

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 January 29, 2002 in Room 210 Memorial Hall

Committee staff present: Emalene Correll, Kansas Legislative Research Department
Dr. Bill Wolff, Kansas Legislative Research Department
Norman Furse, Revisor of Statute's Office
Renea Jefferies, Revisor of Statute's Office
June Evans, Secretary

Conferees appearing before the committee: Kevin McCallum, 1-800 Contact
Dr. Terry Carney, Kansas Optometric Association
Dr. Ron Fiegel, Wichita
Gary D. White, Jr., Kansas Trial Lawyers Association
Randy Forbes, Attorney, Kansas Board of Examiners in Optometry
Amy Campbell, Kansas State Ophthalmological Society

Others Attending: See Attached Sheet

Representative Morrison moved and Representative Swenson seconded to approve the minutes of January 16, 22, 23, and 24. The motion carried.

The Chairperson opened the hearing on **HB 2285 - Amending and supplementing the optometry law.**

Norman Furse, Revisor of Statutes gave a briefing on the bill with the update and changes needed.

Kevin McCallum on behalf of 1-800 CONTACTS testified in support of **HB 2285** stating optometrists have excessive powers that no family doctor has ever been granted – the right to prescribe prescription remedies AND sell them. This arrangement is an anomaly among all other forms of health care in the United states in that these health care providers are also retailers. Normally, prescription drugs are sold by a pharmacy or drug store. This system separates the delivery of health care from the profits made off the sale of these prescription products to ensure a health care provider's priorities are never compromised. Allowing health care providers to prescribe AND sell prescription products creates a conflict of interest and introduces the specter of patient abuse.

In order to protect the consumers right to choose where they get their prescriptions filled, foster a competitive marketplace where consumers benefit from lower prices, provide better service and create more convenience, ALL of the following elements should be enacted into law: (1) Automatic prescription release upon completion of an eye examination. (2) Minimum 2-year prescription expiration date (unless a shorter date is medically warranted). (3) Immediate response to requests for prescription verifications. (4) Forbidding private label or "doctor exclusive" contact lenses and (5) Equitable and Equal Enforcement (Attachment 1).

Dr. Terry Carney, Kansas Optometric Association, testified in opposition to **HB 2285**, stating he is a practicing optometrist serving as the Legislative Chairman. The Association met with 1-800-CONTACTS in the fall of 2000 until January 2001. We openly discussed their concerns and could agree on some things. Other questions arose which we could not agree upon.

For our patients to receive proper, safe vision care, expiration dates must be honored so we can monitor the patient's eye and keep them healthy. Healthy, human cornea was not meant to

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have a piece of hydrated plastic on it, so routine follow-up care is essential. We want to be sure that patients get accurate, unexpired prescriptions to assure optimal vision, consistent with federal and state laws.

We have encouraged our members to cooperate with voluntary verification from any company and see if fax verification is workable. We have encountered some problems which make verification with 1-800-CONTACTS unworkable. In our negotiations, we tried to get 1-800-CONTACTS to understand that doctors and their staffs are sometimes too busy to check every fax, review a patient's chart, and respond within even 24 hours, especially if the doctor is out or the office is closed.

A couple of specific points in the bill that seem only to help 1-800-CONTACTS do business and are not in the best interest of the patient are: (1) making expiration dates on contact lens prescriptions last two years instead of one is simply a health problem waiting to happen. (2) Lessening second and subsequent offenses of the law from a Class B misdemeanor to a Class C is important to a company that freely breaks state laws anyway. (3) Allowing the optometry board to only take optometrists to court and not unlicensed persons or entities like 1-800 CONTACTS speaks for itself ([Attachment 2](#)).

Dr. Charles Kissling, OD, testified as an opponent to **HB 2285**, stating long ago the Food and Drug Administration determined that contact lenses posed sufficient health risk to consumers as to required consumer protection. Thus, the FDA requires that all contact lenses be sold only pursuant to a prescription from an appropriate licensed professional (an optometrist or a physician). In fact, the FDA requires the contact lens manufacturer to label every contact lens with the following statement: "Caution! Federal law prohibits dispensing without prescription".

A patient with an expired prescription could provide the information from their old lenses, and then receive new lenses. Any patient with a box of contact lenses could order lenses of a different brand so that they might get colored lenses. A non-contact lens wearer with a glasses prescription in hand could order contact lenses by specifying the power of lenses from their eyeglass prescription and then guessing as to contact lens brand and fitting parameters ([Attachment 3](#)).

Dr. Ronald L. Fiegel, O.D., an opponent to **HB 2285** testified he had always released prescriptions to his patients unless it was medically inappropriate to do so. Dr. Fiegel stated he had also been witness to the numerous problems that can occur when lenses are not properly fit or maintained. Many consumers believe that contact lenses, much like lipstick, are harmless cosmetic devices that enhance their life style. The only purpose this legislation serves is to allow an alternative supplier to immediately sell a contact lens without a valid prescription or before the patient's prescription can be properly verified ([Attachment 4](#)).

Gary D. White, Jr., Kansas Trial Lawyers Association, testified in opposition to **HB 2285** because it grants immunity under Section 2(b) to an optometrist or physician who verifies a contact lens prescription to a seller of lenses in interstate commerce. This provision provides immunity to a health care provider even if the verification is performed incorrectly and causes permanent injuries to the patient ([Attachment 5](#)).

Randy Forbes, attorney for the Kansas Board of Examiners in Optometry (the "Board"), opposed **HB 2285** as the Board feels these proposed changes to the Kansas Optometry Law are extremely ill advised for many reasons. For many years the Kansas Optometry Law has declared that it shall be unlawful for any person to dispense an ophthalmic lens or lenses without first having obtained a prescription or order therefor from a duly licensed optometrist or a person licensed to practice medicine and surgery.

On April 7, 1999 the Board was forced to file suit against the author of this bill, 1-800-CONTACTS in an attempt to force 1-800 CONTACTS to cease violating K.S.A. 65-1504b. In the lawsuit, the Board alleges multiple instances of 1-800 CONTACTS dispensing contact lenses without a prescription. The Board has filed a witness and exhibit list that includes no less than 10 instances involving 1-800 CONTACTS dispensing contact lenses in violation of the

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Kansas law.

If this bill were to be passed, 1-800 CONTACTS would be able to sell contact lenses without having first obtained a prescription (thereby placing the customer's ocular health at risk) if it "attempted to verify" the prescription.

The Board believes **HB 2285** is extremely bad policy and would foster situations that could be dangerous to the ocular health of Kansas citizens (Attachment 6).

Amy Campbell, Kansas State Ophthalmological Society, testified in opposition to **HB 2285**, stating the members are acutely aware of the complications and potential problems that contact lens wear can create. It is strongly believed that contact lenses are a prescription item as required by the Federal Food and Drug Administration and should be treated with respect. The KSOS supports contact lens prescription release and our members do so on a regular basis (Attachment 7).

The Chairperson closed the hearing at 3:10 p.m. The next meeting will be January 31, 2002.