identify themselves as health care providers to authorize a refill by pharmacists, and/or contact an attending physician's covering physician to request refills for pain medication. What these people are doing is illegal. This is a frequent means for securing medication for sale on the street or for satisfying a life-threatening addiction (Attachment 1).

Representative Lightner asked how many states have this same law?

Ms. Collins said she did not know but would provide that information.

Dwight Allen, Executive Director, Medical Society of Sedgwick County, Wichita, a proponent to **HB 2456** testified that through cooperative and collaborative efforts to reduce the amount of prescription-only drugs being obtained under false or misleading pretenses, the practicing physicians in Sedgwick County, the Sedgwick County pharmacists, representative of the Sedgwick County District Attorney's Office and the Narcotics Division of the Wichita Police Department, support and approve **HB 2456.** Through this bill, additional immunity would be provided to those persons who are in a position to report these deviancies and thus increase the number of reports by reducing the fear of potential malicious prosecution relating to right of privacy, defamation of character and breach of confidentiality issues. Mr. Allen shared their confidential pharmacy information report form they use (Attachments 2 & 3).

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 210, Memorial Hall at 1:30 p.m. on March 5, 2001.

Bob Williams, Executive Director, Kansas Pharmacists Association, testified as a proponent to **HB 2456** as it would provide health care providers immunity from liability if, in good faith, they provide to another health care provider or to a law enforcement agency information regarding an attempt by an individual to fraudulently obtain prescription only drugs. Currently, when a pharmacist receives a “questionable” prescription from a patient, the pharmacist would first contact the prescriber to verify the authenticity of the prescription. If the prescriber indicates he/she did not write the prescription, the pharmacist refuses to fill the prescription and likely contact other pharmacists in his or her community regarding the attempt to obtain prescription medication with a false prescription ([Attachment 4](#)).

Kevin J. Robertson, CAE, Executive Director, Kansas Dental Association, testified in support of **HB 2456**, stating like physicians, dentists that have qualified for a DEA license have the authority to prescribe medication within their area of expertise depending on the category of license they have. Dentists too are often bombarded by fraudulent requests for prescription medication. Often these requests come in the middle of the night or on the weekends when the abuser thinks he/she can best take advantage of a foggy memory and lack of proper records to con the dentist into simply phoning in a prescription. Dentists are generally aware of these tactics and are on guard against them, yet, attempted abuses persist. **HB 2456** is a positive and necessary step to allow physicians, dentists, and pharmacists to report such suspected abusers without fear of liability for doing such. Without this ability, the abuser can simply make the rounds calling any healthcare provider without fear of recourse until he/she is finally able to con an unsuspecting or overly trusting provider into writing a prescription ([Attachment 5](#)).

Michael C. Helbert, Attorney, Emporia, testified as an opponent to **HB 2456**, stating there are four basic privileges that have enjoyed universal respect since the birth of our country. Those privileges are the attorney-client privilege, the penitential privilege, the physician-patient privilege and the marital privilege. Consequently, we all should be cautious when we tread upon such time-honored principles. All of these privileges depend upon one thing. The complete belief and trust that any communications between a citizen and his or her doctor, lawyer, priest or minister, and his or her spouse would be treated as confidential and can not be revealed to anyone.

This bill is an intrusion into the physician-patient privilege. This is proposed as a means of stopping the prescription of drugs without the necessary medical foundation for their use. The bill is designed to assist in the prosecution of doctors and patients who are prescribing or using pain killers and mind altering medications. This legislation could drive a wedge between the doctor and his patient by authorizing not only the doctor, but any member of his staff to reveal this problem, without restriction, to any other health care provider or law enforcement. The bill does not define what is misleading information. Pain is a subjective complaint. There is no test or diagnostic tool to measure the pain that a patient is experiencing.

This bill contains a requirement of good faith, but it does not adequately describe the facts necessary to establish good faith. Instead, it creates a subjective standard that would allow each health care provider to make his or her individual decision concerning whether a person is obtaining or attempting to obtain prescription drugs fraudulently. This bill would create a situation where the mere request for anti-anxiety medication could result in a permanent black mark on a person’s medical records and it would do so with immunity for the person that put the black mark there.

If we, as a society, are concerned about our right to privacy and the sanctity of our communications with our doctors, we cannot allow such information to be used, and not hold the person responsible for its publication accountable. It is firmly believed that this is legislation that has the potential to cause irreparable harm to the medical consumers of this state ([Attachment 6](#)).

The following proponents provided written testimony: Mike Taylor, Government Relations Director, City of Wichita ([Attachment 7](#)); Carolyn Gaughan, CAE, Executive Director, Kansas Academy of Family Physicians ([Attachment 8](#)); Charles L. Wheelen, Kansas Association of Osteopathic Medicine ([Attachment 9](#)).

The Chairperson closed the hearing on **HB 2456**.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 210, Memorial Hall at 1:30 p.m. on March 5, 2001.

Representative Welshimer moved and Representative Morrison seconded approval of the minutes of Feb 6, 7, 8, 12, 13, 14, 15, 19, 20 and 28. The motion carried.

The meeting adjourned at 3:10 p.m. and the next meeting will be March 7.