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**Testimony re: SB 328  
Senate Public Health and Welfare Committee  
Presented by Julie J. Hein  
on behalf of  
Kansas Association of Chain Drug Stores  
February 2, 2012**

Madam Chairman, Members of the Committee:

My name is Julie Hein, and I am government affairs consultant for the Kansas Association of Chain Drug Stores (KACDS) which represents the 315 chain pharmacies of the total of 603 pharmacies operating in the state of Kansas. There are approximately **1,796 community pharmacists** active in the state of **Kansas**, including **1,284 chain pharmacists**. Chain pharmacies **employ** approximately **32,893** full and part-time employees. The KACDS functions as the state affiliate of the National Association of Chain Drug Stores (NACDS).

KACDS supports SB 328 and proposes amendments as set out in the letter from the NACDS attached to my testimony.

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

January 31, 2012

***Senate Bill No. 328***

Members of the Senate Public Health and Welfare Committee:

On behalf of the approximately 315 chain pharmacies operating in the state of Kansas, the National Association of Chain Drug Stores (NACDS) thanks the members of the Senate Public Health and Welfare Committee for considering our comments on Senate Bill No. 328 relating to the format and other requirements for prescriptions. We appreciate this opportunity to convey our members' perspectives on this bill.

***Chain pharmacy supports statutory changes clarifying that electronic prescribing of controlled substances is a legal practice in Kansas.*** Among the various changes that this bill would make to Kansas law, Senate Bill No. 328 would add language addressing electronic prescribing. In particular, the bill would add language to K.S.A. 65-4123 to explicitly recognize the electronic transmission of controlled substances prescriptions. Chain pharmacy supports this clarification in the law. Over the years, electronic prescribing has been shown to benefit patients and healthcare providers alike, as this practice increases operational efficiencies and enhances the level of accuracy of prescriptions that are transmitted in this manner. With the recent rule issued by the United States Drug Enforcement Administration (DEA) that now permits the electronic transmission of all controlled substances prescriptions, one of the key barriers to widespread adoption of e-prescribing has been eliminated.

Notably, the Kansas Board of Pharmacy recently promulgated rules affirming the validity of electronic prescription drug orders for controlled substances created in conformity with the DEA rules. Under these rules, schedule III through V controlled substances prescriptions may now be electronically transmitted, although further rule changes are necessary to conform the rule requirements for electronic schedule II prescriptions to the DEA rule. Chain pharmacy continues to encourage the Kansas Board of Pharmacy to address this remaining regulatory impediment, which once made, will enable healthcare providers in the state of Kansas to fully employ e-prescribing in their practices, thereby serving to encourage greater use of this beneficial technology.

***Chain pharmacy has concerns with language in the bill that would require pharmacists to "ensure" that prescriptions have been issued by for a legitimate medical purpose.*** Under New Sec. 3, language would be added to the Pharmacy Practice Act specifying the format and other requirements for prescriptions. Included in this section is language that specifies the following:

(f) The pharmacist shall ensure that the prescription order, regardless of means of transmission, has been issued for a legitimate medical purpose by an authorized prescriber acting in the usual course of the prescriber's professional practice. A

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pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an internet-based questionnaire, an internet-based consultation or a telephonic consultation and without a valid preexisting patient-practitioner relationship.

While chain pharmacy supports laws that clearly prohibit pharmacists from knowingly filling prescriptions that were issued to patients on the basis of an internet-based questionnaire, an internet-based consultation, or a telephonic consultation, we have concerns with the language that would hold pharmacists responsible for “ensur[ing] that the prescription order... has been issued for a legitimate medical purpose by an authorized prescriber.” This is a vague directive that is subject to interpretation. Some might argue that the only way a pharmacist could be sure that the prescription was issued for a legitimate medical purpose would be to call the prescriber for verbal confirmation that a valid patient-prescriber relationship exists. Clearly, this would be an impractical and time consuming process.

We are also concerned that this language would put pharmacists in the position of having to police the prescribing activities of prescribers to ensure that they are practicing within the confines of the laws and regulations of the Kansas State Board of Healing Arts, when this would more appropriately be the role of the Board of Healing Arts and its employees. Further, it could require pharmacists to second-guess the medical judgment of a prescriber, which could inappropriately delay treatment to patients.

For these reasons, we urge legislators to delete the following from paragraph (f) under New Sec. 3. in the bill:

~~(f) The pharmacist shall ensure that the prescription order, regardless of means of transmission, has been issued for a legitimate medical purpose by an authorized prescriber acting in the usual course of the prescriber's professional practice.~~ A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an internet-based questionnaire, an internet-based consultation or a telephonic consultation and without a valid preexisting patient-practitioner relationship.

*In conclusion.* We again would like to convey our appreciation to members of the Committee for considering our members' viewpoints on this legislation, and we thank you for your consideration of our comments.

Sincerely,

Lis Houchen  
Regional Director, State Government Affairs, NACDS