

STATEMENT
FROM THE
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

The National Community Pharmacists Association ("NCPA") represents the nation's community pharmacists, including the owners of nearly 24,000 pharmacies. These independently owned pharmacies generate more than \$78 billion in annual sales and dispense nearly half of all retail prescriptions. Our members in North Dakota are concerned about the impact of this proposal on their ability to continue to service their patients.

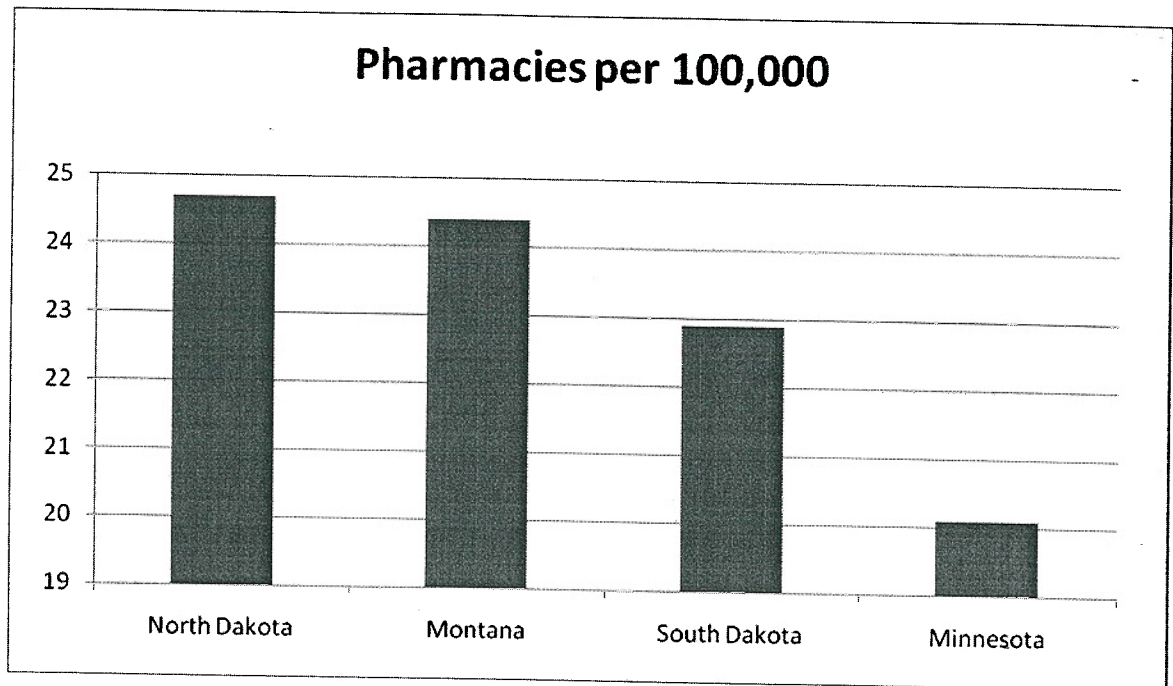
Consumers, our patients, have consistently ranked our industry, i.e., independent pharmacists as "the most trusted profession" and excellent providers of customer service. The pharmacists in North Dakota provide exemplary service in their communities. On a daily basis they counsel patients and provide compounding, medication therapy management (MTM), and durable medical equipment. In fact, the pharmacists in North Dakota were number 1 in the nationwide total of MTM cases completed in 2007.

NCPA supports the continuation of the North Dakota pharmacy ownership law. We believe that its continuation is critical to the North Dakota residents of the state and to your economy.

The marketplace under the current law is competitive and cost effective.

Community pharmacies in North Dakota maintain a key role in the state's economy. A recent study titled "The Contribution of North Dakota's Community Pharmacies to the State Economy" found that community pharmacies make a contribution of \$907 million to the state's economy on an annual basis.

North Dakota has a very competitive market. One measure of that competitiveness can be evaluated by the number of pharmacies per 100,000 people in neighboring states. Based upon an analysis performed by NCPA using Census data along with National Council for Prescription Drug Programs ("NCPDP") data, North Dakota has more pharmacies per 100,000 people than its neighboring states:



North Dakota has 158 pharmacies and a population of 639,715, giving the state more pharmacies per 100,000 people than its three neighboring states with 24.7. This number indicates a high degree of access at a time when many pharmacies in rural areas are closing.

Due to the high level of competition among North Dakota's community pharmacies, prescription prices are lower in the state of North Dakota when compared to national prices. According to the *2007 Chain Pharmacy Industry Profile* by the National Association of Chain Drug Stores¹, the average prescription price nationally was \$75.64. This is \$11.46 higher than the average prescription price in North Dakota of \$64.18. For patients covered under Medicaid, the average prescription price was \$69.40 in North Dakota, which was \$9.03 lower than the national average price for a Medicaid prescription of \$78.43

A repeal of the current law would negatively impact the marketplace.

Many of the out of state businesses that would presumably enter the North Dakota marketplace if the current law is repealed have engaged in business practices which have been the subject of government investigations and settlements. Other business practices have resulted in a detrimental impact on a state's economy.

Two of the largest chain pharmacies have been the subject of recent government settlements:

- In February 2008, **Caremark CVS** agreed to pay \$38.5 million to the United States and 23 states and the District of Columbia to settle Medicaid prescription fraud allegations. The allegations concerned switching patients from one prescription to a more expensive prescription to boost its Medicaid reimbursement levels. The settlement also includes an amount up to \$2.5 million as reimbursement for certain medical tests.
- In June 2008, **Walgreens** settled drug switching allegations which resulted in overcharging Medicaid with the United States and 42 participating states and the Commonwealth of Puerto Rico for \$35 million. The case initiated when a pharmacist whistleblower became concerned with Walgreens' drug switching programs which he believed were for the sole purpose of increasing Walgreens profits and no medical benefit to the patient.

Also there have been four lawsuits against **Walgreens** for prescribing errors since 2006, leading to a cumulative total of over \$61 million dollars being awarded for prescription error verdicts.

According to a study published by David Neumark, Junfu Zhang, and Stephen Ciccarella titled "The effects of Wal-Mart on local labor markets"ⁱⁱ, the authors found that the big-box retailer Wal-Mart had a negative effect on both retail level employment and wages for the retail industry. Their comprehensive study which looked at employment and payroll data between 1977 and 2002, found that a Wal-Mart store opening replaces 1.4 retail workers for every retail job Wal-Mart creates, and a decrease in county-level earnings by 1.5 percent.

According to Wal-Mart's Annual Report (2008) and its March 31st 10-K filing with the Securities and Exchange Commission, it is involved in lawsuits which include wage and hour "Off the Clock" Class Actions and Gender discrimination cases. They appear to be involved in at least 80 lawsuits in the United States. Further according to an internet site that tracks litigation concerning Wal-Mart (<http://www.wal-martlitigation.com/>):

"How often is Wal-Mart sued?" is one of the questions we are most frequently asked. Wal-Mart is sued two to five times every business day somewhere in the United States in federal court alone. One of the goals of the Wal-Mart Litigation Project is to obtain a photocopy (or e-mail copy) of each actual lawsuit filing, called a Complaint or Petition. These filings will become part of the "information packets" the Wal-Mart Litigation Project sells to lawyers. In this manner, a lawyer with a specific type of case, e.g. falling merchandise, can contact lawyers in his or her geographical area and work together on matters of proof, discovery, expert witnesses and the like. In 1999 Wal-Mart was sued approximately 845 times in cases that were filed in or removed to federal court."

"Andersonville Study of Retail Economics"ⁱⁱⁱ looked at the economic impact of chain retail outlets versus locally owned retail outlets in the Andersonville neighborhood in Chicago, Illinois. This study found that locally owned stores had a stronger impact on the economy than chain stores. The study found that a square foot of a locally owned business on average contributed \$179 to the local community, compared to only a \$105 for a chain store. The primary reason for this discrepancy is due to the fact that for every \$100 spent at a locally owned store, \$68 stayed within the community, versus a chain store where only \$43 out of every \$100 remained in the local community.

A repeal of the current law would negatively affect access to quality pharmacy services by North Dakota patients.

According to the Center for Rural Health Policy Analysis, 998 rural independent community pharmacies have closed their doors since May 1st, 2006. Of these, 158 rural independent community pharmacies were the sole provider in their area, and have ended up closing their doors without another pharmacy (chain or independent) setting up shop in the community^{iv}. It is a fear among many patients and pharmacists, that encouraging chain pharmacies to set up shop in metropolitan areas may provide an additional burden on community pharmacies in nearby rural areas; exacerbating this trend of access being reduced for patients in rural areas.

In closing, we want to urge you to continue to support your pharmacy ownership law. It has been clearly demonstrated that the pharmacists of North Dakota are an asset to their community and to the state's economy. NCPA appreciates the opportunity to bring these concerns to your attention. Thank you.

ⁱ "The 2007 Chain Pharmacy Industry Profile", National Association of Chain Drug Stores.

ⁱⁱ David Neumark, Junfu Zhang, Stephen Ciccarella. "The effects of Wal-Mart on local labor markets", Journal of Urban Economics, December 2006.

ⁱⁱⁱ "The Andersonville Study of Retail Economics", by Civic Economics. October 2004.

^{iv} Donald Klepser, Liyan Xu, Fred Ullrich, Keith Mueller, Ph.D. "Independently Owned Pharmacy Closures in Rural America", Center for Rural Health Policy Analysis, July 2008.