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DESCRIPTION

1407

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10/3/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR
HB 1407

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1407

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/27/03

Tape Number	Side A	Side B	Meter #
4		x	9.8-end
5	x		0.0-8.2
Committee Clerk Signature <i>Judith Hamma</i>			

Minutes: **Chairman Keiser** opened the hearing on HB 1407.

Arnold Thomas, President of the ND Healthcare Association, appeared in support of HB 1407.

(See Attachment # 1)

Rep. Severson: Under this bill, if a hospital in my town owned a pharmacy could they set it up in my grocery store?

Thomas: As written, yes. Campus specific language would be more than acceptable. We're only talking about prescriptions, we're not talking the whole line of commercial activity.

Rep. Severson: Is there a simple fix?

Thomas: We looked at an exemption for MSA's (Metro Statistical Areas). We brought this language to you for two reasons. We have a problem that failed to be addressed relative to the current administrative rules and there will be an ongoing policy challenge about pharmaceutical services and their accessibility in parts of our state where private commercial pharmacies may not be able to respond.

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House Industry, Business and Labor Committee
Bill/Resolution Number HB 1407
Hearing Date 1/27/03

Rep. Kasper: How many hospitals are in ND? How many cities have hospitals but are without pharmacies?

Thomas: 43 licensed community hospitals, I don't know about the pharmacies.

Chairman Keiser: Campus specific was mentioned as a language change. If we put it in the south campus, why isn't there a space for it there?

Thomas: There used to be three hospitals in Fargo, now there are two. The campus we're talking about is the result of that merger between Meritcare and the "expanded" Meritcare since they purchased Heartland.

Rep. Kasper: Aren't there 3 pharmacies within a mile of Dakota Heartland? Have you tried to work with them?

Thomas: I'll defer that question to a representative from Meritcare, ok?

Susan Schnase, Outpatient Pharmacy Services Manager for Meritcare Health System, Fargo, testified in support of HB 1407. (See attachment #2)

Rep. Klein: Why is a LLC not acceptable?

Schnase: I'll defer to members of the board to properly answer that question if I can't do so. We met the intent of the law to have 51% ownership but Meritcare was bearing the financial risk so we weren't financially accountable.

Rep. Kasper: How many pharmacies in other clinics does Meritcare have now? And what are their business hours?

Schnase: A retail pharmacy at 737 Broadway, a hospital pharmacy, and one in Moorehead and one in Bemidji. Some other pharmacies are lease arrangements. The pharmacy at 720 N. 4th is open 24 hours a day. Most pharmacies are closed Sundays.

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Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1407
Hearing Date 1/27/03

Rep. Kasper: Why not have the 24 hour pharmacy deliver to the south end?

Schnase: That site is licensed as a hospital pharmacy and there are limitations to operating as a retail pharmacy. Under emergent situations, we can't process insurances or Medicaid.

Rep. Klein: Is there a pharmacy at the Heartland site?

Schnase: That's licensed as a hospital pharmacy and can't do retail prescriptions.

Howard Anderson, the Executive Director of the State Board of Pharmacy, appeared in opposition to HB 1407. (See attachments #3 and #4) Attachment #4 provides a detailed answer to the question Rep. Kasper asked about regarding Meritcare and the ND Pharmacy Board.

Rep. Nottestad: Meritcare said they couldn't do this scenario and you say now they can. We're hearing both sides.

Anderson: The law says that a hospital pharmacy can take care of its own inpatients. The law says that you should have an outpatient pharmacy permit. But we've never said you can't take care of emergency patients or fill scripts when other pharmacies are closed. All hospitals around the state do this.

Rep. Ekstrom: Could we incorporate off site supervision? Could the north campus be the supervising pharmacy or owner?

Anderson: Outreach is fine. Nothing says you can't counsel a patient at a remote location.

Rep. Klein: Are we the only state to require 51% ownership?

Anderson: Yes.

Chairman Kelser: Everyone says they'll lose money at this, what prohibits a hospital from subsidizing an independent venture?

Anderson: I don't believe so.

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1407

Hearing Date 1/27/03

Galen Jordre, Executive Vice-president of the ND Pharmaceutical Association, appeared in opposition to HB 1407. (See attachment # 5)

Rep. Johnson: Do all community with hospitals also have pharmacies?

Jordre: As far as I know, they all do.

Robert Treitline, owner of ND Pharmacy Inc. Dickinson and Williston, appeared in opposition to HB 1407. (See attachment # 6)

John Olson, representing the ND Pharmacy Service Corporation, appeared in opposition to HB 1407 and gave oral testimony. NDPSC represents 44 communities and 99 pharmacies in those communities.

Tony Welder, pharmacy owner in Bismarck and New Salem, appeared in opposition to HB 1407. (See attachment #7)

David Olig, Fargo pharmacist, forwarded written testimony in opposition to HB 1407. (See attachment # 8)

Keith Horner, Director of Pharmacy Services at St. Alexius Hospital, Bismarck, submitted written testimony for comment to the committee. (See attachment #9)

As there was no one else present to testify on this bill, the hearing was closed.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1407

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
3	x		36.4-45.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** called for committee work on HB 1407.

Rep. Froseth moved a Do Not Pass. **Rep. Ekstrom** seconded the motion.

Rep. Severson: Arnold Thomas, President of ND Healthcare Association, hasn't produced the amendments he was going to bring us. **Rep. Ekstrom:** I haven't heard anything from Meritcare.

Chairman Keiser: This is a delicate area. The system in ND requires that a pharmacist own 51% or more of the stock in his company. That provides opportunity and protection for the pharmacist as well as provided communities with outstanding services. It's kept the big box companies out of ND. Dollars spent at megastores are out of state tonight. Here's a chance to protect existing businesses that provide good incomes in our communities.

Rep. Froseth: The \$6000 fiscal note, a non profit ownership of a pharmacy would provide a significant tax loss to local municipalities. They don't pay property or sales tax.

Results of the roll call vote for a Do Not Pass were: **13-0-1. Rep. Nottestad** takes this to the floor.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1407

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2/04/03

Tape Number	Side A	Side B	Meter #
2	x		13.9-22.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** reopened the hearing on HB 1407 which had been re-referred to the IBL Committee.

Rep. Klein moved to reconsider the bill. **Rep. Ekstrom** seconded the motion.

Vice-Chair Stevenson stated that amendments prepared by **Arnold Thomas**, President of the ND Healthcare Association, had not yet been submitted when the committee took action on 1/29/03. After discussion, a voice vote to reconsider the committee's prior actions failed.

Results of a roll call vote were 4-10-0.

Rep. Nottestad carries this bill on the floor.

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FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1407

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$6,000	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The board of pharmacy would need to do some minor rulemaking once this bill is passed. These would be non appropriated funds. The board has adequate resources for this without any changes in fee structure.

There is a distinct possibility that some for profit clinic pharmacies may get converted to non profit ownership. This could impact the tax base significantly. It is difficult to quantify this, as when, and if, it might occur, would depend on leases expiring and decisions by hospital administrators who control those locations.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

none

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The \$6000 dollars is an estimate of rulemaking expenses. The board of pharmacy is an agency which collects license fees and expends those fees to promote public health related to pharmacy and conduct regulatory inspections business. The board has adequate resources for this with no change in fees anticipated.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

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none

Name:	Howard C. Anderson Jr., R.Ph.	Agency:	Board of Pharmacy
Phone Number:	701-328-9535	Date Prepared:	01/24/2003

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1407

Page 2, line 12, remove the overstrike over "hospital" and remove the overstrike over "furnishing"

Page 2, line 13, remove the overstrike over "service only to patients in that hospital", remove "owned and operated by a hospital licensed under"

Page 2, line 14, remove "chapter 23-16" and insert immediately thereafter "Further, upon a showing of good cause, the board must waive the requirements of subsection 5 to permit a hospital licensed under chapter 23-16 to own and operate a retail pharmacy to be located within the licensed location of the hospital. The board shall promulgate rules to establish the criteria necessary to grant a waiver of subsection 5 which shall take into consideration the availability of retail pharmacy services in the community to serve residents during all hours of the day, improved access by residents in the community to retail pharmacy services, and other criteria to promote quality, accessible and timely pharmacy services to the residents of the community in which the hospital is located."

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Date: 1/29/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1407

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38330.0100

Action Taken Do Not Pass

Motion Made By Truschn Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	
Rep.Saverson, Vice-Chair	✓		Rep.Ekstrom	✓	
Rep.Dosch			Rep.Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep.Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep. Tieinan	✓				

Total (Yes) 14 13 No 0

Absent 0 1

Floor Assignment Nottlestad.

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

(13-0-1)

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Operator's Signature [Signature] Date 10/3/03

Date: 2/4/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1407

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38330.0100

Action Taken Motion to reconsider

Motion Made By Klein Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelser		<input checked="" type="checkbox"/>	Rep.Boe		<input checked="" type="checkbox"/>
Rep.Severson, Vice-Chair	<input checked="" type="checkbox"/>		Rep.Ekstrom	<input checked="" type="checkbox"/>	
Rep.Dosch		<input checked="" type="checkbox"/>	Rep.Thorpe		<input checked="" type="checkbox"/>
Rep. Froseth		<input checked="" type="checkbox"/>	Rep. Zaiser		<input checked="" type="checkbox"/>
Rep. Johnson		<input checked="" type="checkbox"/>			
Rep.Kasper		<input checked="" type="checkbox"/>			
Rep. Klein	<input checked="" type="checkbox"/>				
Rep. Nottlestad		<input checked="" type="checkbox"/>			
Rep. Ruby	<input checked="" type="checkbox"/>				
Rep. Tieinan		<input checked="" type="checkbox"/>			

Total (Yes) 4 No 10

Absent 0

Floor Assignment Nottlestad

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

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REPORT OF STANDING COMMITTEE (410)
February 6, 2003 10:02 a.m.

Module No: HR-23-1814
Carrier: Nottestad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1407: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1407 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-23-1814

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2003 TESTIMONY

HB 1407

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Attachment #1
1/27/03

HOUSE BILL NO. 1407

Testimony by
Arnold R. Thomas, President
North Dakota Healthcare Association
January 27, 2003

Mr. Chairman, members of the committee:

I am Arnold R. Thomas, President of the North Dakota Healthcare Association. I appear before you in support of House Bill No. 1407.

Under current law, at least 51 percent of a pharmacy must be owned by a pharmacist.

Recently, Meritcare Hospital wanted to open a pharmacy on its south campus. Some of its patients were experiencing difficulty getting their prescriptions filled because of issues such as transportation - hours of availability, etc.

Meritcare tried to find pharmacists with whom it could partner in accordance with the requirements of the current law but was unsuccessful. Meritcare then applied to the Board of Pharmacy for a waiver of the 51 percent ownership requirement. The Board denied the request.

At that point, Meritcare had no recourse but to come before the Legislative Assembly.

House Bill No. 1407 waives the 51 percent pharmacy ownership requirement with respect to hospitals.

When the North Dakota Healthcare Association drafted the bill, we had a choice to make. One option was to keep the bill very narrow so that it would apply just to situations like Meritcare's. The other option, and the one we ultimately selected, was to use the language before you. This language not only addresses Meritcare's situation, but also recognizes the reality that access to pharmacies is a statewide issue and of particular importance to citizens residing in the rural areas of our state.

Donna Hall Smith
Operator's Signature

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★ 1

Our current law governing the 51 percent requirement for pharmacy ownership was, I believe, put into place in the early 1960's. We can all think back to main street North Dakota 40-some years ago and with fondness remember the main street businesses. A pharmacy was probably in the middle of that recollection.

But - this isn't 1960 anymore. Demographics have significantly impacted our main street businesses - both in terms of their economic viability and in terms of their hours of service. If a pharmacy is no longer able to remain open, how do the residents get their prescription drugs? If the patient is a sick child -- an elderly aunt - a homebound diabetic - there are demands for access and convenience that need to be addressed.

Hospitals have for many years worked with their local pharmacies to ensure that the citizens have the best and broadest access to prescription drugs and pharmaceutical services. Hospitals have been very sensitive to issues of competition with the local pharmacies. However, hospitals are finding that as our demographics change, local pharmacies in many parts of our state are facing increasingly greater challenges providing timely service and access to those citizens who need prescription drugs.

House Bill 1407 is one way that hospitals can step in and make such services available where there are none or expand the coverage in areas that have only limited service.

We respectfully request a do pass on House Bill 1407.

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Attachment 2

North Dakota 2003 Legislative Session

House of Representatives – House Committee on Industry Labor and
Business

House Bill 1407

January 27, 2003

Chairperson Kelser and Members of the Committee:

My name is Susan M. Schnase. I am a registered pharmacist and manager
the Outpatient Pharmacy Services for MeritCare Health System in Fargo,
ND. I am a registered lobbyist for MeritCare Health System and am
speaking on behalf of MeritCare in support of HB 1407. I strongly encourage
the committee to bring HB 1407 to the floor of the House of Representatives
with a DO PASS recommendation.

MeritCare Health System supports the provisions provided in HB 1407 which
will allow pharmacies owned and operated by a hospital licensed under
NDCC Chapter 23-16 to be
exempt from the provision of subsection 5 (43-15-35).

MeritCare operates a walk-in clinic at our South University Hospital Campus.
This clinical setting serves an average of 175 patients each day. In a patient
care setting of this nature, patients often leave the facility with a prescription,
which needs to be filled immediately. Access to retail pharmacy services
within the MeritCare location they were seen are not currently permitted
under North Dakota retail pharmacy law.

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#2

At the present time, three non-MeritCare retail pharmacies are located within two blocks of the MeritCare walk-in clinic. None of which are open in the evening, all are open limited hours on Saturday (until early afternoon) and two are closed Sundays and holidays.

MeritCare has fully explored the available options to provide on-site pharmacy services with three independent pharmacists and one North Dakota retail chain store. All parties showed little interest in the operation due to the lack of profitability in operating a seven-day per week pharmacy with extended hours (approx. 105 hours/week). MeritCare recognizes the significant costs of extend hours retail pharmacy services including the cost and difficult nature of securing pharmacists to staff such locations – In the instance of hospitals and walk-in clinics it is a matter of access and quality for our patients and community.

Moreover, three pharmacists, including myself, with MeritCare in an effort to obtain licensure to operate a pharmacy at the walk-in location formed a Limited Liability Corporation (LLC). The LLC was drawn up to minimize the pharmacist's financial risk. The Board of Pharmacy did not accept the arrangement.

MeritCare employs professional pharmacists and meets all other requirements for the operation of a pharmacy in North Dakota. The nature of healthcare delivery requires extended hours every day of the week. It is essential to have an on-site pharmacy, which is open during the hours of the walk-in clinic. As a hospital pharmacy, we are prohibited to operate an on-site pharmacy.

Donna Halliwell
Operator's Signature

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MeritCare strongly urges a DO PASS recommendation on HB 1407 to enable hospitals and health systems such as MeritCare the ability to provide necessary and appropriate access to comprehensive pharmacy services, including retail prescriptions, where and when they are needed.

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BOARD OF PHARMACY
State of North Dakota

John Hoeven, Governor

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3

Harvey J. Hanel, PharmD, R.Ph.
Bismarck, President
David J. Ollig, R.Ph.
Fargo, Senior Member
Gary W. Dewhirst, R.Ph.
Hettinger
Dewey Schlittenhard, MBA, R.Ph.
Bismarck
Rick L. Detwiller, R.Ph.
Bismarck
William J. Grosz, Sc.D., R.Ph.
Wahpeton, Treasurer

House Bill 1407

HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE

2:30 PM - MONDAY - JANUARY 27TH, 2003 - PEACE GARDEN ROOM

For the Record, I am Howard C. Anderson, Jr, R.Ph., Executive Director of the North Dakota State Board of Pharmacy. Thank you for the opportunity to appear before you today. The North Dakota State Board of Pharmacy strongly supports the current law, which we refer to as "the pharmacy control law".

Allow me to review the History of this law for you. NDCC 43-15-35 was passed in 1963 by the North Dakota Legislature with the intention of keeping the professional pharmacist with his/her ethical standards, in control of pharmacies. The Oath of the Professional Pharmacist to keep concern for their patients uppermost in their professional practice contributes significantly to protection of the public's health, welfare and safety.

In 1963 when the law was passed, no one had ever envisioned hospitals would be in the out-patient pharmacy business. Probably, at that time, no one envisioned that they would employ most of the physicians either.

There have been attempts to legislatively repeal NDCC 43-15-35 in 1975, 1987 and 1993, and court challenges in 1968, 1972, 1982. In all cases, these attempts were defeated by large margins. We believe that every Governor since 1963 has supported the law.

In 1972, a decision by the North Dakota State Board of Pharmacy to deny a pharmacy license to Snyder's Drug Stores was appealed to the North Dakota District Court and the North Dakota Supreme Court. These courts relied on a 1928 US Supreme Court Decision called Liggett v. Baldridge to say the law was unconstitutional. The North Dakota State Board of Pharmacy appealed to the United States Supreme Court and in the case argued by Bismarck Attorney A. William Lucas, the US Supreme Court, by a 9 to 0 opinion reversed the 1928 Liggett v. Baldridge decision and upheld the Constitutionality of the North Dakota Law. On remand the North Dakota Supreme Court agreed. Attorney Lucas stated that he believes that this law has been one of the most thoroughly Constitutionally and Legislatively tested statute in the North Dakota Century Code.

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In the decision, written by Justice William O. Douglas, he stated very clearly, "those who control the purse strings control the policy". This has been the basic tenet from the beginning in the North Dakota State Board of Pharmacy's interpretation and application of this law.

Let me explain grandfathering. In 1963, a provision was made to allow pharmacies currently in business to stay in business as long as the ownership of those pharmacies did not change.

Until 1996 the Board of Pharmacy interpreted that to mean retail pharmacies. In 1996, the North Dakota Supreme Court said that it looked to them like hospitals, which had pharmacy permits in 1963, could do at their licensed locations, whatever they wanted to with their pharmacy permit. Even though legislators in 1963 did not envision hospitals in the out-patient business, many of them who continue to hold their pharmacy permits, are in the out-patient pharmacy business at their hospital's permitted location as grandfathered permit holders.

There are currently nine *grandfathered* hospital pharmacies in North Dakota out of the total of forty-seven licensed hospitals in the state. This Bill would allow all forty-seven Hospitals to own Pharmacies at any location they wish to choose.

Within the hospital where the hospital pharmacy is serving their in-patients, there are procedures which link the hospital pharmacist with the Pharmacy and Therapeutics Committee through the Medical Staff to the Board of Directors of the hospital. This allows all policies and procedures of the hospital/healthcare institution to be vetted through these several levels of control. Once we get outside the hospital/healthcare institution in a clinic setting or another location, these requirements do not apply. Simply, we have a hired administrator directing the pharmacy staff and this is what NDCC 43-15-35 intended to prevent.

I have listed here seven tenets, which the North Dakota State Board of Pharmacy presented to the Supreme Court and which still holds true today:

- Professional and ethical standards of pharmacy demand that a pharmacist's concern for the quantity and quality of stock and equipment. Decisions made in this area by a non-professional could endanger public health.
- Supervision of hired pharmacists by non-pharmacist owners would be detrimental to public health.
- Responsibility for improper action can be more readily pinpointed when supervision is in the hands of a pharmacist.

Deanna Ballantyne
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10/3/03
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- The dignity of the profession and morale and proficiency of those licensed is enhanced by prohibiting the practitioner from subordinating himself to the direction of untrained supervisors.
- If control and management is vested in non-pharmacists, there is the danger that social accountability will be subordinated to the profit motive.
- The term "pharmacy" identifies an establishment where healthcare is practiced and it is intended to do more than make a profit.
- Doctor-owned pharmacies with built-in conflict-of-interest problems could be restricted.

The Supreme Court accepted these reasons in 1973. Today we see workplace issues and medication errors headlined in the national pharmacy press. We see pharmacists in some pharmacies that have had to form a union in order to insist that they be allowed a bathroom, lunch or work break during their shifts. This does not happen in North Dakota. The environment you and your predecessors in the Legislature put in place has served North Dakota consumers well.

In North Dakota bear counters do not determine how many prescriptions must be filed before there is an additional pharmacist or pharmacy technician to help. Pharmacists make those decisions.

The ownership law is the best opportunity for pharmacists to be masters of their own destiny in the patient's best interest. The ownership law insures that pharmacists who have pledged their oath to uphold healthcare standards and professional ethics determine policy.

North Dakota can serve as a light for the rest of the country. We have the best level of pharmacy services in practice in North Dakota, compared to ANY state.

We hope you agree and will keep it that way.

Thank you.

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Date



BOARD OF PHARMACY
State of North Dakota

John Hoeven, Governor

OFFICE OF THE EXECUTIVE DIRECTOR
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Howard C. Anderson, Jr, R.Ph.
Executive Director

4
Harvey J. Hanel, PharmD, R.Ph.
Bismarck, President
David J. Ollg, R.Ph.
Fargo, Senior Member
Gary W. Dewhirst, R.Ph.
Hettinger
Dewey Schlittenhard, MBA, R.Ph.
Bismarck
Rick L. Detwiller, R.Ph.
Bismarck
William J. Grosz, Sc.D., R.Ph.
Wahpeton, Treasurer

House Bill 1407

HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE

2:30 PM – MONDAY – JANUARY 27TH, 2003 – PEACE GARDEN ROOM

There has been discussion here today of a specific instance where a pharmacy could not be obtained in a hospital which had lost it's grandfathered status through several asset purchases which failed to keep the original 1963 ownership chain intact.

There was a scenario presented to the Board of Pharmacy, which was not approved, as it was very similar to a 1982 case in which Osco Drug attempted by corporate documents to control a pharmacy in which a pharmacist owned the majority of the stock. The North Dakota Court Case was in the matter of the application of ND Pharmacy Inc. for a Pharmacy Permit. (1982). The settlement was reached after two administrative hearings, a District Court Hearing and a District Court decision affirming the decision of the North Dakota State Board of Pharmacy denying the pharmacy permit. The case involved the question as to whether Osco Drug as minority shareholder, had retained actual pharmacy control through various complex corporate agreements with the pharmacist majority shareholder.

This was exactly what the scenario presented by Meritcare entailed.

There are ways which a pharmacy can be placed at any particular location. Many of our major grocery stores have pharmacies in them as well as many of our clinics. These pharmacists lease space from the owner and own/control the pharmacy at that location. Sometimes restrictive covenants or requirements for hours of service, make the location or opportunity unfeasible.

This is what happened in the Heartland Hospital location. There are currently other pharmacies within one block of this location which provide service for all but one or two hours in the evening. In a true emergency situation, these patients could be accommodated by the hospital pharmacy.

Howard C. Anderson, Jr, R.Ph.
Executive Director

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Dennis Hallen
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10/3/03
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**Testimony before the House IBL Committee
Monday, January 27, 2003
Galen Jordre – Executive Vice President**

My name is Galen Jordre and I am the Executive Vice President of the North Dakota Pharmaceutical Association (NDPhA) an organization that represents the 700 pharmacists practicing in the state. The NDPhA has a long history of supporting the ownership law and has always been active in any attempts to overturn it. We may have individual members who may feel that the ownership law should be changed, but the position of the organization has been to support the law as it is in place.

I came to North Dakota six years ago from South Dakota to accept the job that I currently hold. I was attracted to the job because of the reputation of North Dakota pharmacists and pharmacies as leaders in our profession. I have found that North Dakota has a vibrant and progressive pharmacy community. There is a high level of investment to improve patient care and upgrade facilities. I attribute this in a large part to the pharmacist ownership law.

The pharmacist ownership requirement provides the element of competitive balance that ultimately best serves the public. Pharmacies are established and maintained according to the ability of the pharmacist owner to provide quality services to patients and obtain a return on investment. With pharmacist ownership, business decisions are made with professional ethics as a basis for determining policy.

There are many ways that demand for pharmacies can be fulfilled. The ownership law allows for significant investment by non-pharmacists or corporations. Any business has the opportunity to be a minority stockholder and leasing arrangements have placed pharmacist controlled pharmacies in clinics, supermarkets, and general merchandise stores. When there are sincere efforts to make business arrangements within the parameters of the ownership law, successful pharmacist controlled pharmacies can effectively serve patients.

Pharmacy services in the state will be best served and the current law is maintained. We ask that you vote no to this proposal.

At this time, I would like to introduce Bob Treitline, President of the North Dakota Pharmaceutical Association to speak.

**OFFICERS
2002 - 2003**

BOB TREITLINE, R.Ph.
President

WADE BILDEN, R.Ph.
President-Elect

CURTIS MCGARVEY, R.Ph.
Vice-President

GALEN JORDRE, R.Ph.
Executive Vice President

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#36
1/27/03

Testimony of Robert Treitline, R.Ph.
HB 1407
House Industry, Business, and Labor Committee
Monday, January 27, 2003

Chairman Keiser and Committee members:

My name is Robert Treitline and I am owner of ND Pharmacy Inc. in Dickinson and Williston. My two pharmacies were the first pharmacies to be approved under the (Ownership Law). I own 51% of the common stock and Albertson Foods owns the minority of stock or 49%. I can tell you this arrangement works very well for me and for Albertson. I have full and complete control of the pharmacy operation. I make all decisions as it concerns the business as well as professional activity of my pharmacy. I believe through my ability to make these decisions we have advanced pharmacy services to a level that would not have been obtained under a different ownership situation. I am able to make investments in services and programs that better serve our local patients needs.

I don't believe Dickinson is unique in the fact that pharmacies provide 24 hour-7 days a week pharmacy services to our community and surrounding area. One of our local pharmacists is on call 24-7. This service is a combined effort between the local pharmacist and the local hospital. There is no need to expand services from the hospital to provide pharmacy services to our community.

Hospital exemption to the ownership law has many negative implications. There are several pharmacies that currently lease space from hospital outlets. These pharmacies provide that excellent quality of pharmacy care that is expected in North Dakota. If the hospital exemption would be granted there would be pharmacies that could and would lose their lease. I don't believe Dickinson would best be served if Med-Center One owned the pharmacy in the Dickinson Clinic now owned by Dick Silkey. There would be many situations of this type across the state. North Dakota is unique in the ownership law and we are the envy of pharmacy in the U.S. After talking with many practitioners across the country I can tell you we have advanced pharmacy in North Dakota to a level most would like to be at. We have laws and rules that protect our citizens and allow the practice of pharmacy to grow and provide the needed services in our rural communities.

Again I question the proposed exemption for hospitals in ownership and if it is needed to provide pharmacy services. Bigger is not always better.
I urge you to defeat this bill. Thank you.

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Robert Treitline
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10/3/03
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#7

NDHOUSEBILL14073 TESTIMONY 1-27-03 IBL COMM

MY NAME IS TONY WELDER AND I AM INVOLVED IN THE
IN BISMARCK AND ONE IN NEW SALEM. I SPEAK AGAINST
1407.

THIS BILL CONCERNS WHETHER PHARMACISTS CAN C
PROFESSION. AS YOU HAVE HEARD, THAT LAW HAS B
PREVIOUS LEGISLATIVE ATTEMPTS TO CHANGE IT AND
DECISIONS.

I AM ON EXECUTIVE BOARDS OF TWO NATIONAL PHAR
ASSOCIATIONS AND A BUYING GROUP, SO AM EXPOSE
WHO PRACTICE ALL OVER THE COUNTRY. ND PHARM
RESPECT, AND ENVY, OF OUR PEERS OUTSIDE THE STA
ARE TYPICALLY VERY PROGRESSIVE AND ARE LEADER
WE ARE ABLE TO PRACTICE UNENCUMBERED BY NON
EXECUTIVE TYPES WHO ARE MORE INTERESTED IN TH

SOME QUICK EXAMPLES OF SUPPORT OF THIS:

1) A VISITOR FROM CALIFORNIA WAS AMAZED THAT I
FEW HOURS" TO GET HER PRESCRIPTION REFILLED. S
COULD NOT GET HER PRESCRIPTION REFILLED THE SA

2) A GOOD FRIEND WHO OWNED HIS OWN PHARMACY
THE LEASE ON HIS BUILDING AND CLOSED HIS PHARM
WORKING PART TIME FOR A CHAIN DRUG STORE. THE
DIFFERENCE, AND DISAPPOINTMENT FOR HIM? HE CA
TAKE THE TIME TO TALK TO PATIENTS.

3) THIS IS MY WEEK TO CARRY A PAGER IN CASE ONE
NEEDS ANYTHING AFTER HOURS. YESTERDAY, A PAT
NEEDED A REFILL. SHE HATED TO BOTHER ME (DURING
BOWL), SO SHE CALLED A HOSPITAL PHARMACY SHE
AND EXPLAINED THE SITUATION. THEY HAD NO INTE
HER.

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Operator's Signature

10/3/03
Date

H 7 P2

THE ABOVE IS NOT TO CRITICIZE THE PHARMACISTS IN ARE SOME VERY GOOD PHARMACISTS IN THOSE INSTI CONCERN IS THAT SOME OF THE POLICIES ARE SET BY WHO IN THE ABOVE SITUATIONS DID NOT HAVE THE B. THE PATIENT IN MIND. RETAIL PHARMACY IS A DIFFER INSTITUTIONAL PRACTICE.

PHARMACISTS IN NORTH DAKOTA ARE HARD WORKIN PROVIDE AS MUCH PERSONAL SERVICE AS POSSIBLE. THE BUSINESS, YOU HAVE GOT TO RESPOND TO PATIE

IN MY OPINION, HOUSE BILL 1407 WOULD CREATE A DI ATMOSPHERE IN OUR PROFESSION AND IS A MAJOR CE THAT HAS WITHSTOOD THE TEST OF 40 YEARS. THIS L THE PEOPLE OF NORTH DAKOTA VERY WELL AND I CA THIS CHANGE WOULD BENEFIT OUR CITIZENS.

I URGE A RECOMMENATION OF 'DO NOT PASS'.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

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#8

House Bill 1407
HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE
2:30 PM - MONDAY - JANUARY 27TH, 2003 - PEACE GARDEN ROOM
David Olig, R.Ph.

For the record, I am David J. Olig a pharmacist from Fargo, North Dakota.

Due to time constraints I was unable to testify against House Bill 1407 concerning the requested waiver for hospitals with respect to the pharmacy ownership law.

My wife, Jolette and I are both pharmacists. We lease pharmacy space from MeritCare at their Southpointe and Southwest Fargo locations. We have been associated with MeritCare in this capacity since 1990 and 1983 respectively.

I was involved in negotiations concerning the South University Campus pharmacy that is the topic of discussion. I rejected MeritCare's first offer because the rent they required was approximately 4 times the national average being paid by pharmacies around the country. We counter offered with a shared risk proposal with rent starting after a financial break even point was reached. After considerable analysis I determined that with the rent request, it would not be possible to make this site profitable using the current provider mix and services offered and the extended hours required to be open. I withdrew my offer and conveyed I was not interested in this site under these terms.

I have several concerns about the presentation made by MeritCare at the committee meeting:

1. Not ALL possibilities have been explored. There is the possibility of a contracted service pharmacy. If MeritCare wants to have a pharmacy so much that they will sustain a loss to provide pharmacy services, they can explore more options. One would be to contract with a company (corporation) to provide pharmacy services at this site. The company would have to be majority owned by a pharmacist and would be the direct responsibility of that pharmacist/company. A suitable financial arrangement could be made to pay a reasonable management fee plus the required expenses, with any excess profits paid back to MeritCare in the form of rent. The pharmacists should not be MeritCare employees for obvious reasons. Executive Director Howard Anderson explained that tying ownership to employment at MeritCare would violate the law.
2. Technology is available for after hour dispensing. Pyxis machines or delivery from another MeritCare licensed pharmacy with counseling done via a telepharmacy link are viable options.
3. There are at least 6 pharmacies within a 2 mile radius. Our Southpointe Pharmacy is open 7 days a week, 8-8 M-F and 9-6 on S & S. The only access issue is after 8 or 9 PM. All of these patients have their own pharmacy that they use on a regular basis.
4. Pharmacy is not just about drugs, but also about the practice of pharmacy and our patients. Pharmacy should ONLY be under the control of pharmacists.

Although pharmacy practitioners in this state are not perfect, they are exemplary. There are a very large number of innovative types of practice going on in North Dakota and that is largely because pharmacists get to determine their practice types, optional services etc. The control of the practice of pharmacy should never be relegated to a health system administrator.

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David J. Olig
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#2

Good afternoon Chairman Keiser and Members of the House Industry, Business, and Labor Committee. Thank you for the opportunity to present information on House Bill 1407. My name is Keith Horner, Director of Pharmacy Services at St Alexius Medical Center. We have elected to not take a position on this legislation but would like to comment to the Committee.

Hospital owned retail pharmacies purchase medications using the same class of trade as defined by the Federal Trade Commission as all other retail pharmacies. Pricing arrangements to all retail pharmacies are governed by that class of trade. Therefore, hospital owned retail pharmacies hold no economic advantage over any other retail pharmacy.

Profits from hospital owned retail pharmacies are reported as unrelated business income and are subject to the same taxation as other for-profit retail pharmacies.

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

Thank you for your time and consideration.

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