

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on March 6, 2003 in Room 231-N of the Capitol.

All members were present except: Senator David Haley

Committee staff present: Mr. Jim Wilson, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Ms. Susan Linn, Director of the
Kansas Board of Pharmacy
Mr. Merlin McFarland, Registered Pharmacist
Public Member, KS State Board of Pharmacy
Dr. Dan Upson, Veterinarian
Board Member, KS State Board of Pharmacy
Mr. Tom Bell, Executive Vice President,
Kansas Hospital Association
Mr. Bob Alderson, Kansas Pharmacy Service Corporation
Ms. Marla Rhoden, Director of the
Health Occupations Credentialing

Others attending: See attached guest list

Approval of Minutes

The Minutes of January 28, 29, and 30 and February 4, 5, 6,10,11,12 and 13, that were distributed on February 19, 2003 are approved.

Hearing on HB2207 - an act concerning the state board of pharmacy; providing for pharmacy technicians

The Chair announced there would be a hearing on HB2207 and asked Ms. Emalene Correll, Kansas Legislative Research Department to explain the bill as it came over from the House. Some of the highlights of her overview included:

- page 1 creates a new statute which deals with pharmacy technicians and makes it unlawful for any person to practice unless registered with the Board of Pharmacy except as otherwise provided in Sec. 1, sub (d) which is a grandfather clause, and will first have to pass the examination approved by the Board (this is an area where there has been some dispute in the past) and requires the Board to adopt rules and regulations to establish criteria for the examination and a passing score;
- (b) standard language that states applicants for registration will be made on a form prescribed and furnished by the Board. It also has, rather than adding to the fee section of the pharmacy act, in this new statute, the application fee (notice on line 23 the word is "licensed" fee and this needs to be corrected, because this is a registration fee.);
- ©) states that the Board would take into consideration any felony conviction of an applicant, but that conviction does not automatically operate as a bar to registration;
- (d) form of a grandfather clause, allowing anyone who is employed as a pharmacy technician on the effective date of this act (7-01-03) to continue as a pharmacy tech until October 31, 2004 without having to be registered and pass the exam as required by the new statute;
- (e) provides expiration of registration, apparently giving the board the opportunity to stagger registration dates and goes ahead and includes the renewal fee;

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- there is a provision that is a little unusual in that the application for registration renewal and with the appropriate fee and is received before the date of expiration, has the effect of temporarily renewing the applicant's registration until there is actually new registration or denial of the registration issued;
- (f) (1) this is a fairly common type of provision that allows the Board to deny an application for registration as a pharmacy tech on any ground, however, (2) is somewhat unusual provision for a person who functions at this level which allows the Board to require either a physical or mental examination (This is required in the physicians licensure act.)
- The Board is given the authority to temporarily suspend or limit the registration in accordance with the emergency procedures.
- Page 2, lines 24-26, requires the pharmacy technician, within 30 days of obtaining new employment, to furnish the Board's executive secretary, notice of the name and address of the new employer, currently the burden is on the pharmacist.
- The wording in lines 27 through 39 are virtually identical to the language that is stricken on page 3 in an existing statute. This makes the new statute relate to pharmacy technicians and takes out of another section of the pharmacy act, that portion that now relates to pharmacy technicians. (The only difference is that currently the ratio of pharmacy technicians to pharmacists in the prescriptions area of pharmacy may not exceed two-to-one.) While that is somewhat restored in the new language, she asked the Committee to note that the language is different on lines 36 through 39 to include "fixed by rules and regs" and "until the board does so."
- The language in lines 40 thru 43, state standard provisions (The Board adopting rules and regs as necessary to carry out their duties relating to the pharmacy technicians.)
- The language in (j) is probably the surplus (the Board has given specific authority in the subsection (I) but here the authority is specific) and probably not necessary here because if the Committee will notice on lines two and three on page 3, this new statute is made a part and supplemental to the pharmacy act of the state of Kansas.
- Finally, the only change in the statute that is amended, which is a part of the pharmacy act, is the removal of the language that has been replaced from the previous page in the new statute.

As Ms. Correll stood for questions, Senator Salmans referred to the subsection (d) asking, is this a conflict in the right-to-work law and on line 13, page 2, is it unusual for persons to take physical or mental exams? (The concern is, are the persons who function as pharmacy technicians and who have not previously proven themselves in that same position, ex. a young hire misappropriating drugs?)

The Chair then recognized the first proponent conferee, Ms Susan Linn, Director of the Kansas Board of Pharmacy, who stated that the bill was necessary because under current law, the Board has no means to prevent technicians, who are at risk of injuring the public, from assisting in the practice of pharmacy, thirty states (including Oklahoma and Missouri) are now registered pharmacy technicians and offered testimony regarding what pharmacy technicians are involved in. A copy of her testimony and fiscal note are ([Attachment 1](#)) attached hereto and incorporated into the Minutes as referenced.

Next to testify as a proponent was Mr. Merlin McFarland, Registered Pharmacist and Board Member of the Kansas State Board of Pharmacy, who stated that the changes in technology and the increasing workload due to cuts in pharmacy reimbursement, make it mandatory that we have a competent well-trained technician work force, so the Board must be able to identify and regulate individuals' functions as pharmacy technicians. He also cited two recent problems that could have been resolved by this bill. A copy of his testimony is ([Attachment 2](#)) attached hereto and incorporated into the Minutes as referenced.

The third proponent was Dr. Dan Upson, Veterinarian and Public Member of the Board of Pharmacy, who stated that professions must change as times change and the pharmacy technicians are able to perform more of the pharmacists' duties to increase the time the pharmacist has to counsel their customers. A copy of his testimony is ([Attachment 3](#)) attached hereto and incorporated into the Minutes as referenced.

The fourth proponent was Mr. Tom Bell, Executive Vice President, Kansas Hospital Association, who stated that since the Board has never had jurisdiction over pharmacy technicians, it has been unable to track the movement of these workers, take any action to stop unlawful behavior, or address incompetent

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performance and one purpose of this bill is to give Board the ability to step in a discipline those pharmacy technicians when there is a need. A copy of his testimony is ([Attachment 4](#)) attached hereto and incorporated into the Minutes as referenced.

The final proponent was Mr. Bob Alderson, Kansas Pharmacy Service Corporation, who read testimony for Mr. Bob Williams, Executive Director, Kansas Pharmacy Association, stating Kansas is only one of 17 states that does not have some form of credentialing for pharmacy technicians. A copy of Mr. Williams testimony is ([Attachment 5](#)) attached hereto and incorporated into the Minutes as referenced.

A copy of written testimony from Mr. Mike Johnston, CPhT and Executive Director of the National Pharmacy Technician Association (NFTA) is ([Attachment 6](#)) attached hereto and incorporated into the Minutes as referenced.

The Chair then called upon Ms. Marla Rhoden, Director, Health Occupations Credentialing, who stated the bill amends and adds language to the Board of Pharmacy statutes to establish registration as a level of credentialing of pharmacy technicians, and the proposed legislation is similar to 2001 **SB194** which was intended to create in effect a "registry" of pharmacy technicians without the label of registration as a level of credentialing. She also stated that the technical committee, which reviewed the application for registration of pharmacy technicians, determined that four of the ten criteria were not met, and the committee's final report recommended denial of the application. A copy of her testimony and the committee's final report, including the ten criteria and the application of the Board for registration of pharmacy technicians, are ([Attachment 7](#)) attached hereto and incorporated into the Minutes as referenced.

As there was no neutral testimony, the Chair asked if there were questions or comments from the Committee. Senators Haley, Barnett, Brungardt, Brownlee, Salmans, and Ms. Correll asked questions ranging from what are the four criteria to determine the need for credentialing and how difficult to implement into the bill, what would be the most appropriate regulatory means, who has the authority to mandate exams, National Certification Exam not mandated, do you try to have appropriate regulations to protect public safety, what crime did the person commit in reference to the theft of the fourteen hundred Lortab tablets, is the credentialing process more for licensure or registered and since this looks like a "catch 22" what would you suggest could be changed in the statute, did you intend to make the change where the person responsible is the pharmacist and not the pharmacy tech, registration is the appropriate step, what is a pharmacy technicians qualifications to the serious medication errors shown in testimony makes the issue of oversight extremely important causing concern with two-to-one ratio and why are we not mandating requirements?

The Chair recognized Mr. Randy Forbes, the Board's attorney, to address the history of the two-to-one ratio. Mr. Forbes stated that the concept was not necessarily to eliminate this ratio but because of the dynamic changes occurring in the industry, assuming that the bill is passed, the Board would have a set of training criteria and know that the people performing these functions are qualified and those that are not would be eliminated. He also stated, it was felt that since the Board can view this industry on a year by year basis, they would be in a better position to determine if two-to-one is an appropriate ratio. Senator Barnett responded by asking "If there are national standards already set in certification, why are we not requiring that now as opposed to letting each develop his own?" Mr. Forbes responded by saying there is a provision in the statute that allows the Board to address training, however, when they asked if they could make the passage of an exam a requirement, the Attorney General said no because the statute does not mention anything about an exam, it only addresses training. "And this is why we are trying to move in this direction, to give the Board the additional authority to deal with not only training but some sort of certification exam that will show a level of competency," he said.

Adjournment

As it was time for the Senate session, the Chair closed the hearing and adjourned the meeting. The time was 2:33 p.m. The next meeting is scheduled for March 11, 2003.