

To: Senate Public Health and Welfare Committee
Senator Vicki Schmidt, Chair

Senator Pete Brugnardt, Vice Chair
Senator Terrie Huntington
Senator Dick Kelsey
Senator Mary Pilcher Cook
Senator Roger Reitz
Senator Chris Steineger
Senator David Haley
Senator Laura Kelly

From: Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

Date: February 7, 2012

Subject: SB 327 Prescription Monitoring Program - Amendment

Neutral testimony

The Kansas Board of Healing Arts (KSBHA) appreciates the opportunity to provide neutral testimony on SB 327. The KSBHA presently licenses and regulates 13 health care professions. The mission of the KSBHA is to safeguard the public and strengthen the healing arts.

SB 327 amends K.S.A. 65-1685 by adding language related to acceptance of grant funding, disposition of funding, replaces reference to Kansas health policy authority with department of health and environment, provides that persons authorized to prescribe or dispense may access certain information, allows medical examiners, coroners or others persons authorized by law to investigate or determine causes of death to access information, and provides criminal penalties for unauthorized dissemination of prescription monitoring information.

The prescription monitoring program is the result of hard work by many involved with health care and legislators who recognized the need for this important tool to protect the public and enhance health care by physicians, pharmacists and many others.

KSBHA currently has limited access to information contained in the prescription monitoring program. Pursuant to statute and regulation, if there is cause KSBHA may request information. Procedurally, if KSBHA has a pending open investigation and there is reasonable cause to believe that information contained in the prescription monitoring program would assist in resolving the investigation then the program can provide information.

The prescription monitoring program advisory committee, Kansas Medical Society, and other important stakeholders in the health care community recognized an opportunity to improve the existing program. It is anticipated that an amendment will be introduced that would provide a mechanism to proactively inform regulators when information is identified that controlled substances or drugs of concern are being misused, abused or there is a breach of professional standard or violation of state or federal laws.

This is an important enhancement to the current program. News articles from across the nation highlight the harm when controlled substances or drugs of concern are misused or abused and when there are violations of professional standards that harm patients or there is a violation of state or federal laws. Examples of such headlines include, “Doctor Accused of Recklessly Prescribing Painkillers Linked to Deaths, After Little or No examination of Three Men Who Died After Overdosing” or “Candy Man Doctor Arrested for Trafficking Painkillers” and “Surgeon Gets 11 Years for Prescription Scheme”. The critical element for public protection is that credible reliable information is thoroughly investigated in a timely fashion.

Currently, KSBHA has the statutory authority to provide peer review for all standard-of-care cases. After a thorough investigation, all standard of care cases are peer reviewed pursuant to K.S.A. 65-2840c. This statute provides that review committees shall be established to advise KSBHA. KSBHA currently has three (3) MD review committees to conduct peer review on MD standard-of-care cases and one (1) DO review committee to conduct peer review on DO standard-of-care cases. If KSBHA were to receive information from the prescription monitoring program that met identified threshold criteria specified by the prescription monitoring program advisory committee, KSBHA could either utilize existing review committees or add another review committee with members who have identified expertise in this field.

Pursuant to K.S.A. 65-4925(a)(4)(e), KSBHA is prohibited from using peer review records exclusively to prove a violation of standard-of-care. Specifically, this statute provides that KSBHA must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding. This statute provides many important protections and due process for physicians and other licensees.

Consequently, if the prescription monitoring program conducted peer review and provided the results, KSBHA would still be required to conduct a thorough investigation and conduct independent peer review; public protection would be delayed. This delay is currently experienced when a hospital limits or suspends hospital privileges. While adverse privileging action must be reported to KSBHA, it is only reported at the conclusion of their peer review process. Therefore, KSBHA receives adverse action reports from hospitals where privileges have been limited, suspended or revoked. However, the underlying conduct may have occurred more than a year before the report; public protection is delayed.

Pursuant to K.S.A. 65-2898a, any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the KSBHA shall be confidential and shall not be disclosed by KSBHA except as provided in statutory exceptions. Therefore, information received by KSBHA from the prescription monitoring program cannot be disclosed unless specific statutory exceptions apply. Complaints, unless or until credible admissible evidence demonstrates there is merit to a complaint, are unfounded and should not be used by other entities. Concerns have been expressed that merely having a complaint or investigation adversely impacts licensees. One solution may be to provide that complaints and investigations are confidential and can't be used by other entities unless or until there is a public board action or order determining a violation of the practice act.

We are available to respond to any questions. Thank you for your consideration.