

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 proactively. 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**. (Attachment 5) Illicit use of prescription medications is increasing. In a 2005 report, The Partnership for

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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.

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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 cited 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.