

August 21, 2008

Comments to Business, Industry and Labor Committee

by Larry L. Gauper, Consumer, Fargo, ND

RE: North Dakota Pharmacy Ownership Law

Chairman Rick Berg and Legislators:

Thank you for this opportunity to comment on North Dakota's pharmacy ownership rules. I offer my opinion as a consumer, one who is also a life-long North Dakotan and now demographically classified as a "senior citizen."

The first point I would like to make, and I want to be very clear on this: I have the greatest respect for the Registered Pharmacist. These men and women, whether fresh out of school or advantaged with years of experience, literally hold life and death in their hands. Every working day - and sometimes during their off hours - they carefully and professionally dispense medications to thousands of North Dakotans and millions of Americans - to maintain or improve health.

While growing up in Valley City, the independent, pharmacist-owned drug store, film shop, greeting card center and soda fountain was part of my formative years. And - to this day - no ice cream soda ever tasted quite as good as those I experienced

at Valley Drug on Main Street, at their "Happy Days" style soda fountain.

Back when the "Ozzie and Harriet Show" was on prime time TV and "Matt Dillon" was cleaning-up Dodge City, the 38th legislative assembly enacted North Dakota's current pharmacy ownership law. The year was 1963 and national pharmacy retailers weren't much of a factor, particularly here in North Dakota. The centerpiece of pharmacy retailing was the local pharmacy and these were managed and owned by local pharmacists. The North Dakota legislature captured that structure, froze it in time, and that's the way it has been for 45 years.

But times have changed and so has pharmacy. Yet, North Dakota remains burdened by this antiquated, anti-competitive, anti-consumer, protectionist legislation, a law that should have been repealed decades ago. Or, better yet, this kind of legislation should never have been enacted. I'm sure you've seen that once a legislative body makes a law to economically protect a particular class of vendor from competition, it's very difficult to repeal. While about 170 independent pharmacy owners are currently being protected from a free and open market, where is the protection for the consumer from the kind of market

restriction no other state legislature in this country tolerates?

NDSU's College of Pharmacy, I believe, is turning out better trained pharmacists than ever before. And most of them leave the state as soon as they graduate. I've visited with over twenty of these young people during their senior year. These are the kind of North Dakota-educated professionals we talk a lot about wanting to keep in the state. But these young people are leaving for positions with national pharmacy retailers throughout the country. I can't imagine any of them not providing highly professional, ethical and customer-oriented service for companies like Walgreens, CVS, Wal-Mart, Target and others, who welcome them gladly and pay them at national salary levels. Can you imagine these North Dakota trained pharmacists compromising their ethics or standards in order to conform to bad corporate policy? I can't.

However, I've had more than one North Dakota pharmacist tell me these NDSU graduates will not be able to be "true to their professional standards" if they work for any of the national companies I mentioned. Somehow, the service they will deliver will be second-rate to that offered by pharmacists who practice

in North Dakota under our state's unusual pharmacy ownership rules. In my opinion, that's just plain wrong.

There's another red herring in current law that claims repeal of the ownership provision would hurt small towns in rural areas. In the 2007 legislature, hospitals throughout the state wanted the right to own their own pharmacies and be another source of supply for consumers in the communities they serve. An important benefit of this change in law would have allowed some pharmacy competition in pricing and service in smaller towns. But the 60th Assembly burdened this legislation with "sole provider" strings, thus assuring there wouldn't be a hint of competition in communities with one or more currently operating "pharmacist/owner" drug stores. And yet we talk about expanding access to health care services in rural areas. Complicating HB-1299 didn't walk that talk.

It's as if barring retail pharmacy competition throughout North Dakota will somehow "save" rural North Dakota towns. That's fantasy. The reality is - in order to get lower prices on prescription drugs - rural residents are turning to mail order - demanded, in fact, by some national employers because their North Dakota employees can't find a national pharmacy retailer anywhere in the state.

When consumers turn to mail order, every North Dakotan loses. Mail orders provide no support for local infrastructure, no salaries for local personnel, no income taxes, no property taxes, no purchasing of local services by bricks and mortar businesses.

Recently, a group of Fargo business and political leaders wanted to enact a new sales tax to fund "economic development." It was projected to glean \$10 million a year from consumers who shop in Fargo. It was soundly defeated. On the other hand, repealing North Dakota's unique pharmacy ownership rule would open the doors to instant economic expansion with benefits - not costs - to taxpayers.

This committee is also assigned to look at the "statutory interplay between the Board of Pharmacy and the North Dakota Pharmacists Association." I hope you do take a close look at the current structure. In looking at the Board of Pharmacy's website, I learned that members of that licensing authority are required to be members of the Pharmacists Association. So long as the Association fulfills an advocacy role promoting retention of the current pharmacy ownership provision, Association membership should not be a requirement for sitting on the state's licensing board.

After all, these are two entities, one private and the other regulatory; one with an advocacy role and the other charged with a governmental responsibility. Each of these bodies should operate totally independent of each other, both in membership and function.

Several months ago, I read an item in "USA Today" that reported, and I quote: "Since 2006, Wal-Mart's \$4 generic drug program has spread to every state except North Dakota, where Wal-Mart has no store pharmacies." And I recently saw Walgreens promoting lower prices on a long list of generics, as they attempt to compete with other pharmacy retailers throughout the country - except in North Dakota. As a consumer, I'm not pleased that these promotions are not available as a choice for North Dakotans, blocked by an ownership requirement publicly-owned companies are not obligated to meet in any other state.

In response to those promotions, a North Dakota pharmacist told me "Ya, but these 'chains' are using prescription costs as loss leaders, to get people in their stores." To that I say, "so what?" I don't care if Wal-Mart, Walgreens, CVS, Target - and, yes, the independents, all compete to bring lower prescription prices to consumers. Remember too, not everybody has drug

insurance and, for those that do, insurance premiums are tied to prescription costs, both wholesale and retail.

One North Dakota pharmacist told me that if I didn't like the ownership law, I should shop in Moorhead. He reminded me, "There's a Walgreens and a Wal-Mart right across the river." I couldn't believe I was hearing a North Dakota businessman telling me to go shop in a neighboring state.

Before I close - one comment on the ability of independent pharmacies to compete: Two weeks ago, I visited Virginia, Minnesota, a smaller community of around 8,000 people in the northern part of that state. And last summer, I talked with an NDSU-educated Registered Pharmacist - an independent pharmacy owner - in a suburb of Dallas, Texas. In these two locations, and at thousands of others across our great land, independent pharmacies are competing successfully with national pharmacy retailers, and they've been doing it for many years. Sure, independents in North Dakota may have to change some pricing, as has happened elsewhere, but mostly these independents outside of North Dakota compete not just on "pricing," as my friend from Texas told me, but on service, location and professionalism. I do not underestimate the ability of independent pharmacists in North Dakota to compete in a free and open market.

Whenever I've talked with people who live outside North Dakota or when I've addressed health care provider groups at out-of-state conferences, I can always get a laugh when I tell them how, for 36 years, since the West Acres Shopping Center opened, North Dakota has been the only state in the union where you can walk into a Walgreens drug store and not get a prescription filled. It's illegal.

It's time North Dakota stops being the laughing stock of the country on this issue and our citizens are allowed to take full advantage of retail pharmacy services and competition, just as all other states have permitted for decades. I ask you to draft a bill to repeal the antiquated ownership provision of North Dakota's pharmacy law, and get it passed during the 61st Assembly.

Thank you for your time and attention.

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