**2015 HOUSE HUMAN SERVICES**

**HB 1149**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Fort Union Room, State Capitol

HB 1149
1/19/2015
22135

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Jade Krieg

**Explanation or reason for introduction of bill/resolution:**

Adoption of administrative rules governing use of the prescription drug monitoring program.

**Minutes:** Attachment #1 #2 #3 #4

Chairman Weisz opened the hearing on HB 1149.

**Rep. George Keiser**: Introduced HB 1149. During interim it was a working group to establish to work on this issue. These are the kinds of drugs that if you get a prescription you will sign a form when you go to pick up that prescription. We have an opioid problem and the street use is significant. When I had shoulder surgery I was prescribed opium drugs. The value on the street for these drugs is amazingly significant. An additional problem if you want to abuse our system getting a prescription for opioid drugs is pretty easy. If you present in an emergency room and are fairly sophisticated, back pain is a wonderful source of pain for opioid addiction. It's not something we can directly measure. If I can present all the right behaviors and express the right symptoms chances are fairly good to get an opiate prescription. We had all the medical boards on the task force. This is not a new issue. Historically prior to the last session we approached the north Dakota Medical Association and others in this group and said we need to do something about this and what we are suggesting doing is what other states have done which is we want to require health care providers to register the use of these drugs on the PBMP, which is the prescription drug monitoring program. We have a registry that providers can go on to, but it was not user friendly and it also had significant delays. The various groups involved in the PDMP have made dramatic improvements with respect to that. They have made it much more user friendly they have made it almost real time. If you want to abuse the system you can do it for one day but we will catch it on day two or three or four or five. What we discussed with these various groups prior to last session let's like other states, Kentucky being the most successful of all the states in this respect, go out and statutorily require that if you are going to have a controlled substance prescription issued that you are required to registered it on the PBMP. There was a lot of push back. Physicians argued through their representatives that this affects their ability to practice medicine and there were other concerns that were expressed. They came forward at that time and said would you allow us one interim to see what we can do on a voluntary basis and we consented to do that. They put together a significant attempt to market it to get their providers to participate and

using the PDMP and the bottom line is it didn't work. We had approximately 27% participation prior to last session and I think it went up to 28% and that's misleading. That is not 28% of all controlled substances written, that just means that providers at some point during that period participated and that's how we got to 28%. This is a significant problem in our state and we want to cut it off. This session as we got together with this group and we discussed many issues relative to controlled substances and others. The discussions again lead to should we put it into statute. The state of Ohio had a statue for physicians and healthcare providers. We looked at other states we looked at Kentucky, but they came forward and said what we would is an intermediate step. What we would really like to try, but didn't work to do it on a voluntary basis but instead of putting it into statute because it is difficult to put into statute, for example Ohio did a heck of a job. Their bill looks like what we will do for physicians in the state of North Dakota if this were to pass. They have exclusions: surgery, time of death. If someone is dying we don't want to limit them to pain medication. There is a whole list of exclusions that are very appropriate where physicians don't have to register it on the PDMP. That's not our choice. What we did with this bill is to say that the state board of pharmacy will write rules just for the state board. But based on those rules in section 2 we have each other licensing boards whose members can write a script who will write their own rules and implement them during the interim relative to the use of the PDMP to controlled substances. At the bottom of subsection 2 it simply states that those boards will not work together but will communicate so that hopefully the rules for across the spectrum of boards will be as consistent as reasonable. That's what this bill does it will require them, it's not optional, to write rules but it is their responsibility to have some flexibility based on their specific areas of providing healthcare to our citizens. That completes my testimony

**Rep. Hofstad**: The bill says the board of pharmacy may adopt rules, but I'm confused about that because in your testimony you allotted to the shell that they would be required to.

**Rep. Keiser**: And again the board of pharmacy doesn't write a script so the language is put it that they may do it they have already done it but the others in subsection two have to do it. The board of pharmacy has representation here I have no problem in making that they shall because they have already done it. They have not passed the rule they have written the rule and they have distributed their model or version of the rule with the other groups.

**Wayne Stenehjem**: Attorney General of ND testified in support of the bill. If I could this outline is what everyone in law enforcement in North Dakota and nationwide know about our prescription drug problem, it says: Use of narcotics and other opioids have sky rocketed in recent years. Prescriptions have climbed 300% in the last decade and vicodin and other drugs containing the narcotic hydrocodone are now the most commonly prescribed medication in the United States. With that increase come increase of deaths, 46 people per day or almost 17,000 people die per year from over dose of these drugs. That's up more than 400% since 1999 and for every death more than 30 people are admitted to the emergency room because of opioid complications. (Read from a booklet) Prescription drugs create a much more unique problem than any of the other kinds of drugs that we in law enforcement are used to working with, because they are legal, they are necessary, they

are appropriately used by individuals in the vast majority of cases for the people they are prescribed. But we have real problems. We had a prescription abuse seminar here in Bismarck and in Fargo and within hours of announcing that the seminar was full. 300 to 400 people deal with this problem every day signed up immediately we had to turn people away and here is what we heard from various sources: from the schools I got a message saying I want to pass this information along to you from the schools in Minot as I know you have this seminar coming up. This morning we had a gang juvenile task force meeting and we had five principles from the schools at the meetings and I asked them about drug usage in the schools and they said one of the main problems is with prescription drugs but the added problem is that everyone considers it just prescription drugs and not in the same category as other controlled substances. These are legal medications they say how dangerous can they be. From the addiction and treatment people we heard this: We are alarmed to see the spike in the number of incidents in prescription drug addiction. Many of our patients report they are illegally buying them on the internet or stealing them from people's homes or lying to their doctors to get their medications. And then a simple message from law enforcement, they say that the problem is just out of control. In fact at that time one of our narcotic tasks force agents said that 80% of the work that they do involved investigating prescription drug cases. The misuse of prescription drugs has been quietly steaming, too many lies across the nation, more people die in the state of Washington for example from prescription drug overdoses than automobile crashes. We are a little better here in North Dakota but more people die from prescription drug overdoses than from homicides. The misuse of prescriptions is simply steeling away too many lives across our nation and here in North Dakota. We have done something's that are significant. Our narcotics tasks force is working diligently with local law enforcement and have consistently been dealing with the problem of state distributions. When representative Keiser mentioned the profit that can be made from the purchase of these prescriptions, the going rate for oxycontin is one dollar per milligram. And it goes up to two dollars in the western part of the state. But if you get an 80 milligram prescription for hydrocodone that can sell for 80 dollars per pill, up to 160 dollars per pill. With your copay you probably pay five or six dollars for it at the pharmacy. So the incredible markup of the drugs in the street is a real problem. You implemented the prescription drug monitoring system a couple of sessions ago and that has been very important but it is not used enough. And we implemented in my office the prescription drug take back program were people who have unused medication hiding in there medicine cabinet after telling them not to flush them or put them in their garbage. Since that started five years ago we have collected eight tons of medications. People are voluntarily bringing these medications into their local law enforcement agency. Eight tons a milligram at a time is a lot just so that you know. So that has been very affective too, but one of the main things is that people are out doctor shopping they go from one doctor to the next and they know how as representative Keiser said to game the system. These are folks for whom the PDMP was established but as he mentioned it is not being utilized enough. It is an important tool it is a tool that can help save lives so I think that this bill which will mandate that each other these prescribers are required to consult, look at the PDMP to see which of their patients might be doctor shopping is something that is critical to help in this fight. Mr. Chairman I commend this bill to you. If there is any information that I can offer I will.

**Rep. Mooney**: So out of the eight tons that you received back, what happens to them?

**Stenehjem**: We take them to Fargo to be incinerated at the place for the pharmacy school at NDSU. So they are destroyed.

**Rep. Rich Becker**: On a daily basis can you kind of describe what the doctor must do, how much time does it take for them to get into this program and search down? Is it really time consuming for doctors who already over scheduled?

**Stenehjem**: It doesn't need to be, because it really is pretty quick. It is an internet based system where you punch in the person's name and it will show where the person might have gotten other prescriptions elsewhere. It was a little clunky at first. As I understand it has gotten much better so it's much easier so the doctor can do it and the doctors nurse can also access this system and do that for them. I think it's just one critical part of the step in patient care to prescribe, these powerful useful and potentially dangerous medications so one of the steps that you need to be taking is checking to make sure they aren't shopping around.

**Rep. Dick Anderson:** How do you go about catching someone or enforcing legal drugs verses illegal drugs? Is there a big difference? Is it hard to enforce?

**Stenehjem**: It can be hard to enforce but the use of the PDMP can be useful for law enforcement too. We have a limited right to go in and look at what's happening with PDMP but only where we have an ongoing case with a known suspect but we can't just go in and start pawing through to see. But like any case it involves a lot of work and it can involve a lot of man power

**Rep. Fehr**: I think I understand the mechanics of what this bill is trying to accomplish and you began your testimony by discussing what has been a national issue and of course an issue here if this passes and this works how much of an impact will it really have over all on terms of reducing supply and really making an impact.

**Stenehjem**: I think it can have a positive impact. This is of course just part of the issue but it is a critical part that were actually able to address in a very simple and relatively easy way but I think it is something that law enforcement is certainly asking for and I think it will reduce the incident of prescription drug over prescription and prescription drug addiction. Its only party of the solution of course but it's an important one that we are able to address through legislation and I think at this point one that the prescribers are on board with. This is one tool that people can use and I think it's a very important one?

**Mark Hardy**: Executive Director of ND State Board of Pharmacy testified in support of the bill. (See Testimony #1)

**Rep. Mooney**: My question is just trying to follow the practicality of how this would work. So if I'm prescribed and opioid, I go to my pharmacist and once I reach the pharmacist what is the process that is followed then?

**Hardy**: If the pharmacist is not familiar with you, if you do not have a relationship in which you have receive that controlled substance from them in the past then we say in the rule

that the pharmacist should look up your PDMP report and see if it's appropriate to dispense or not since they don't have any relationship with you in that specific controlled substance

**Rep. Mooney**: If I went and found a new doctor, does that doctor have the capability to also look at that to see if I'm shopping and conversely then if that doctor doesn't pull up the PDMP and then if I go to the next pharmacist the intent is somewhere between the two of them I would be caught it would be found out that I am indeed shopping for those prescription drugs.

**Hardy**: That is correct. In response to Rep. Hofstad's question earlier, as to section one the first item there that specific section talks about the implementing of the PDMP to create the data base but section two is talking more about utilizing a rule process for the use of the PDMP.

**Duane Houdek**: Executive Director of the State Board of Medical Examiners testified in support of the bill. (See Testimony #2)

**Courney Kobel**: Executive Director of the North Dakota Medical Associate I have no prepared testimony but we stands in support of the bill. The PDMP is a useful tool as discussed and we look forward to working with the soon to be state board of medicine to from guidelines to increase the use of the PDMP

**Cheryl Rising**: FNP and legislative liaison for the ND Nurse Practitioner Association testified in support of the bill. (See Testimony #3)

**Constance**: I am the Executive Director of the North Dakota Board of Nursing and I have not prepared a testimony but would like to say the board is in support of this legislation and will work with the board of pharmacy and medicine to put together a set of rules that will be acceptable to the profession. When you use the program extensively during investigations it is a requirement to run the PDMP and find out whether the individual is prescribing or ingesting kind of thing. We have also been a member of the PDMP when we began in 2005 part of that rule making process too. So again I'd like to say we are very supportive of it and will continue to use the program at the board and hopefully the rules will assist the practitioners to use the program more and more continually.

**Nancy Kopp**: Represent North Dakota Optra metric Association (See Testimony #4)

No Opposition

Chairman Weisz closed the hearing on HB 1149.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Fort Union Room, State Capitol

HB 1149
1/19/2015
22163

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

**Explanation or reason for introduction of bill/resolution:**

Adoption of administrative rules governing use of the prescription drug monitoring program.

**Minutes:**

Chairman Weisz

Rep. Porter: I push motion for a Do Pass.

Rep. Seibel: The only question I have is line eight page one where it says the state board pharmacy may adopt rules and then page 13 states everyone shall adopt rules. Do we want to make those the same?

Rep. Weisz: The difference is in 2005 we adopted the PDMT program it was put in charge of the state board of pharmacy so that is in current law so they are the ones that adopted the rules for the pharmacy for the PDMT program. And so they are already in place. Sub section 2 is not trying to bring in all the individual boards that are affected that have the prescribing ability to say you have to get on board with this. I thought the usage had been going up dramatically but the usage being 28% is not very good numbers. Once we got the bugs worked out I thought everyone ones jumping on the band wagon on this one so we certainly could change it but we already adopted them. Any further discussion? Seeing none the clerk will call a roll for a due pass on house bill 1149.

Recommendation a do pass. Motion made by Rep. Porter. Seconded by Rep. Fehr. A total of 12 yes, 0 no, 1 absent. Floor assignment Rich S. Becker.

No audio obtained.

Date: 1-19-15
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 1149

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Porter Seconded By Rep. Fehr

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Weisz | V | | Rep. Mooney | V | |
| Vice-Chair Hofstad | V | | Rep. Muscha | A | |
| Rep. Bert Anderson | V | | Rep. Oversen | V | |
| Rep. Dick Anderson | V | | | | |
| Rep. Rich S. Becker | V | | | | |
| Rep. Damschen | V | | | | |
| Rep. Fehr | V | | | | |
| Rep. Kiefert | V | | | | |
| Rep. Porter | V | | | | |
| Rep. Seibel | V | | | | |
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Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Rich Becker

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**HB 1149: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1149 was placed on the Eleventh order on the calendar.

**2015 SENATE HUMAN SERVICES**

**HB 1149**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**
Red River Room, State Capitol

HB 1149
3/16/2015
24879

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donald Mueller

**Explanation or reason for introduction of bill/resolution:**

A bill relating to adoption of administrative rules governing use of the prescription drug monitoring program.

**Minutes:**

Attach #1: Written testimony by Duane Houdek
Attach #2: Photos by Attorney General Wayne Stenehjem
Attach #3: Testimony by Mark Hardy
Attach #4: Testimony by Cheryl Rising
Attach #5: Testimony by Nancy Kopp

**Representative Keiser** introduced HB 1149 to the Senate Human Services Committee. Last session, it was discussed how important this issue was, and the stakeholders strongly encouraged us not to introduce legislation in the past session. The North Dakota Board of Medical Examiners and other groups asked for the interim to see what they could do on a voluntary basis. They did engage in an aggressive marketing campaign, personal communications, and through their newsletters, attempting to implement the Prescription Drug Monitoring Program (PDMP). The net result was not encouraging. It didn't address the problem we had with the issue. These are very important drugs for the treatment of certain conditions, but they are also very important drugs for the abusive street drug industry. Having tried the voluntary basis, a task force was established in the interim to discuss the issues. It was a true demonstration of how important the issue is. We had support from the Attorney General, the US Attorney, law enforcement, Board of Medical Examiners were all included in the process. Initially, they considered submitting a direct bill that would require the prescription drug monitoring program for these drugs. Ohio has introduced a model bill that we looked at. After much discussion, it would be difficult to write the bill that is appropriate for every level of health care. It may be different for the different medical professions, such as physicians, nurse practitioners, dentists, etc. We want them all to use the prescription drug monitoring program, but they all have a slight variation for the criteria to be established. This bill will use the administrative rules process rather than a single piece of legislation. We will require them to adopt rules for standards for the prescription drug monitoring program for regulating. If this doesn't work, then in future, we will write statute because this is a policy issue. The Board of Pharmacy has already completed the rules, and other boards are following their lead. To say they were excited about this opportunity is an understatement, but they recognize and feel the need to address the issue do agree and support. Many states, Kentucky probably first with

mandatory use of prescription drug monitoring program, there data is good in reduction of problems and money being saved in their state. Other states have also gone the mandatory route. At this time, we believe rules are the right answer today for North Dakota.

**Senator Dever** asked are you suggesting that the boards currently do not have the authority to craft the rules or are reluctant to.

**Representative Keiser** stated they are reluctant to adopt the rules. They could do it in rules today. It is a policy issue. If you want them to adopt rules regarding this issue, then pass this bill. If you want to leave it up to them, it is a policy statement and they can choose to do it or not. The voluntary did not work.

**Chairman Judy Lee** agreed that there was resistance.

**Duane Houdeck** provided written testimony and supports HB 1149 (attach #1).

**Chairman Judy Lee** provided example of a physician who thinks it is not a big deal, but there was resistance to do this.

**Representative Keiser** initially part of the resistance was process resistance. It was not a simple process to use the prescription drug monitoring program. The other issue is the "real time" issue for the program. If someone wants to abuse the system, can present all the right symptoms, can I get the certain pills, and the answer is yes. This bill and the rules will not do that. The program is not real time. But the dump of information comes at 24 hours, and might improve to 12 hours in the future. Previously it was longer. There is still potential for abuse, but not for weeks at a time. Once you get identified on the prescription drug monitoring program, your name shows as misused access to these drugs. It is a very important partial solution to the drug crisis in the state.

**Chairman Judy Lee** provided an example that the flip side of this is the emergency room physician, knowing what was prescribed for the patient legally or is there some other problem here. Knowing what was being done helps in the emergency situation as well.

**Senator Warner** asked in subsection 1, the terms "may adopt" versus "shall" adopt. Should it be uniform language?

**Representative Keiser** has no objection to that. They have adopted that.

**Senator Warner** this is outside, the supply management side, are we looking toward disciplinary procedures toward physicians who have high rates of prescribing these drugs, and other implications emergency room physicians, hospice, pain management specialists, and others. Are we generating data that could lead to prosecution of the people doing the prescriptions?

**Representative Keiser** does not believe that is the case at all. Although, the Prescription Drug Monitoring Program will provide a record for those prescribing. He is on the Sanford board. They do not want a limit the physicians to prescribe the drugs, especially the high

utilization as they are prescribing the pain management. Referring to someone who specializes in this who has experience in this area, they account for the vast majority of high users. Do not want to limit the ability to prescribe, because many times that is the correct prescription.

**Chairman Judy Lee** certainly not the intent of the interim committee to do that. There have been inappropriate prescribers identified.

**Senator Howard Anderson, Jr.** continued that the prescription monitoring drug program has been tracking information for some time, and legislation does say they can report to the various boards, and boards can query the Prescription Drug Monitoring Program for prescribing patterns for their own licensees. At various times, we notice someone who gets disciplined based on the prescription drug monitoring program reports, or we may notice someone who is not keeping adequate records for reporting.

**Wayne Stenehjem**, North Dakota's Attorney General, testified IN FAVOR of HB 1194 and also commended Chairman Judy Lee and Representative Keiser for the efforts they have put forth toward this effort. This is an issue that took some time to get where we are now. Getting the prescription drug monitoring program took two sessions pass. We are now faced with prescribers not utilizing the prescription drug monitoring program. It was adopted for an issue of health for whom the prescriptions are given. There is a law enforcement component as well here. Mr. Stenehjem referred to a recent issue of Consumer Reports article - "America's Scary Pain Pill Habit", starts out with America is in pain and being killed by pain killers. It starts with pain medications but can be as addictive as heroin, and have deadly side effects. Use of those and other opioids have skyrocketed in recent years. Prescriptions have climbed 300% in the past decade, and Vicodin and other drugs containing the narcotic hydrocodone are now the most commonly prescribed medications in the United States, with an increased use showing deaths of 46 people per day, or almost 17,000 people per year, die from overdoses from those drugs. That is up more than 400% since 1999, and for every death, there are more than 30 people who are admitted to the emergency room because of opioid complications. That brings us to the purpose of this bill. Prescription medications are legal, necessary, and appropriately used, by the vast majority of people for whom they are prescribed, but problems arise. We have had 3 or 4 prescription drug abuse seminars in his office. Here is what they hear - from the schools: when asked about drug usage in the schools, they said the main problem is with prescription drugs. The added problem is that everyone considers it "just prescription drugs" and not in the same category as other controlled substances. These are legal medications, so how dangerous can they be. From the treatment people, we are hearing this quote: "we are alarmed to see a spike in the incidence of prescription drug addiction. Many of our patients report they are legally buying them on the internet or stealing them from people's homes or lying to their doctors to get the medications." From law enforcement, the message is that the problem is out of control. One of the narcotic tasks forces says, "it used to be that most of the cases involved Meth, now 80% of our work involves prescription drugs abuse. The misuse of prescription drugs has been stealing away too many lives across the nation and in North Dakota. The narcotics task force members have consistently been dealing with street distribution of prescription medications. After two legislative sessions, you passed the prescription drug monitoring program law. It allows physicians to see who is doctor shopping or who is going from

pharmacy to pharmacy and who may have an addiction problem, but because the program is new, not enough prescribers are using the prescription drug monitoring program. The prescribers who are using the programs are surprisingly and disappointingly low. We have implemented in his office the prescription take back program, where thousands of North Dakotan's have leftover medications at home, can return them to law enforcement. When this program was initiated 5 years ago, unneeded medication was placed given to law enforcement. They have collected 9 ½ tons of unused medication in 5 years. They are taken to a facility in Fargo and incinerated. Reference pictures (attach #2)

**Chairman Judy Lee** indicated that North Dakota is one of the few states that collects unused medications every day.

Mr. Stenehjem indicated we are the only state that takes drugs 24x7 prescription take back program. We cover 90% or more of the state and it is very easy to take the pharmaceuticals back, with no questions. The pharmaceuticals, the hydrocodone has a high street value. One 20 milligram hydrocodone pill goes for $20 on the street, western part of state is $40 for one pill. At the pharmacy, you pay $5 or $6 for 20 pills. The markup and incentive to misuse and to sell and trade is enormous. It is an important bill, and it provides an additional tool from law enforcement and public health perspective. The law was amended last session for addiction counselors, and law enforcement has authority and limited circumstances to have access to the prescription drug monitoring program.

**Senator Howard Anderson, Jr**. offered it is important for the committee to understand that law enforcement has to have an open investigation in order to get information from the prescription drug monitoring program. They cannot just go out there and look up information.

**Mr. Stenehjem** confirmed, and stated that is why he indicated there are limited circumstances, and those are the limitations. We have to have an actual case with an actual defendant, and then we can go in and look at the program.

**Senator Dever** asked with the profits of hydrocodone, do surrounding states have similar programs.

**Mr. Stenehjem** indicated there are some states have similar programs, although his opinion is that North Dakota has the best program, and the most effective. Other states have prescription drug take back days, where our is 24x7 every day.

**Chairman Judy Lee** credited **Pam Sagness** from the Department of Human Services doing a very nice job with a media campaign, concerning not only prescription drug take back but also locking up your drugs. If you lock up your guns, why not your medications. Chairman Judy Lee provided example of training for realtors, to make sure homeowners are locking up prescriptions when selling homes.

**Mr. Stenehjem** indicated they have worked with the Board of Realtors Association to address that very issue. They also have worked with Funeral Directors, as many times there are a lot of medications from a person who dies, and burglars target these people.

**V. Chairman Oley Larsen** asked with all the pills, is there a thought about recycling these medications.

**Mr. Stenehjem** deferred to Senator Howard Anderson, Jr., but also indicated there is a way to reuse medications, but there are limitations and something that needs to be very careful about.

**Senator Howard Anderson, Jr.** answered in North Dakota, we do have a program where pharmacies and physicians can take back medications, only if those pills are bubble-wrapped and can be re-dispensed to eligible patients who need them, for example in a nursing home. However, the drugs we are talking about today are controlled substances. There, the federal law states that you can only transfer control substances between registrants or to a patient. You cannot get them back from a patient except that take-back programs that the Attorney General identified. The federal law won't let us take controlled substances back from a patient and give to another, even in a nursing home.

**Senator Warner** stated his understanding is the licensing board makes the rule, so the licensing board must have some kind of threshold that it establishes for non-compliance. Is there a certain threshold of non-compliance which becomes a criminal defense?

**Mr. Stenehjem** indicated what this bill does is not to require the prescribers actually list what they are prescribing. They are already required to do this under current law. This bill says the prescribing licensing boards have to adopt rules for the instances for which they have to actually go and look at the prescription drug monitoring program when they are prescribing certain drugs to their patients. There is no threshold. The bill doesn't do this, but the administrative rules will, and these will be monitored by a lot of people, including those worked on the bill in the interim and his office as well.

**Senator Warner** asked the only way that your office can initiate a criminal complaint is if the license had been withdrawn by the regulatory board.

**Mr. Stenehjem** indicated they wouldn't do a criminal complaint, but it would probably be a disciplinary action.

**Mark Hardy**, PharmD, Executive Director of the North Dakota State Board of Pharmacy, testified IN FAVOR of HB 1149 (attach #3)(33:28-36:40).

**Senator Howard Anderson, Jr.** followed up that it used to say the board, which was the board of Pharmacy and responsibility for all the prescription drug monitoring. But once we included the other boards, then it was necessary to say state board pharmacy. Senator Howard Anderson, Jr. further asked Mr. Hardy that he had seen some figures that once the rules were adopted, the number of pharmacists and utilization has increased dramatically.

**Mr. Hardy** confirmed yes. It went up roughly 170 pharmacists using the program, which is significant considering that we have approximately 1,000 active pharmacists today.

**Senator Howard Anderson, Jr.** asked that Dr. Hardy provide that information to the committee.

**Cheryl Rising**, FNP, testified IN FAVOR of HB 1149 (attach #4)(38:14-41:04)

**Nancy Kopp**, representing the North Dakota Optometric Association, testified IN FAVOR of HB 1149 (attach #5)(41:04-42:27)

**Courtenay Koebel** testified IN FAVOR of HB 1149, but provided no further testimony.

OPPOSITION to HB 1149
No opposing testimony

NEUTRAL to HB 1149
No neutral testimony

**Chairman Judy Lee** closed the public hearing.

**Senator Axness** moved a DO PASS to HB 1149. The motion was seconded by **Senator Warner**. There was no discussion.

Roll Call Vote to DO PASS
6 Yes, 0 No, 0 Absent. Motion passes.

**Senator Howard Anderson, Jr.** will carry HB 1149 to the floor.

Date: 03/16 2015
Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO.** HB 1149

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Axness Seconded By Sen Warner

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| Senator Judy Lee (Chairman) | ✓ | | Senator Tyler Axness | ✓ | |
| Senator Oley Larsen (V-Chair) | ✓ | | Senator John M. Warner | ✓ | |
| Senator Howard C. Anderson, Jr. | ✓ | | | | |
| Senator Dick Dever | ✓ | | | | |

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Anderson

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**HB 1149: Human Services Committee (Sen. J. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1149 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1149**

HB 1149
1/19/2015

#1

State of North Dakota
Jack Dalrynple, Governor

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Mark J. Hardy, PharmD, R.Ph.
Executive Director

**House Bill No 1149 – Prescription Drug Monitoring Program**
**House Human Services Committee – Fort Totten Room**
**9:00 AM - Monday – January 19, 2015**

Chairman Weisz, members of the House Human Services Committee, for the record I am Mark J. Hardy, PharmD, Executive Director of the North Dakota State Board of Pharmacy. I appreciate the opportunity to be here to speak with you today about HB1149.

The Board of Pharmacy would agree with HB1149 that giving the licensing boards authority to adopt rules to govern the use of the Prescription Drug Monitoring Program [PDMP] is a good approach to take. Prescribing and dispensing controlled substances varies greatly between the professions, so a one-size-fits-all approach is not the best way to govern this.

The Prescription Drug Monitoring Program [PDMP] was implemented in 2005 and since 2007 has been administered by the Board of Pharmacy. The utilization of the PDMP has increased substantially since its creation in 2007 and is a valuable patient care tool that practitioners and pharmacists utilize to make important decisions verses prescribing and dispensing of controlled substance prescriptions.

In 2014 The Board of Pharmacy promulgated NDAC 61-12-01-04, which I have attached, which requires North Dakota Pharmacists to utilize the PDMP in their practice before dispensing controlled substance prescriptions. This was in response to limited situations in which pharmacists were not diligently looking up the patient on the PDMP before dispensing a controlled substance and had they looked up the patient's profile they would have been alerted to an issue that clearly would have impacted their dispensing decision.

We ran this rule by the profession during the 2014 ND Pharmacists Association Convention, at which time we received mostly positive feedback. The rule was revised according to the comments received and became effective October 1, 2014. We have certainly seen an increase in the number of pharmacists registering for PDMP direct access accounts and the number of queries that have been run since the rule became effective.

I will be happy to answer any questions you may have and do appreciate your time.

HB 1149
January 19, 2015

**61-12-01-04. Required use for Certain Dispensing Situations.** **FINAL**

1. Prior to dispensing a prescription each dispenser licensed by a regulatory agency in the state of North Dakota who dispenses a controlled substance to a patient, for the treatment of pain or anxiety shall, at a minimum, request and review a Prescription Drug Monitoring Report covering at least a one year time period and/or another state's report, where applicable and available, if the dispenser becomes aware of a person currently:

    a. Receiving reported drugs from multiple prescribers;
    b. Receiving reported drugs for more than twelve consecutive weeks;
    c. Abusing or misusing reported drugs (i.e. over-utilization, early refills, appears overly sedated or intoxicated upon presenting a prescription for a reported drug, or an unfamiliar patient requesting a reported drug by specific name, street name, color, or identifying marks);
    d. Requesting the dispensing of a reported drug from a prescription issued by a prescriber with whom the dispenser is unfamiliar (i.e. the prescriber is located out-of-state or the prescriber is outside the usual pharmacy geographic prescriber care area); or,
    e. Presenting a prescription for reported drugs when the patient resides outside the usual pharmacy geographic patient population.

2. After obtaining an initial Prescription Drug Monitoring Report on a patient, a dispenser shall use professional judgment based on prevailing standards of practice in deciding the frequency of requesting and reviewing further Prescription Drug Monitoring Reports and/or other state' reports for that patient.

3. In the rare event a report is not immediately available; the dispenser shall use professional judgment in determining whether it is appropriate and in the patient's best interest to dispense the prescription prior to receiving and reviewing a report.
4. For the purpose of compliance with Section 1, a report could be obtained through a PDMP integration with software or also a Board approved aggregate tool, for which the NARxCHECK will be an approved tool.
    a. The National Association of Boards of Pharmacy Foundation's NARxCHECK service is a risk assessment tool for health care providers and pharmacists that accesses patient prescription information from prescription drug monitoring program (PDMP) databases, analyzes the data, and provides a risk-based score that includes PDMP data and graphical analysis to assist in prescribing and dispensing decisions.

**History:** Effective October 1, 2014
**General Authority:** NDCC 19-03.5, NDCC 19-03.5-09, NDCC 43-15-10 (12)
**Law Implemented:** NDCC 19-03.5

HB 1149
1/19/2015

#2

**HOUSE HUMAN SERVICES COMMITTEE**

**HOUSE BILL NO. 1149**

**January 19, 2015**

Testimony of the State Board of Medical Examiners
Duane Houdek, executive secretary

Mr. Chairman, members of the House Human Services Committee, my name is Duane Houdek, executive secretary of the State Board of Medical Examiners, and I testify on its behalf.

The board supports this bill. We were part of the committee consisting of legislators -- including Representative Keiser and Senator Lee -- law enforcement, the medical community and others, formed to examine prescription drug abuse in North Dakota over the last interim.

The Prescription Drug Monitoring Program is a most valuable tool to all who would monitor the prescribing of controlled substances. At the medical board, we use it in every case we have involving allegations of inappropriate prescribing. It provides a wealth of information.

But, as valuable as it is to us in looking at prescriptive practices after the fact, its greatest value lies in its use by prescribers and dispensers before the fact. We have had guidelines for its use by physicians and physician assistants for over two years and have used them in evaluating cases that come before the board. But we could only apply them when a case was before us.

Under this bill, we will pass a rule of broad application in line with the Board of Pharmacy rule passed this past October, and in conjunction with the advisory council and other boards that regulate those who prescribe controlled substances. This will provide a clear, consistent standard of use for all.

I would be glad to try to answer any questions you may have.

HB 1149
1/19/2015

#3

Chairman Weisz and committee members:

I am Cheryl Rising, FNP and legislative liaison for the North Dakota Nurse Practitioner Association (NDNPA). I am testifying in support of House Bill number 1149. There are 702 Advance Practice Registered Nurses (APRN) in ND that have prescriptive authority and 355 are registered for the Prescriptive Drug Monitoring Program.

There are areas of work that APRN may be involved in that may not require someone to utilize this program which will account for some of the numbers, however we support that anyone prescribing narcotics utilize the PDMP. We do support House Bill 1149.

Cheryl Rising, FNP

527-2583

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HB 1149
1/19/2015

#4

HOUSE BILL 1149

Good morning Mr. Chairman and members of the House Human Services Committee.

My name is Nancy Kopp. I appear before you this morning representing the North Dakota Optometric Association and its practicing optometrists, in support of House Bill 1149.

Licensed optometrists in North Dakota were granted the authority to prescribe Tylenol 3, a Schedule III narcotic in 1997. Tylenol 3 is a moderate pain reliever, most often prescribed by optometrists, to treat corneal abrasions.

In conversation with the North Dakota State Board of Optometry President, there currently are 111 licensed optometrists practicing in North Dakota, that maintain their DEA certificate.

While not speaking on behalf of the State Board of Optometry, they have indicated that they will participate with other licensing boards, in the adoption of a uniform Prescription Drug Monitoring Program, as well as those licensed optometrists, who hold a DEA certificate.

The North Dakota Optometric Association would encourage a DO PASS on House Bill 1149.

I would be happy to answer any questions you may have.

HB 1149
03/16/2015
Attach # 1
J#24879

**SENATE HUMAN SERVICES COMMITTEE**

**HOUSE BILL NO. 1149**

**March 16, 2015**

Testimony of the State Board of Medical Examiners
Duane Houdek, executive secretary

Madam Chair, members of the Senate Human Services Committee, my name is Duane Houdek, executive secretary of the State Board of Medical Examiners, and I testify on its behalf.

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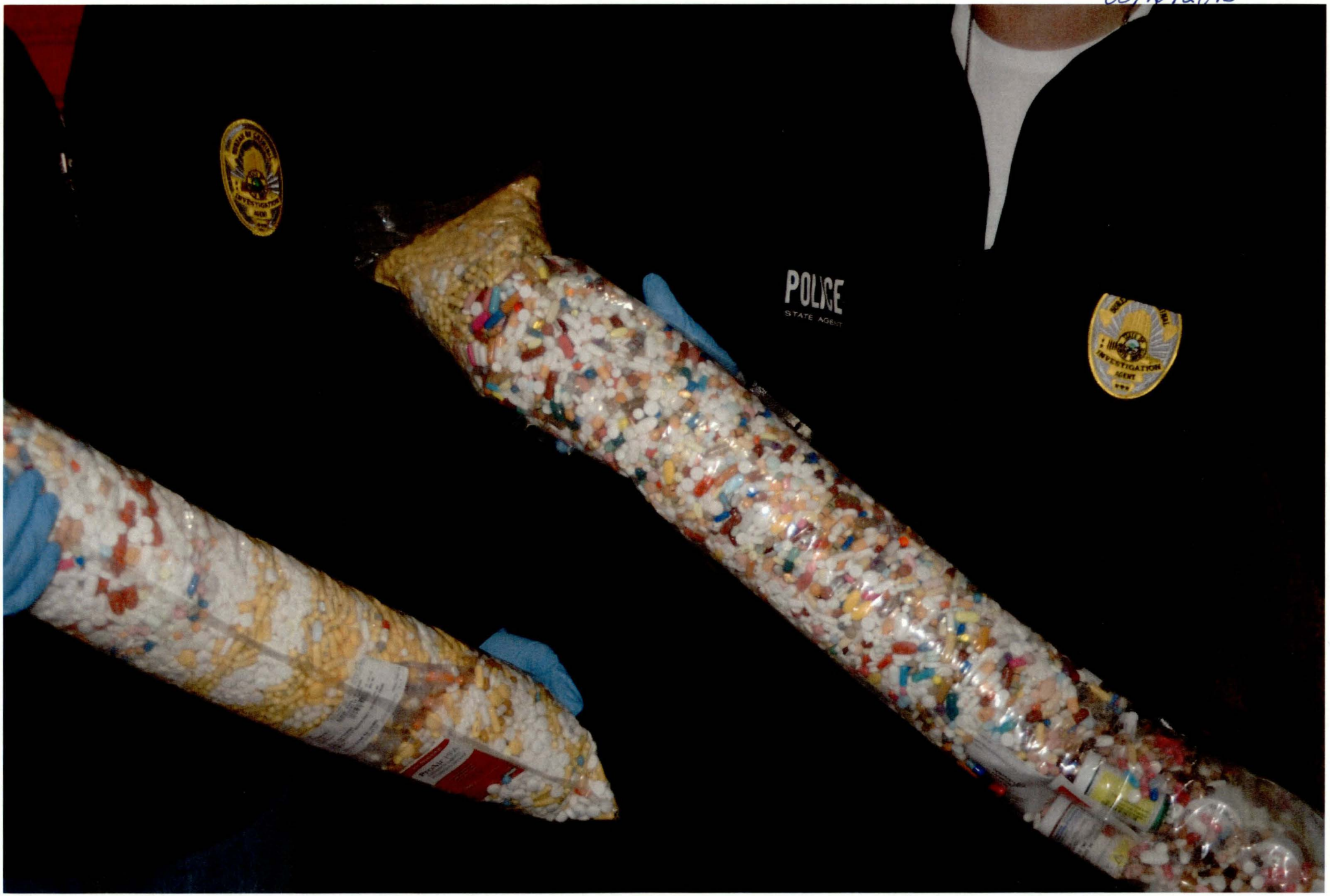
I would be glad to try to answer any questions you may have.

J#24879

Attach #2
HB 1149
03/16/2015




POLICE
ATE AGENT

Attach #3
HB 1149
03/16/2015
J#24879

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Jack Dalrymple, Governor

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Mark J. Hardy, PharmD, R.Ph.
Executive Director

**House Bill No 1149 – Prescription Drug Monitoring Program**
**Senate Human Services Committee – Red River Room**
**10:30 AM - Monday – March 16, 2015**

Chairperson Lee, members of the Senate Human Services Committee, for the record I am Mark J. Hardy, PharmD, Executive Director of the North Dakota State Board of Pharmacy. I appreciate the opportunity to be here to speak with you today about HB1149.

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    d. Requesting the dispensing of a reported drug from a prescription issued by a prescriber with whom the dispenser is unfamiliar (i.e. the prescriber is located out-of-state or the prescriber is outside the usual pharmacy geographic prescriber care area); or,
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**History:** Effective October 1, 2014
**General Authority:** NDCC 19-03.5, NDCC 19-03.5-09, NDCC 43-15-10 (12)
**Law Implemented:** NDCC 19-03.5

Attach #4
03/16/2015
HB 1149
J# 24879

NDNPA
North Dakota Nurse Practitioner Association

Madam Chairperson Lee and Committee Members:

I am Cheryl Rising, FNP and legislative liaison for the North Dakota Nurse Practitioner Association (NDNPA). I am testifying in support of House Bill 1149. There are 702 Advance Practice Registered Nurses (APRN) in ND that have prescriptive authority and 355 are registered for the Prescriptive Drug Monitoring Program.

I have been a member of the Prescriptive Drug Monitoring Program since its inception. NDNPA actively involves the PDMP at our annual Pharmacology Conferences. The nurse practitioners that utilize the program state it is very useful in determining decisions with some patients.

There are areas of work that APRN may be involved in that may not require someone to utilize this program which will account for some of the numbers, however we support that anyone prescribing narcotics utilize the PDMP. We do support House Bill 1149.

Cheryl Rising, FNP

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Attach #5
03/16/2015
HB 1149
J# 24879

NORTH DAKOTA
Optometric Association

HOUSE BILL 1149

SENATE HUMAN SERVICES

MONDAY, MARCH 16, 2015

Good morning Madam Chair and members of the Senate Human Services Committee.

My name is Nancy Kopp. I appear before you this morning representing the North Dakota Optometric Association and its practicing optometrists, in support of House Bill 1149.

Licensed optometrists in North Dakota were granted the authority to prescribe Tylenol 3, a Schedule III narcotic in 1997. Tylenol 3 is a moderate pain reliever, most often prescribed by optometrists, to treat corneal abrasions.

In conversation with the North Dakota State Board of Optometry President, there currently are 111 licensed optometrists practicing in North Dakota, that maintain their DEA certificate.

While not speaking on behalf of the State Board of Optometry, they have indicated that they will participate with other licensing boards, in the adoption of a uniform Prescription Drug Monitoring Program, as well as those licensed optometrists, who hold a DEA certificate.

The North Dakota Optometric Association would encourage a DO PASS on House Bill 1149.

I would be happy to answer any questions you may have.

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