

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

(612) 698-0806. (612) 296-3931

MINNESOTA STATE BOARD
OF PHARMACY
MINNESOTA STATE BOARD OF PHARMACY
717 DELAWARE ST., SE, #351
MINNEAPOLIS, MN. 55414
DAVID E. HOLMSTROM, R.PH. 1965 FORD PARKWAY
SECRETARY ST. PAUL, MINN. 55116

Bob Stich
333 –

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Pharmacy Board
(Agency or Board)

Regulation No. Pharm 37 (amended)

Subject: Unprofessional Conduct

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
JUN 9 1975 11:50am
BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 6-9-75

Rev. 9-72

MINNESOTA NEWSPAPER ASSOCIATION

84 South Sixth Street, Minneapolis, Minnesota 55402
Telephone: (612) 335-8844

Robert M. Shaw, *Manager*
Linda I. Hansen, *Office Manager*

May 27, 1975

The Honorable Warren R. Spannaus
Office of the Attorney General
102 State Capitol
St. Paul, Minn. 55101

Dear Warren:

I talked to you two weeks ago about the Board of Pharmacy's revised Regulation 37-K. As I pointed out, our organization would like to have a slight revision of some of the wording in this regulation; we felt, and still feel, that this regulation in its present form lacks a simple, affirmative statement about the price advertising of prescription drugs.

I mailed a copy of our proposed wording to Bob Stich. He was out of the office last week. I reached him today and he told me the regulations had already been sent over to your office for approval.

Is there still time, Warren, to discuss our proposed amendment to this regulation?

I am enclosing a copy of our proposal with this letter.

Best regards,

Bob

Robert M. Shaw
Manager

RMS:gl
Enc.

RECEIVED
MAY 28 1975
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

President: JOHN R. MEYER, Lakes Publishing Company, Detroit Lakes; *Vice Presidents:* JAMES P. McDONNELL JR., Wright County Journal-Press, Buffalo; EUGENE D. JOHNSON, White Bear Press, White Bear Lake; ROBERT M. MACK, Plainview News; *Directors:* JARED HOW, Mankato Free Press; KENNETH M. ANDERSON, Cottonwood County Citizen, Windom; CHARLES H. WARNER, Brownton Bulletin; *Treasurer:* LOWELL D. (Tip) MILLS, The Hutchinson Leader; *Immediate Past President:* HARRY DAVEY, Brainerd.

MINNESOTA
NEWSPAPER
ASSOCIATION
84 South Sixth Street, Minneapolis, Minnesota 55402
Telephone: (612) 335-8844



Robert M. Shaw, *Manager*
Linda I. Hansen, *Office Manager*

May 22, 1975

Mr. Robert Stich
816 Midwest Plaza Building
801 Nicollet Mall
Minneapolis, Minn. 55402

Dear Mr. Stich:

I would like to recommend that the following amendment be made to Regulation 37-K:

> After the word "promotion" in the final paragraph, change the period to a comma and add the following: "But price advertising without such promotional language shall not be considered an act of unprofessional conduct."
>
> Also in the first paragraph is not the word "only" out of place?
>
> It seems to me that it should read thus: " ... provided to the public by a pharmacy only so long as it is not violative of any federal or state laws ..."

I discussed this amendment with some people at the Attorney General's office last week. They recommended I submit it to you.

May I hear from you when convenient?

Sincerely,

Robert M. Shaw
Manager

RMS:gl
cc: David Holmstrom
State Board of Pharmacy

President JOHN R. MEYER, Lakes Publishing Company, Detroit Lakes; *Vice Presidents* JAMES P. McDONNELL JR., Wright County Journal-Press, Buffalo; EUGENE D. JOHNSON, White Bear Press, White Bear Lake; ROBERT M. MACK, Plainview News; *Directors* JARED HOW, Mankato Free Press; KENNETH M. ANDERSON, Cottonwood County Citizen, Windom; CHARLES H. WARNER, Brownton Bulletin; *Treasurer* LOWELL D. (Tip) MILLS, The Hutchinson Leader; *Immediate Past President* HARRY DAVEY, Rochester

INDEX

SET # 4

1. Copy of Amendments to be adopted.

ADOPTED REVISION - REGULATION 37 - K

Prescription drug price information may be provided to the public only by a pharmacy, so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1) no representation or suggestion concerning the drug's safety, effectiveness, indications for use or competitive comparisons shall be made;

2) no reference shall be made to controlled substances listed in Schedule II - IV of the latest revision of the Federal Controlled Substances Act, and the Regulations of the Minnesota State Board of Pharmacy;

3) the termination date for the prices listed shall be stated in the ad.

The public promotion, direct or indirect, of drugs requiring a prescription, narcotics, depressants, or stimulants is hereby declared to be an act of unprofessional conduct. The reference in any advertisement in any media or other means of the terms "cut rate", "discount", "bargain", or terms of similar connotation in connection with drugs requiring a prescription or for pharmaceutical services related thereto shall be included within the meaning of public promotion.

DEH:mw

4-29-75

APPROVED AS TO FORM AND LEGALITY
JUN -9 1975 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 9 - 1975 11:40 A.M.
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
JUN 9 1975 11:50
BY Eda Staudenmaier
AUTH. SIGNATURE EJ

INDEX

SET #2

1. Copy of Amendments to be adopted
2. Board's Resolution authorizing adoption of the Proposed Rules.
3. Order Adopting Rules
4. Statement of Compliance with rule making procedures
5. Order for Hearing
6. Board's Resolution authorizing the hearing
7. Statement of Need
8. Notice of Hearing (Including Proposed Amendments)
9. Affidavit of acquisition of the Secretary of State's mailing list.
10. Affidavit of Mailing
11. Finding of Fact

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the proposed Revision

of Rules of Board of Pharmacy Governing

the advertising of Prescription Drugs.- RESOLUTION

I, David E. Holmstrom, do hereby certify that I am secretary of the Board of Pharmacy, a board duly authorized under the laws of the state of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the Board of Pharmacy duly and properly called and held on the 29th day of April, 1975. That a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and not been rescinded or modified.

WHEREAS, the public hearing was held on April 2, 1975 in room 116-B in the State Administration Building, Capitol Complex, St. Paul, Minnesota, concerning the adoption of the proposed board regulation number 37-K.

WHEREAS, said public hearing was held after proper notice required by Minnesota statutes 1971, Section 15.0412, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose, and

WHEREAS, all interested persons were afforded opportunity at said public hearing to present written and oral data, statements, and arguments, and

WHEREAS, all interested persons were afforded an opportunity to present further written materials, data, arguments, and briefs through April 22, 1975.

WHEREAS, seven members of the Minnesota State Board of Pharmacy were in attendance at said public hearing, and

WHEREAS, all members of the State Board of Pharmacy have considered all of the evidence introduced at the public hearing and the members attending this meeting have considered all of the written material, data, statements, arguments, and briefs submitted at said public hearing, and

WHEREAS, all the members of the State Board of Pharmacy have determined the need for each of the rules contained in Exhibit "A" attahhed hereto and made a part hereof, and

WHEREAS, such need has been set forth in document marked Exhibit "B" attached hereof and made a part hereof.

NOW THEREFORE, BE IT RESOLVED that the rules and regulations marked Exhibit "A" attached hereto, and made a part hereof be and hereby are approved and adopted pursuant to authority vested in us by M.S. 151.06, and M.S. 151.212 Laws of 1971.

BE IT FURTHER RESOLVED that David E. Holmstrom be and hereby is authorized to execute a certificate certifying the passage of this resolution and he is further directed to submit to the office of the Attorney General of the State of Minnesota all of the necessary papers, documents and transcripts for his approval.

Motion unanimously passed.

STATE OF MINNESOTA
BOARD OF PHARMACY

David Holmstrom

Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA STATE BOARD OF PHARMACY

In the matter of the proposed Adoption of Rules of the State Board of Pharmacy Governing

ORDER ADOPTING RULES

Prescription Drug Price Advertising

The above-entitled matter came on for hearing before the Board of Pharmacy of the State of Minnesota on the 2nd day of April, 1975 at 9:00a.m. in Room 116B, State Administration Building, St. Paul, Minnesota, after proper notice required by M.S. 1971, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and procedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Pharm 37-K Unprofessional Conduct are adopted this 29th day of April, 1975, pursuant to authority vested in the Board by M.S. 151.06, Sections 3 and 4 of Chapter 639, Laws of 1973.

STATE OF MINNESOTA

BOARD OF PHARMACY

David E. Holmstrom

David E. Holmstrom
Secretary

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Robert T. Stich, Special Counsel to Minnesota State Board of Pharmacy do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Special Counsel to Minnesota
State Board of Pharmacy

Dated: 5-19-75

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA STATE BOARD OF PHARMACY

In the Matter of the Proposed Adoption of Revised Regulations of the State Board of Pharmacy

ORDER FOR HEARING

To effectively implement the powers and duties of the State Board of Pharmacy, the said Board deems it necessary to consider adoption of proposed Revision Regulation 37-K, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof, pursuant to the authority vested in the said Board by Sections 1 and 2 of Chapter 555, Laws of 1973.

NOW THEREFORE, IT IS ORDERED THis 26th day of February 1975, that a public hearing on the proposed rules set forth in said Exhibit "A" be held in Room "A" of the Veteran's Service Building, Capitol Complex, St. Paul, Minnesota on April 2, 1975, commencing at 9:00 o'clock a.m. and continuing thereafter until all representatives of associations of other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of the said hearing be given to all of the current members of the Legislature of the State of Minnesota and to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose.

MINNESOTA STATE BOARD OF PHARMACY

By David Holmstrom

David E. Holmstrom
Secretary

CERTIFICATE OF RESOLUTION

OF STATE BOARD OF PHARMACY

I, DAVID E. HOLMSTROM, do hereby certify that I am the Secretary of the Board of Pharmacy, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a Resolution adopted at a meeting of the Board of Pharmacy duly and properly called and held on the 26th day of February, 1975 and that a quorum of the said Board was present at said meeting and that the said Resolution set forth below was passed by a majority vote of the members of the Board, and that the said Resolution set forth below are also set forth in the Minute Book of the State Board of Pharmacy and has not been rescinded or modified:

February 26, 1975

The board next turned it's attention to the proposed revision of Regulation 37-K. Secretary Holmstrom described changes to the proposed revision of Regulation 37-K which were suggested by the board members, board counsel, Robert Stich, and the secretary, himself. The board then thoroughly discussed those suggested changes and generally discussed the proposed regulation.

Mrs. Kitty Alcott moved and Mr. Mike Hart seconded that the amendments to the original draft of the proposed revision of Regulation 37-K be approved. Motion passed.

Mr. Mike Hart moved and Mr. Tom Berg seconded that it be resolved that David E. Holmstrom, Secretary of the Minnesota State Board of Pharmacy be, and hereby is granted the authority to call a hearing for the purpose of promulgating proposed revision to Regulation 37-K as well as to perform any and all acts incidental thereto, including but not being limited to, signing an order for hearing and notice of hearing as well as appointing a hearing examiner. The motion passed.

David Holmstrom

Secretary

Exhibit 2

STATE OF MINNESOTA

COUNTY OF RAMSEY

Exhibit "B"

In the matter of the proposed Revision
of Rules of Board of Pharmacy Governing
the advertising of Prescription Drugs.

STATEMENT OF NEED

The above captioned rule is an amendment to an existing rule of the Minnesota State Board of Pharmacy. The last time the above captioned rule was amended was March 14, 1969.

The need to adopt these rules arises out of the need of the consuming public and in particular out of the need of senior citizens on limited incomes to have available prescription drug price information so as to be better able to provide for their own drug needs at the most reasonable prices considering location and services rendered.

Up to this time it has been considered to be unprofessional conduct for a pharmacist to engage in the advertising of prescription drugs. This new regulation will allow pharmacists to disseminate prescription drug price information to the consumer and at the same time will keep the unnecessary promotion of prescription drugs to a minimum.

Individuals, consumer groups, and the Minnesota Legislature have voiced considerable opposition to the previous regulation prohibiting the distribution of drug price information. The new Regulation 37-K meets the needs and requests of all of these groups and should allow todays relatively more sophisticated shopper the information they require to wisely obtain the best prescription drug value.

While the Board recognizes that the unnecessary promotion of prescription drugs may lead to increased demand, increased use, and increased abuse of these drugs, the Board likewise recognizes the public need for prescription drug price information. The Board has attempted to meet both of these needs in it's new Regulation 37-K.

David Holmstrom
Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

STATE BOARD OF PHARMACY

In the Matter of the Proposed
Adoption of Revised Regulation 37K
Relating to the Advertising of
Prescription Drugs

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M. S. 1974, Section 15.0412, Subdivision 4, in the above entitled matter in Room A, Veteran's Service Building, Capitol Complex, St. Paul, Minnesota on Wednesday, April 2, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed regulations by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

Copies of the proposed revised Regulation 37K are now available and may be obtained by writing to David E. Holmstrom, Secretary, Minnesota State Board of Pharmacy, 1965 Ford Parkway, St. Paul, Minnesota, 55116. Additional copies will be available at the door on the date of the hearing.

MINNESOTA STATE BOARD OF PHARMACY

By David E. Holmstrom

David E. Holmstrom, Secretary

DEH:bf
2-27-75

MINNESOTA STATE BOARD OF PHARMACY

PROCEDURAL RULES FOR HEARING

The purpose of the hearing is to allow interested parties to express their views and present facts bearing upon the proposed regulations. So as to provide for an orderly presentation of evidence, the following rules will be in effect during the hearing specified in the attached Notice of Hearing:

1. Anyone wishing to be heard should indicate by signing the speaking sheet, listing his name, address, and the group which he represents. The speaking sheet will be available at the main entrance to the hearing room. It is requested that each group select one speaker only to present its views.

2. The first time the witness makes a statement he should spell his name and identify the group he is representing. Prior to making any subsequent statements he should state his name and the group which he represents. He may be sworn upon his request but it is not required. If he elects not to be sworn, that may be considered in determining the weight to be given to his testimony.

3. By giving testimony, a witness, including one who may also be a member of the panel, subjects himself to questioning by the panel. However, he is subject to cross-examination by non-members of the panel only if he affirmatively consents to being so examined. A refusal to be cross-examined may be considered in determining the weight to be given to his testimony.

4. All parties interested in introducing any written matter may do so by having it marked as an exhibit and then introduced for the record. Unsworn written matter may be received, but the fact that it is unsworn may be considered in determining the weight to be given it.

The public promotion, direct or indirect, including but not limited to advertisement through any of the media of drugs requiring a prescription, narcotics, depressants or stimulants is hereby declared to be an act of unprofessional conduct by a pharmacist causing such public promotion or by the pharmacist-in-charge of a pharmacy engaged in such public promotion. The reference in any advertisement in any media or other means of the terms "cut rate", "discount", "bargain", or terms of similar connotation in connection with drugs requiring a prescription, narcotics, depressants or stimulants or for pharmaceutical services related thereto shall be included within the meaning of public promotion.

Prescription drug price information may be provided to the public so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1) no representation or suggestion concerning the drug's safety, effectiveness, indications for use or competitive comparisons shall be made;

2) no reference shall be made to controlled substances listed in Schedule II-V of the lastest revision of the Federal Controlled Substances Act, and the Regulations of the Minnesota State Board of Pharmacy;

3) the proprietary or trade-name of the drug product, if any; the established name of the drug product, if any; the established name and quantity of each active ingredient in the drug product; the name of the manufacturer, packer or distributor as it appears on the label of the drug product with the size and prominence required by 21 USC 352 (n) and detailed by 21 CFR 1.105 (e) to prevent the article from being misbranded; the dosage form; and the primary manufacturer of the finished dosage form shall be included. (The established name and quantity of each active ingredient in the drug product is optional if the drug product contains more than three active ingredients);

4) the price charged for a prescription for at least three specific numbers of commonly prescribed dosage units of tablets or capsules or a specific quantity of other drug dosage forms shall appear;

5) the price stated as that charged for a prescription shall include all charges to the consumer including, but not limited to, the cost of the drug product, professional fees, and handling fees, if any;

6) the price stated as that charged for a prescription shall remain unchanged for a period of at least 60 days from the date first provided to the public and the termination date shall be stated in the ad. Delivery on dispensing of such product shall be rendered in a reasonable time after demand for same at said price level;

7) the availability or nonavailability of the following services shall be included in all advertising together with the additional cost to the consumer therefor, if any;

   a) patient profile system
   b) charge accounts or other charge services
   c) delivery service
   d) after hours emergency service
   e) prescription purchase summary for tax or other purposes

DEH:mw 2/28/75

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the proposed Adoption of Revised Rules of the Minnesota State Board of Pharmacy Governing Advertising of Prescription Drugs.

I hereby certify that the attached 415 labels and sheet constitute the complete list of persons, associations, and other interested groups who as of 3:30 o'clock p.m., this 25th day of Feb, 1975, have requested pursuant to M.S. 1974, Section 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
SECRETARY OF STATE

BY Gail Dion

AFFIDAVIT

David E. Holmstrom, being first duly sworn upon oath deposes and says:

(1) That he is the secretary of the Minnesota State Board of Pharmacy

(2) That on the 21st day of February 1975, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

(3) That on the 25th day of February 1975, in response to the above request, the Secretary of State provided this affiant with such a list, composed of mailing labels and a list of recent additions thereto, a copy of which is attached hereto, marked Exhibit A and made a part thereof.

(4) That on the 28th day of February 1975, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul a true and correct copy there of together with a copy of the proposed regulations, properly addressed and postage prepaid to all persons and associations set forth in said Exhibit A and also to all of the current members of the Minnesota Legislature.

David Holmstrom

David E. Holmstrom
Secretary

Subscribed and sworn to before
me this 22nd day of May, 1975

Alice D. Hummer

Notary Public

ALICE D. HUMMER
Notary Public, Ramsey Co. Minn.
My Commission Expires
Nov. 18, 1981

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

STATE BOARD OF PHARMACY

In the matter of the Proposed
Adoption of Rules of the State
Board of Pharmacy governing
the Advertising of Prescription
Drugs..

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Minnesota State Board of Pharmacy on the 2nd day of April, 1975, at 9:00 a.m. in Room 116-B, State Administration Building after proper notice required by M.S. 1971, Sec. 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1) While the board's proposed regulation was significant in that it represented the first deporture from the previous hard-line stand by the board on the issue of prescription drug price advertising, the preponderance of the weight of the testimony was not in concurrance with the board's proposal.

2) The preponderance of the testimony supported a revision of Regulation 37-K that would be less restrictive than that proposed by the board. Testimony by the Metropolitan Senior Citizens Federation, the Consumer-Services Division, the Minnesota Newspaper Association, and a member of the Minnesota House of Representatives all supported a proposal less restrictive than that proposed by the board.

3) The evidence taken at the hearing dictates that the board revise its proposal by deleting some of the proposed areas of restriction thus allowing the advertising of prescription drug prices.

MINNESOTA STATE BOARD OF PHARMACY

David E. Holmstrom
Secretary

ADOPTED REVISION - REGULATION 37 - K

Prescription drug price information may be provided to the public only by a pharmacy, so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1) no representation or suggestion concerning the drug's safety, effectiveness, indications for use or competitive comparisons shall be made;

2) no reference shall be made to controlled substances listed in Schedule II - IV of the latest revision of the Federal Controlled Substances Act, and the Regulations of the Minnesota State Board of Pharmacy;

3) the termination date for the prices listed shall be stated in the ad.

The public promotion, direct or indirect, of drugs requiring a prescription, narcotics, depressants, or stimulants is hereby declared to be an act of unprofessional conduct. The reference in any advertisement in any media or other means of the terms "cut rate", "discount", "bargain", or terms of similar connotation in connection with drugs requiring a prescription or for pharmaceutical services related thereto shall be included within the meaning of public promotion.

DEH:mw

4-29-75

The public promotion, direct or indirect, including but not limited to advertisement through any of the media of drugs requiring a prescription, narcotics, depressants or stimulants is hereby declared to be an act of unprofessional conduct by a pharmacist causing such public promotion or by the pharmacist-in-charge of a pharmacy engaged in such public promotion. The reference in any advertisement in any media or other means of the terms "cut rate", "discount", "bargain", or terms of similar connotation in connection with drugs requiring a prescription, narcotics, depressants or stimulants or for pharmaceutical services related thereto shall be included within the meaning of public promotion.

Prescription drug price information may be provided to the public so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1) no representation or suggestion concerning the drug's safety, effectiveness, indications for use or competitive comparisons shall be made;

2) no reference shall be made to controlled substances listed in Schedule II-V of the lastest revision of the Federal Controlled Substances Act, and the Regulations of the Minnesota State Board of Pharmacy;

3) the proprietary or trade-name of the drug product, if any; the established name of the drug product, if any; the established name and quantity of each active ingredient in the drug product; the name of the manufacturer, packer or distributor as it appears on the label of the drug product with the size and prominence required by 21 USC 352 (n) and detailed by 21 CFR 1.105 (e) to prevent the article from being misbranded; the dosage form; and the primary manufacturer of the finished dosage form shall be included. (The established name and quantity of each active ingredient in the drug product is optional if the drug product contains more than three active ingredients);

4) the price charged for a prescription for at least three specific numbers of commonly prescribed dosage units of tablets or capsules or a specific quantity of other drug dosage forms shall appear;

5) the price stated as that charged for a prescription shall include all charges to the consumer including, but not limited to, the cost of the drug product, professional fees, and handling fees, if any;

6) the price stated as that charged for a prescription shall remain unchanged for a period of at least 60 days from the date first provided to the public and the termination date shall be stated in the ad. Delivery on dispensing of such product shall be rendered in a reasonable time after demand for same at said price level;

7) the availability or nonavailability of the following services shall be included in all advertising together with the additional cost to the consumer therefor, if any;

   a) patient profile system
   b) charge accounts or other charge services
   c) delivery service
   d) after hours emergency service
   e) prescription purchase summary for tax or other purposes

DEH:mw 2/28/75

Pharmacy Rules

① allow dissemination of certain info, but prohibit "promotion" in media – what is the difference between allowed + proscribed conduct?

② Change by deletion – better view is that it is OK since no actually change
– no obl. to promulgate –
can not draw entirely
– obj. that rules no go far enough re persuasion –

③ Auth. to promulgate (151.06) – regulate sale of drugs + prom. rules to enforce + carry out

④ Is this, in effect, a prohibition on adv. +
∴ a prior restraint?
a) #3 may do this – if price is regular price, how can termination date be stated?
– also #2

#3 looks in 1st to advertise
b) Final R may be prior restraint
– except that it is req. of profession

⑤ Restrict 1st Amdt. rt to know prices?

So these rules do indirectly what can't be done directly?

C O P Y

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA STATE BOARD OF PHARMACY

In the Matter of the Proposed Adoption of Revised Regulation 37K Relating to the Advertising of Prescription Drugs

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The Public Hearing in the above-entitled matter convened at 9:00 o'clock a.m., Wednesday, April 2, 1975, in Room 116B of the State Administration Building, 50 Sherburne Avenue, in the city of Saint Paul, Minnesota.

APPEARANCES: Robert Stich, Hearing Officer

Board Members:
Ben Siefert, President
Kitty Alcott, Vice President
Rozetta Stark
Thomas Berg
Michael Hart
Thomas Jones
Marcus Fredrickson
David Holmstrom, Secretary

* * * * * *

Russell A. Boogren, Jr.
Richard C. Johnson
Jennie Arimond
Lucy Arimond
Bob Goligoski
Jim Cyre
Ben J. Abrohams
David C. Butler
Donald Dee, MSPhA
Roy H. Olson
Joseph V. Brochin
Lowell Anderson
Mike Sieben, State Representative
Duane A. Rasmussen,
Minn. Newspaper Association
A. Tobler
Sherry Chenoweth
Fred Axelson
Robert Faust

WHEREUPON, the following proceedings were duly had:

E X H I B I T I N D E X

Exhibit Number	Description	Marked	Offered
NA	Registry of names of persons present	NA	NA
1	Article from the December 19, 1972, Saint Paul Dispatch entitled Strict Curbs on Pharmaceutical Product Ads Urged	6	6
2	Article from the March 23, 1975, Saint Paul Sunday Newspaper entitled How Good is Your Doctor by Dr. Marshall Goldberg	8	8
3	Copy of the Federal Register, Vol. 38, No. 224, Wed., November 21, 1973, and the proposed revision of the Food and Drug Administration	13	13
4	Report dated December, 1974, entitled Demise of Independent Pharmacies Warned in Nader Consumer Study	15	14
5	Proposed Revision - Regulation 37K dated Feb. 28, 1975	15	15
6	Statement prepared by Jennie Arimond, homemaker and mother	19	19
7	Statement prepared by Ben J. Abrohams, Attorney for Osco Drug	28	28
8	Letter from Michael R. Sieben, State Representative, to David Holmstrom, Secretary of the Board of Pharmacy, dated April 1, 1975	33	33
9	Statement prepared by Adolf Tobler, representing the Metropolitan Senior Federation and the Minnesota Senior Caucus	62	62

(Continued on Index Page b)

E X H I B I T I N D E X (Cont'd)

Exhibit Number	Description	Marked	Offered
10	Report of Senior Federation dated December, 1974, and entitled Prescription Drug Comparison Survey	62	62
11	Statement prepared by Donald Dee of the Minnesota State Pharmaceutical Assn	74	74
12	Statement prepared by Duane Rasmussen, editor and publisher of the Forest Lake Times and a member of the Legislative Committee of The Minnesota Newspaper Assn	82	82
13	Notice of Hearing in the Matter of the Proposed Adoption of Revised Regulation 37K Relating to the Advertising of Prescription Drugs, dated Feb. 27, 1975, and the Procedural Rules for Hearing (back side)	91	91

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HEARING OFFICER: At this time, we will call the hearing to order.

I am Robert Stich and I will be acting as the Hearing Officer for the hearing. This is a hearing on proposed revision of Pharmacy Board Regulation 37K.

We have circulated a list among those of you present requesting that you sign the list with your name and giving an indication as to whether or not you want to testify with regard to the proposed regulation. Is there anyone now who has not signed the list? A gentleman in the back; would you sign your name on there please.

All those wishing to be heard will be heard. At the conclusion of the hearing, anyone who wishes to submit any written data, either in support or against the proposed regulation, will be given an opportunity to do so. Any such written data will be accepted by the Board for a period of twenty days following this hearing. After that twenty-day period, all data submitted, either oral at this hearing or in writing during the hearing or in writing during the twenty-day period, will be considered by the Board, which will then make a decision as to the adoption of the proposed regulation.

The members of the Board of Pharmacy, who are here, I think should perhaps introduce themselves. We will start with Mr. Holmstrom, the Secretary of the Board.

MR. HOLMSTROM: I am David Holmstrom,

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Secretary of the Minnesota State Board of Pharmacy.

MS. ROZETTA STARK: Rozetta Stark, a member of the Board of Pharmacy.

MR. BERG: Thomas Berg, member of the State Board of Pharmacy.

MS. ALCOTT: Kitty Alcott, Vice President of the Board of Pharmacy.

MR. SIEFERT: Ben Siefert, President of the State Board of Pharmacy.

MR. HART: Michael Hart, member of the State Board of Pharmacy.

MR. JONES: Tom Jones, a member of the State Board of Pharmacy.

MR. FREDRICKSON: Marc Fredrickson, member of the State Board of Pharmacy.

HEARING OFFICER: Mr. Holmstrom, will you give us some opening remarks and an introduction to the proposed regulation?

MR. HOLMSTROM: Yes, Mr. Hearing Officer.

Regulation 37K in its present form has been on the books of the State Board of Pharmacy for quite some time now and has been under criticism and attack from various groups and the legislature and various pharmacists and pharmacies and a lot of different sources. The Board has spent some time

approximately the last six months or better, working on a revision of Regulation 37K.

The original intent of Regulation 37K was to prevent the unnecessary promotion of prescription drugs, promotion that would tend to increase demands for drugs and increase the probability of abuse of these drugs. The Board has in its deliberations over the revision of 37k hopefully found a way to still retain some control over the promotion of prescription drugs, while at the same time allowing the consumer the price information on the individual prescriptions of these drugs that he obtains from the pharmacist.

The result of these deliberations is the revision that you have before you. The Board feels that this revision meets the needs of both the consumer and of the health and welfare of this state and that it will hopefully prevent undue promotion and still allow the consumer the price information he desires. The scope of control over prescription drug advertising, controling primarily and the prevention of false or misleading advertising or advertising not in the interest of the health and welfare of the public, encompasses both the federal and the state regulation.

Advertising prescription drugs can be classified, as we mentioned, both as informational or promotional type of advertising. Informational advertising is that type of advertising intended to convey scientific or price information

about the product to the recipient of the advertisement. Promotional type of advertising, on the other hand, is intended to create a demand for the product, either among the consumer or among the various health professionals toward which it is directed.

In light of the dangers inherent in a drug oriented culture, the Board feels very strongly it is in the public interest to prevent, if possible, promotional type of advertising of prescription drugs. Promotional advertising can only serve to exacerbate the problem of overutilization of drugs already so prevelant in our culture.

The Board of Pharmacy is not alone in its concern of promotional type of advertising of drugs of all types. From an article dated Tuesday, December 19, 1972, appearing in the St. Paul Dispatch; it can be seen that not only experts from the United States, but experts from many countries are concerned over the promotion and subsequent overusage of medication. This article is entitled Strict Curbs on Pharmaceutical Product Ads Urged and it says and I quote: "Drug experts called today for strict controls on advertising of tranquillizers headache tablets and energy pills to reduce their attraction to youths tempted by narcotics.

The call was part of an international effort to combat drug problems.

Experts from twenty countries have been meeting for more

than a week in a conference organized by the United States Educational Scientific and Cultural Organization (U.N.E.S.C.O.).

Experts said that while young people used 'new drugs' such as marijuana, opiates and Hallucinogens, both youths and adults were prey to 'cultural' drugs, i.e. -- compulsive buying, mass information and advertising.

An adult addiction, specified by the experts, was pharmaceutical products.

'The advertising of pharmaceutical products, whatever their toxicity, should be strictly controled and restricted to the professions directly concerned in their use and distribution -- chemists (which are pharmacists) and doctors,' they said.

The experts also attack television advertising of tobacco and drink..."

I would like to have this entered as Exhibit Number One.

HEARING OFFICER: Will the Reporter please mark this document as Exhibit Number One.

(Whereupon, Exhibit One was marked for purposes of identification.)

MR. HOLMSTROM: An argument has been put forth to the effect that promotional advertising of prescription drugs cannot create or increase the demand for the product in that a prescription from a licensed practitioner is needed before a prescription drug can be dispensed. Professionals engaged in the practice of medicine, dentistry

and pharmacy know this to be false.

In an article appearing in the Parade Magazine Section of the St. Paul paper on March 23rd, 1975, written by Dr. Marshall Goldberg, Educational Chief of Medicine at Hurley Hospital, Flint, Michigan, helps to point this out. In the article entitled How Good is Your Doctor?, Dr. Goldberg states that twenty years ago a patient used to say to me, in effect, "Here's my money, keep me alive." No longer! Now they say, "Here's my money, keep me alive and keep me happy." An exaggeration? Hardly. It's reliably estimated that ten to fifteen per cent of all admissions to general hospitals these days are for drug-induced diseases.

So watch out for the overly accommodating "doctor-drug pusher." Don't be too insistent on getting your money's worth each time you visit him. Most doctors like me must keep to a schedule that allows ten to fifteen minutes for each follow-up visit. How then do we deal with the individual who is not so much sick as lonely and over-talkative. Kick him out? We have a slicker way: Reach for the prescription pad. But all too often what the patient gets is some needless and potentially hazardous drug. I readily admit that I use my prescription pad too -- only most of the time I write for a lab test, not a pill. A copout, doctor? You bet. But no patient of mine has ever died from having a superfluous serum Cholesterol or blood sugar drawn.

Before I go on, I should like to have this entered as Exhibit Number Two please.

HEARING OFFICER: Will the Reporter please mark this as Exhibit Number Two.

(Whereupon, Exhibit Two was marked for purposes of identification.)

MR. HOLMSTROM: The Board agrees with the physician who wrote the article that promotional type advertising of prescription drugs is something that should be restrained if at all possible and thus the Board has retained most of the wording of the present 37K dealing with the prohibition of promotional type of advertising. This is found in the first paragraph of the proposed revision of 37K.

The second paragraph of the proposal contains the new wording, which will allow informational advertising of prescription drug prices to be disseminated. The second paragraph of the proposal or much of the wording of the second paragraph of the proposal is based on the requirements of the Food, Drug and Cosmetic Act and the regulations thereunder and on the proposed rules of the Food and Drug Administration regarding the reminder advertising and the reminder labeling regulation. The federal control of prescription drug advertising finds its basis in the Food, Drug and Cosmetic Act, which is found in Title Twenty-One of the

U. S. Code.

The Food, Drug and Cosmetic Act was first passed in substantially the form in which it is now found in the early 1900s and has been amended from time to time since that date. The Food, Drug and Cosmetic Act, as a whole, is a very broad piece of legislation and as the title indicates it covers all aspects of food, drug and cosmetic advertising and distribution in the United States.

The misbranding sections are the sections of interest to us in looking at the federal control of prescription drug advertising.

The misbranding section of the Food, Drug and Cosmetic Act is found in 21 U. S. Code 352. The section dealing with prescription drug advertising is found in Subdivision 10 under the general misbranding heading of 21 U. S. C. 352. Subd. N states a drug shall be declared to be misbranded and as a result shall become subject to seizure by the Food and Drug Administration, unless certain criteria are complied with in the advertising.

The Secretary of the Food and Drug Administration has issued a series of regulations explaining and clarifying requirements of the Food, Drug and Cosmetic Act. These regulations are found in Title Twenty-One in the Code of Federal Regulations. 21 CSR 1.105 deals primarily with prescription drug advertising. Certain parts of this

regulation, issued by the Secretary of the Food and Drug Administration, due exempt some types of advertising from the very stringent requirements found in 21 U.S. Code 352, other sections of the Code and other sections of the Code of Regulations. The most important of these exemptions lies in the realm of reminder advertisements.

Reminder advertisements are not subject to the myriad of regulations other ads are subject to. If the reminder ad contains only the proprietary or trade name of a drug, which does necessitate declaring the established name, if any, and furnishing a formula showing quantitatively each ingredient for the drug to the extent required for the label and optionally information relating to dosage form, quality of package contents, price, the name and address of the manufacturer, packer, or distributor or other written, printed or graphic matter containing no representation or suggestion relating to the advertised drug.

In the Federal Register of Wednesday, November 21st, 1973, the Commissioner of the Food and Drug Administration caused to be published a proposed revision of reminder advertising regulations.

The Federal Register states that the Commissioner proposes to revise the regulations concerning reminder advertisements and reminder labeling for prescription drugs in order to eliminate any difference in these regulations. Reminder

advertisements and reminder labeling for prescription drug products will be exempt from the requirement of 1.105 (e)(1) if the proposal is adopted. The exemption will apply if the reminder advertisements and reminder labeling contain only the proprietary or trade name of the drug product, if any, the established names and quantity of each active ingredient of the drug product and optionally information relating to dosage form, quantity of package contents, price, the name and address of the manufacturer, packer or distributor or other written, printed or graphic matter containing no representation or suggestion relating to the drug product.

The notice in the Federal Register then goes on to say that it is the policy of the Food and Drug Administration not to inhibit public disclosure of the prices charged for prescriptions for particular drugs. This policy extends to all reminder advertisements intended to provide consumers with information regarding the price charged for prescriptions including price lists...

The proposed regulation establishes conditions whereby prescription drug reminder advertisements will be exempt from the requirements of 1.105 provided that the sole purpose of the reminder advertisement is to convey price information to consumers, and the reminder advertisements contain no representation or suggestion concerning the safety or effectiveness or use of the drug product.

Sections One, Three and Five of the second paragraph of the Board's proposed revision of the regulation reflects the requirements of this federal act.

In that the drugs listed under the Controled Substance Act of 1970 and its revision have proved to be subject to abuse already and in that the indications for use of most of the medications on the controled substances list are for a short term, acute therapy; the Board feels it is definitely in the public interest to keep the drugs out of the public eye. As a result of this conviction, the Board has included Item Number 2 in the second paragraph in its proposed revision of 37K.

Item Number Four of the second paragraph was included to provide the consumer with a more realistic pricing structure from which he can judge the prices he can expect to be charged for a particular prescription. For instance, the listing of prices in a hundred quantities only does little good for one who has a prescription of twenty-four or thirty-six tablets or capsules. By requiring a listing of prices for at least three specific numbers of commonly prescribed dosage units, the consumer should be able to more easily compare prices for the quantity his prescription is written for.

Item Six of paragraph two was included to allow the consumer to rely upon the prices being advertised and to prevent

the consumer from exerting undue pressure on physicians to prescribe larger quantities than are necessary and proper for the treatment of that particular patient. The two sentences in Item Six hopefully will offer the consumer some protection from the bait-and-switch type routine that weekend specialists might lend themselves to.

Before I go on, I would like to introduce this as Exhibit Number Three; this is a copy of the Federal Register and the proposed revision of the Food and Drug Administration.

HEARING OFFICER: Would you mark this as Exhibit Three please.

(Whereupon, Exhibit Three was marked for purposes of identification.)

MR. HOLMSTROM: In order that the consumer has access to the true value of the items being purchased, the Board feels that the consumer should know whether the cost of the services listed in Item Number Seven is included in the cost of the prescription, which it may well be, if the services are being provided.

In December of 1974, Ralph Nader's California Citizen Action Group published a thirty-one page guide to the pharmacies in the Sacramento, California area. The Nader group, in addition to revealing which pharmacies offered professional convenience and services such as those listed in Item Number Seven of our proposal, also offered their own observation and

warnings, alerting bargain hunters not to fall into their own trap. The report cautioned that a stampede by consumers to the chain stores and away from the independent pharmacies may cost you more money in the long run. Low prescription prices are indeed attractive in these days of rising prices; but driving independent pharmacies out to business will not benefit you either. "The independent pharmacies are competition to the chains and without competition the chains would be free to charge whatever they want for drugs.

The most effective way to combat high drug prices is to back legislation aimed at monitoring and controling the drug manufacturers. They are at the root of the inequities of the drug pricing structure." The report continues to say, "Generally discount stores do not offer the services you may wish or require. And some large discount stores practice prescription baiting. They offer low drug prices to lure you into the store. Then they keep you waiting an unnecessarily long time hoping that you will buy other products.

The Board is convinced that stating the availability or nonavailability of services stated in Number Seven, directly affects the health and the welfare of the consumer.

I would like to have a copy of the Nader article introduced as Item Number Four please.

HEARING OFFICER: Will you mark that as Exhibit Four please.

(Whereupon, Exhibit Four was marked for purposes of identification.)

MR. HOLMSTROM: This basically is the Board's position regarding its proposed revision of Regulation 37K and some of the reasons behind the inclusion of the various paragraphs in the revision.

HEARING OFFICER: Mr. Holmstrom, do you have a copy of the proposed revision of 37K to mark as an exhibit?

MR. HOLMSTROM: Yes, I do.

HEARING OFFICER: Will you mark this as Exhibit Five please.

(Whereupon, Exhibit Five was marked for purposes of identification.)

HEARING OFFICER: Mr. Jones of the Minnesota State Board of Pharmacy, I believe that you wish to be heard.

MR. JONES: Yes, sir, Mr. Hearing Officer. Mrs. Stark and myself are what we loosely call public members of the Minnesota State Board of Pharmacy. We are members as provided by the law, which now says that there shall be two public or nonprofessional members of this and other state boards. Obviously, the original five members are qualified pharmacists, but neither Mrs. Stark nor myself are.

I am by profession an accountant. My employer is the

Minneapolis Star and Tribune Company, who fortunately permit me to take time off for activities such as this, so that my remarks with respect to the proposed revision of 37K will certainly not be very technical; I am not qualified to speak in that area. However, I have met with the Board in their various meetings and have listened to their various discussions of these various revisions and have been permitted to enter into the discussion and ask all the questions that I chose to ask, so that I might have a better understanding of what they are attempting to do. I do have a few things that I would like to add, which will relate primarily to the non-technical aspects of this revision.

Since each of you have a copy or there is one available to you, I would like to urge you to recall that Section Two provides for no advertising of controled substances and this is one thing that most people, who have any concern about this area, are really concerned about.

Item Number Three from a layman's standpoint provides primarily to avoid misrepresentation, either on the part of the dispenser of the merchandise or the misunderstanding on the possible purchaser.

Item Number Six, relating to prices and their length of time that they should be available, that a product should be available at a given price, is to avoid encouraging people to stock up on medicines that they might better not have too

great a stock on hand for their own protection, for one reason, and there are some products, not only in medical lines but other lines as well that do not lend themselves to long shelf life.

Item Number Seven, which pertains to services that the Board feels that an efficient practicing pharmacist should provide are items that cost money. And if you or I, as a purchaser, don't know that the price given for a specific item does include the practice of these additional policies by the pharmacists, we are not in a good position to know whether the price we are paying for the product -- we don't know if it includes the services and we don't know whether we are getting a good bargain or not.

Two other things I would like to bring to your attention, since I already mentioned that I do work for the newspaper. It might interest you to know that our newspaper does have a little booklet entitled Medical Product Advertising Acceptability Standards and while they are not directed exactly the same as the Board's concern, they do explain to the advertiser what kind of advertising would be acceptable to the newspaper; what restrictions they might place on a proposed ad governing any medications and what recourse you might have if the newspaper feels that your advertisement would be unacceptable by their standard.

Presumably, their standards would be for the protection

of the individual consumer, because obviously they would like to have all the advertising they can get; except in situations where there is a newsprint shortage.

The other thing I would like to bring to your attention is some of you folks may not be aware that the Board members all in effect wear two hats, as they say. To begin with, they are all practicing pharmacists and obviously have interests in that direction. On the other hand, it has been my experience in almost a year and a half of association with them that while they are serving as Board members, their concern is administration of the Minnesota Regulations and other federal regulations as govern the practice of pharmacy and at no time have I evidenced any incidents of their being more concerned with running their drugstore than they have been with administering the pharmacy regulations, such as they are. That concludes my remarks.

HEARING OFFICER: Thank you, Mr. Jones. Is there anyone else from the members of the State Board of Pharmacy, who wishes to be heard at this time?

I have been told that Jennie Arimond would like to be heard early because of some time commitments. Mrs. Arimond, would you like to be heard at this time? Will you please, for the record, please identify yourself by giving your name or any group you might represent.

MRS. ARIMOND: I have a copy of what

I want to say; I wrote it down so I could be brief and concise.

HEARING OFFICER: Would you like it entered into the record?

MRS. ARIMOND: Please.

HEARING OFFICER: Will you mark this as Exhibit Six please.

(Whereupon, Exhibit Six was marked for purposes of identification.)

MRS. ARIMOND: My name is Jennie Arimond. I am a homemaker and a mother of six children. I have been interested in consumer legislation at the legislature and have spent time there lobbying as a layperson for a variety of bills. Included in this was lobbying for drug price advertising at the last legislative session.

My interest in this has been accented by the fact that one of my children has been on maintenance drugs for the past fifteen years. I think the public has the right to know comparative prices especially in the area of maintenance drugs.

My original experience in trying to get this information was met with refusal of prices over the telephone and negative reaction at the counter as if I were asking for something I had no right to have. The present Board of Pharmacy's proposals indicate they agree with my right to know.

Coupled with my strong feelings about my right to know are equally strong feelings against promotional advertising.

As a layperson I would be unable to evaluate the claims made in drug advertising. I think the promotional advertising of over the counter drugs on television today is dishonest and a disservice to the consumer. I would hate to see this happen with prescription drugs as well.

To me, as a consumer, I want to know the price of the drug I am asking for and the generic name so I can compare that with other brands; what the price in several dosage units is and what, if any additional fees, will be added to the cost of the prescription. A week-end special would be unlikely to do me any good, so there is a need for the requirement that the advertised price be in effect for an extended period of time.

Finally, the ad should specify if this is indeed a reduced price or the regular price of the prescription.

I approve of what the Board of Pharmacy is now proposing. Thank you.

HEARING OFFICER: Thank you.

From here on, I think I will just go down the list as the names are signed in. Has anybody come into the room now, who has not signed on this list and who would like to take part in the hearing?

Richard Johnson, will you please stand, identify yourself by name and who you are representing and whether you wish to speak for or against the proposed regulation.

MR. JOHNSON: My name is Richard C. Johnson; I represent Snyder Drug Stores. I didn't come here to testify, only to make an observation. The proposed regulation will not, in any practical sense, permit the advertisement of prescription drugs. If you will permit me some justification, if this regulation is promulgated and adopted, then absent action by the legislature or the courts, you will not see advertisement of prescription drugs in the state of Minnesota. Thank you.

HEARING OFFICER: Ben Abrohams, will you please identify yourself and who you represent.

MR. ABROHAMS: My name is Ben J. Abrohams and I am an attorney with the law firm of Foley and Lardner, Milwaukee, Wisconsin. I am appearing here today on behalf of Osco Drug, Inc.. I have previously represented Osco in connection with various consumer information programs in the state of Wisconsin.

With me today is Mr. David Butler, who is the Director of Professional Services for Osco Drug, Inc.. Mr. Butler is a graduate of the University of Pittsburgh School of Pharmacy. He is a registered pharmacist in Illinois and Pennsylvania.

We welcome this opportunity to present our views concerning prescription drug advertising. As you may be aware, Osco Drug has maintained a position supporting the consumer's right to know and have available prescription price information.

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Osco demonstrated its convictions by being the first drug chain in America to post prescription prices in its drug-stores, in October of 1971.

We believe that only through a free, competitive environment, with effective removal of all restraints on price disclosure, will equity in prescription pricing be reflected in the consumers' prescription bill.

Prior to the posting of prescription prices in October of 1971, an Osco task force examined the desirability of open price information for the consumer. This task force included three registered pharmacists in Osco management and two outside consultants. Major findings were evidenced from the activity and may be summarized as follows:

1. It is extremely difficulty for the patient to ascertain the price he must pay for a prescription drug in advance; an atmosphere of secrecy affectively prevents patients from comparing prescription prices among competing pharmacies or even at the same pharmacy from one visit to the next.

2. There are great price disparities between pharmacies in the same town for the same prescriptions; these disparities and high costs, coupled with prescription price secrecy, have received increasing publicity around the country, seriously undermining the professional image of all retail pharmacists by making them appear as dishonest merchants, who are primarily interested in keeping their price secrets within

their own closed clubs, in order to profiteer freely at the public's expense.

We believe that the elimination of restrictions related to the advertising of prescription medication would be a step in rectifying this situation.

Arguments have been made by those in opposition to price disclosure that advertising of prescription drugs would increase the demand for and use of those products. We believe this argument has no merit since prescriptions are only dispensed upon receipt of a written prescription of a duly licensed physician. No valid research or statistical basis, to our knowledge, has yet been found to suggest that the demand would increase and we believe this argument is advanced by those opposing drug price disclosure merely to play on public fears about drug overuse and abuse. In any event, there has been enough price disclosure by Osco and other companies that those advancing this argument should be required to produce evidence to support such an allegation and perhaps not an article from a magazine.

We feel that the open communication of drug pricing will tend to strengthen the relationship between our pharmacists and the patients they serve. The elimination of the mystery surrounding the pricing of prescription products by the open communication of drug prices will, in our opinion, increase the trust the public has in the profession of pharmacy.

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Quite clearly, the pharmacy is in a unique position since it deals in selling a product and a service rather than the traditional service-only concept usually associated with a profession. This inclusion of product considerations by virtue of the dual role of the pharmacist has forced consumers to view pharmacists on one hand as a professional and on the other hand as a retailer.

The elimination of any disputes concerning the disclosure of prescription prices will tend to force attention on the broader issue of the professional services pharmacists offer the public. This will occur since the open advertising of prescription products will tend to eliminate the great disparity in prices which exist today. Once this disparity has been neutralized, consumers will demand and quite rightly expect appropriate levels of pharmaceutical services. This cannot help but benefit consumers and the pharmacists.

From time to time, private interest groups have maintained that the advertising of prescription prices will increase the price of prescriptions to the extent needed to cover the total cost of advertising. Osco dismisses this argument as being totally unfounded and not consistent with modern economic thought.

It is clear to us that the open availability of retail prescription price information would have the net effect of lower drug prices for consumers. Probably the greatest effect

would be the elimination of the wide price disparities, which give all pharmacists a black eye. It would seem logical, too, that through the removal of restraints prohibiting full price disclosure, a generally more competitive environment would result. The consumer would certainly be made more aware of the prices drugstores charge for prescriptions and would be able to shop and compare. The market should, therefore, seek its own level, which would predictably be lower than in a strictly regulated market. Currently, the consumer's ability to make a decision on price is simply not practical in those locations where such restraints exist. The elimination of the secrecy surrounding the pricing of prescription drugs will tend to make the prescription market free and open. In any free market environment, it is incumbent upon a retailer to price his goods and services with or below his competition. This competitive pricing of product forces retailers to find more efficient, productive and economical means of serving the public. Naturally, we believe that the open advertising of prescription products should be devoid of deceptive advertising practices. Groups have raised the objection that, since prescriptions are -- as a general rule -- refilled, organizations should not advertise prescription specials. Osco believes that the true service it can offer consumers is in the area of informing them of its everyday price and not in running week-end specials.

Our firm conviction is, that given a free market place:

1. Consumers would have the ability to choose the best value for the prescriptions they need, consistent with the particular services they feel are necessary.

2. It would strengthen the relationship between professional pharmacists and the consumers they serve.

3. The benefits of drug savings would be passed onto consumers because the market place would be competitive.

4. The consumer economic awareness of drug prices would cause pharmacies to look toward more efficient means of providing service, thus maintaining prices at a level both equitable to consumers and the profession of pharmacy.

In short, our view is that we need less regulation and fewer barriers on information. As a result, Osco Drug strongly supports the elimination of regulation 37K in its entirety.

It has been, unfortunately, my experience that boards of pharmacy throughout the country have been extremely reluctant to adopt the concept of price advertising and recognize its validity. The result of this apparent attitude, predictably, has been manifested in legislation and a close scrutiny by various federal governmental agencies. We have witnessed, over the past few years, the judicial striking down of statutes or regulations which prohibit price advertising as being unconstitutional or otherwise invalid by

virtue of a lack of statutory authority to promulgate such administrative rules, as the case may be.

In this regard, I am sure you are aware of judicial decisions in, among other states, Wisconsin, Pennsylvania, Maryland, Oregon and Virginia. The common thread of these decisions is that the arguments advanced by those in opposition of open price advertising are totally without merit. You are undoubtedly aware that the United States Supreme Court has agreed to review the Virginia decision which held unconstitutional a state statute prohibiting prescription drug price advertising as being violative of the First Amendment rights of the consumer.

We submit that the proposed 37K is totally unreasonable, unworkable and would effectively prohibit any meangingful form of price advertising. If the proposal before us is intended to open up price advertising, it fails. I might point out that subsequent to the Pastor decision in Pennsylvania, which held unconstitutional a statute which prohibited prescription drug price advertising, the Pennsylvania board adopted a similar -- what we might call -- smother-with-affection type of regulation. Thereafter, the Pennsylvania Attorney General advised the board that it could not do indirectly that which it could not do directly. Intended or not, the proposed 37K has such a result.

You today have the opportunity to be among the leaders

in recognizing an idea whose time has come. We urge you to meet this challenge by eliminating Regulation 37K.

Mr. Butler and I would be happy to entertain any questions you may have. I will leave a copy of my remarks with you after the hearing.

HEARING OFFICER: Mr. Abrohams, would you like a copy of your remarks to be marked as an exhibit of the record?

MR. ABROHAMS: Yes, I would.

HEARING OFFICER: Do you have a copy for that purpose?

MR. ABROHAMS: Yes.

HEARING OFFICER: Would you please mark this as Exhibit Seven.

(Whereupon, Exhibit Seven was marked for purposes of identification.)

MR. HART: Could I ask a question? You said that you would be glad to answer any and my question is that you spoke and said you would like to see an elimination of 37K in its entirety. You also stated that you would like to see week-end specials be avoided, that your prices would be prices that would be in effect at all times. And as I listened to what you said, I couldn't find any objection to any of the major portions of the proposal and I am not exactly sure what you do object to. Do you object to running controled substances? Would you care to

advertise those? That is Item Two, do you oppose that or favor that?

MR. ABROHAMS: Number one, I think Mr. Butler would be the appropriate person to answer a lot of these questions and then I think in the discussion of this one has to look at the proposed regulation in its entirety or as to the overall and certainly we can discuss specific points --

MR. HART: I think if we discussed each specific point, that it might be better.

MR. BUTLER: Sure, I have no objection.

MR. ABROHAMS: On point number two, the question as to the controled substances portion --

MR. HART: Do you feel that those should be permitted advertising?

MR. BUTLER: Yes, we do. Now, as I take the definition -- should I recite my name, Mr. Hearing Officer? My name is David Butler with Osco Drug.

As I take this regulation that you have in front of us now, the second part refers to prescription price information and not promotion; so, I am looking at it in that context and the first sentence about the drug safety, effectiveness, indications for use, etcetra. I think that any individual who wants to advertise prescription drugs would find

that this information is information that consumers don't really need and they are not going to use. This is information for physicians, information for pharmacists, information for other allied health professionals; so anybody, who would be putting this into an ad, would be wasting good space. I don't really think it is necessary, because nobody is going to do it. Nobody is going to put it down, possibly effective, probably effective, that the federal government is coming out with.

The second point about the controled drugs, I heard Mrs. Arimond, is that correct?

MRS. ARIMOND: Arimond.

MR. BUTLER: Arimond, I am sorry, say that she has a child on a maintenance drug for fifteen years, I believe she said, and she felt that she needed the information about the price of that drug.

Now, if that drug was phenobarbital or Ritalin, which a number of children are on; these regulations would effectively prevent her from getting that information. Is that fair to her? I don't think so.

This part implies, it doesn't come out and state it, but it implies that this type of advertising or drug price information is going to increase drug abuse. Again, as we said in our remarks, I would like to see some proof of this. We have had drug price advertising in a number of states,

Wisconsin, Florida and I am sure we could provide you with a whole list if you were interested in the number of states that have this advertising and I would like to see somebody prove that this advertising has increased drug abuse. I, for one, do not buy that argument.

The third part -- I believe Mr. Holmstrom, while he didn't come out and state it and correct me if I am wrong, Dave -- it implied that the third part runs in tandem with the federal regulation, the regulations of the Food and Drug Administration. I would question that, because of the fact that you have in there the part about the primary manufacturer, the finished dosage form, just as an example. I don't think that is in any of the federal regulations at this point in time and I don't see where this really runs in tandem with the proposed 1.111 of 21CFR.

MR. HOLMSTROM: Yes, it does run in tandem with 1.111, the exception of that provision. That provision is placed in there to correspond with some legislation that has now passed both the House and the Senate in the state of Minnesota and is being sent to the Conference Committee, which would require the disclosure of that information by manufacturers to pharmacists.

MR. BUTLER: Then it runs in tandem with both the federal regulations and the proposed state statutes?

MR. HOLMSTROM: That is correct.

MR. BUTLER: Looking at that information, again, I wonder how useful it is to consumers.

MR. HOLMSTROM: Well, the legislature of the state of Minnesota, in its wisdom, decided that that information has enough use to the consumer to require that it be placed upon the prescription label that the pharmacist suspenses to the consumer and that is good enough for us.

HEARING OFFICER: Excuse me, gentlemen, I beg your indulgence here. Before we get into a round-robin discussion or argument here, one of the Minnesota state legislators is here with us this morning and has asked to be heard and also I believe has some time commitments. If you will indulge us at this time, we ask that Representative Sieben be allowed to speak.

MR. BUTLER: Mr. Hearing Officer, will I be able to get back on my other points?

HEARING OFFICER: Yes, yes, Mr. Butler. Immediately after Representative Sieben, you will be given an opportunity to give whatever prepared statements you have and also to answer the questions which are directed to you.

MR. BUTLER: Fine, thank you.

MR. SIEBEN: Mr. Chairman, thank you very much and I am sorry that I am interrupting your talk.

Mr. Chairman and members of the Board, first of all, I do have a prepared statement that I have written in the form of a letter to Dave Holmstrom and I will submit that to the Clerk at this time to be identified as an exhibit.

HEARING OFFICER: Would you please mark this as Exhibit Eight?

(Whereupon, Exhibit Eight was marked for purposes of identification.)

HEARING OFFICER: For the record, will you identify yourself please?

MR. SIEBEN: My name is Mike Sieben and I am a Representative from Newport, Minnesota.

Mr. Chairman and members of the Board, first of all, I would like to congratulate you on considering revisions to Regulation 37K. I want to assure you that as a co-author of legislation in this area of drug price advertising that there is considerable public interest and in my opinion, overwhelming public support for any legislation or any regulations, which would make price information more accessible to consumers of prescription drugs.

I have reviewed your proposed regulations and I do have some comments on specific parts of those regulations.

I am concerned in your regulations that they are overly restrictive in a general sense and I want to deal with specific concerns that I have at this time. First of all,

I don't think there should be a blanket prohibition of advertising of controled substances. I was able to catch part of the conversation that you just engaged in on that issue. This particular issue came up in our legislature hearings on House File 29, which I imagine you know I was the chief author of and it passed the State House. There are many controled substances that many citizens use in our state at this time and I think if we prohibit the advertising of these controled substances in a blanket way, we are going to deprive them of the opportunity to price information on the substances.

Secondly, I think that your requirement that ads should include the trade name and as I understand it also the full generic name of a particular drug product is also unnecessarily restrictive. I would refer for your information to House File 29 in which we do allow an advertiser to refer to either the trade name or the generic name or both, at his discretion, and it is my recommendation that you leave this matter up to the advertiser's best discretion and his best judgment. I believe that most consumers are not particularly interested in a long generic name of a particular drug. And in some cases he may be, but in other cases he may not and I think it certainly is in the advertiser's best interest to make this decision for himself, rather than have it required. And so I think that the

requirement that he have both the trade name and the generic name is unnecessarily restrictive for consumers.

Third, I think that the requirement that the advertising offer three different prices at three different quantity levels is also very possibly unnecessarily restrictive. I think that this is another matter where you ought to leave the discretion up to the best judgment of the advertiser. It certainly is in his best interest to advertise something that he knows is commonly sold in a quantity that is commonly sold. I think that this required information at three different levels may be helpful to consumers, but it may be unnecessarily restrictive as I have indicated. I think that the ultimate possibility is that if we have a restriction like this with a requirement of three different prices at three different levels, it may cut down on the amount of advertising that takes place in the area of prescription drugs, which I think is counter productive to what you are trying to do today.

Fourth, I think that your requirement that the advertised price be unchanged for at least sixty days is also unnecessarily restrictive. I really don't see any reason why we should have a requirement for up to two months after the advertisement is inserted, that the price is required to remain the same. I think that this is once again going to decrease the flexibility of the advertiser and it is also

going to have the very possible effect of cutting down the advertising in this area.

I might footnote this, with concern that I heard expressed in opposition to the bill as I have introduced it and that is House File 29 that allows advertising; much of the concern was expressed that the small family druggist in rural Minnesota is not going to be able to compete if we allow advertising of prescription drugs. And I think that all of these restrictions, such as the restrictions that I just listed, if you do any advertising to have the generic name, trade name, keep it on for sixty days and have three different prices, that all of these restrictions are going to result in the small fellow, who runs a small operation and who doesn't have the flexibility that a large advertiser or a large pharmacy outlet might have is going to be at a competitive disadvantage.

And finally, I think that your requirement that the availability of or nonavailability of all of the advertised services that are listed, I notice in your proposed regulation, such as a patient profile system, charge accounts, delivery service, after hours emergency service; I think that the requirement that they list all of these services in the advertisement and indicate whether or not they are going to charge you for it is also unnecessarily restrictive. We do, I think we do in our bill, allow for the pharmacist

to advertise professional services reasonably related to -- this is what the bill says -- to the sale, delivery and proper use of prescription drugs. We allow him to make that claim, if he wishes; but once again, I think that this is the sort of thing that you ought to let the advertiser and the consumer, in their best judgment, make the decision, rather than you make the decision for them. I think it is somewhat patronizing and maternalistic to require and to assume that people and consumers, in their best judgment, won't look into this type of information by themselves.

I am seriously concerned that with all of the above indicated restrictions in your proposed regulation, that the result that you are promulgating is in a very real sense maybe a fraud, because I believe if you pass the regulation in its current form, the end result will be not any advertising, but probably very restricted advertising. And it may well be there will be no advertising of prescription drugs.

Once again, I want to point out my opinion and I guess that is all it is, based upon the surveys I have done in my district and what other legislatures have done, but there is overwhelming support of the people of Minnesota for more assessability of price information.

I congratulate you for taking a look at the issue, but I would hope that you would pass a regulation, if you are

going to pass a regulation, that isn't going to be counter-productive or have the net result in less advertising. As has been indicated in previous testimony, I believe you would be acting consistent with what many other states, throughout the country are doing, and it is my best guess, the last estimate I had by the House Research Survey that I had taken, there are twenty-seven states that now allow advertising of prescription drugs. I don't know if one of those states -- and possibly you do and you are probably more familiar than I am -- but I don't know any of the states that have regulations or restrictions that are nearly as severe as the ones you are suggesting today. And I think that once again, that the restrictions that I have outlined are unnecessarily restrictive.

I guess I have an obvious preference for the bill that I have introduced and it was passed by the House of Representatives, as Dave knows. He attended almost all of the hearings on it and Kitty, for that matter, too. We have had a lot of exhaustive testimony and spent a lot of time in this area in the state legislature and I am sure you are familiar with the proposed bill. And I think that represents a bill that is going to protect both the industry and the consumer. It restricts promotional type of advertising while at the same time allowing for the availability of price information for the consumer.

Thank you very much and to the extent that I can, I would be happy to answer questions.

MR. HEARING OFFICER: Thank you, Representative Sieben. Does anyone have any questions to be directed to Representative Sieben? Mrs. Alcott.

MS. ALCOTT: Representative Sieben, under Number Three you said that you believe that you shouldn't have to advertise both the generic name and the brand name, is that correct?

REPRESENTATIVE SIEBEN: The generic and the trade or brand name, that is my feeling.

MS. ALCOTT: That comes under the Federal Regulations, that if you advertise that both of those have to be in the advertising. Were you aware of that?

REPRESENTATIVE SIEBEN: I may be misinformed, but I did have the matter checked out by the House Research and I was given the answer that the Federal Regulations do not require both the trade name and the generic name. Now, I may be misinformed, but this is what was my understanding.

MS. ALCOTT: We have it right there if you would like to look at it and that is why it was put in there, that particular part of it.

HEARING OFFICER: Are there any other questions to be directed to Representative Sieben?

MR. AXELSON: Yes. My name is Fred Axelson and to review what Representative Sieben said with regard to three different prices for three different quantities. I think that as a general rule, the consumer is naive to pricing structure and I think as much of this should be made available to them as possible.

For example, if a particular drug were advertised at a quantity per hundred, vertually all pharmacies will charge more per unit for a smaller quantity. Perhaps this could be limited to only two, just to give the consumer an idea; but I think that if you limit it to just one advertised price, this could be deceiving to the consumer.

I also think with relation to the mentioning of services, I feel that those stores or businesses, which will be doing the bulk of the advertising, are probably the stores which do not provide these services as a general rule. And I think again that the consumer is naive to many of these services which a community drug store provides to them.

Perhaps it is negligence on the part of that individual or the individual pharmacist in not letting the consumer know of these services, but the fact remains that I think that those stores doing the bulk of the advertising do not provide these services. And, therefore, Item Seven, I feel, is necessary; particularly, the nonavailability of these services.

REPRESENTATIVE SIEBEN: Mr. Chairman, if I may add for a minute a short reaction in regard to the three different prices.

You may well be right that some consumers are somewhat naive in this area. However, I am not so sure that that is true. I think especially consumers that buy drugs on a regular basis are aware of the quantity in which they have been buying it and they are aware of what quantities they will be buying it in the future. If they have seen advertising for a hundred pills and they have a quantity of fifty, they have a right under the existing law to call up the drug store and find out if they have the same per unit price for fifty as compared to a hundred.

And in regard to your second comment as far as requiring all of these four or five, I guess, different services, such as patient profile system; I think consumers really aren't as naive in that area as you think. Most consumers that I know that are on especially maintenance drugs are very much aware of whether or not they, for example, allow credit or charge accounts; they are very much aware of whether or not there is delivery; they are very much aware of whether or not there is afterhours emergency service; at least that is my limited experience in the area and it is very possible you have more experience than I do. But my feeling is that this is something I think you ought to let the best judgment of the consumer prevail upon. Although all of these services

are useful for a consumer and I think many consumers are aware of them, it might be counterproductive once again to require all of these things.

HEARING OFFICER: Are there further questions to be directed to Representative Sieben? Mrs. Arimond.

MS. ARIMOND: I agree with the gentleman who spoke with the two points he just made. And as I testified, I am a parent of a child on maintenance drugs and I would also like to add that I agree with the need for the ad to run for a longer period of time, sighting my own experience with my child. I buy his prescription in units of a hundred; he takes one of those two a day and the other one three a day, which means that his prescription runs out between the thirty and the sixty-day period. So, to me, that is a necessity.

REPRESENTATIVE SIEBEN: I am glad that it was pointed out about the length of which the ad should be required to extend. I don't know of any other regulation or rule, although I haven't researched it thoroughly, where there is quite that length of time required, sixty days. It seems to me to be a very long length of time. It may be appropriate to require some length of time, but I think sixty days is unnecessarily long.

If you are looking around for a prescription drug, I

think it is very unlikely you would be waiting that long. In some cases I am sure some people are, I don't know; you may know a better percentage than I, but I think in most cases people will buy the prescription within at least a month after they get it, in most cases. And I guess that I think that the sixty-day requirement is restrictive and I guess I just have a difference of opinion. It is a little longer, certainly, than what I am aware that other states do. I don't know and I guess I just pose the question. I don't know of any other states that require advertising for any commodities for sixty days.

MS. ALCOTT: Representative Sieben, I would like to comment on it, too.

That is one of the things that our consumer members proposed and they felt very strongly about the fact that it should run for a certain length of time and it shouldn't be a week-end special, because it wouldn't be available to them if they didn't have time for the prescription. And so, they were the ones that really insisted on a time.

REPRESENTATIVE SIEBEN: I guess my point is that there is a big difference from a week-end special and sixty days. I think that that is far beyond a week-end special and I think it is far excessive and I guess the other point is I think that no one individual can speak for consumers.

I don't purport to speak for consumers and I am sure no one does. Of course, this is just my own personal opinion.

MR. HEARING OFFICER: Are there any other questions to be directed to Representative Sieben?

MR. BROCHIN: Yes. My name is Joe Brochin and I speak as an individual.

I just finished a forty-year stint in the ghetto area in Minneapolis and if it was up to me, I would have fifty per cent of all drugs put under controlled substances. I have had more experience in drug abuse than anyone in this entire room and I have seen drug abuse at its worse, it is the worse thing that anybody can see.

And your laws and you as lawyers have been derelict in the duty, with not doing everything possible to cut down the exposure of people to drugs. I have seen teen-agers, who know more about drugs with a limited amount of advertising that has been given to the general public via the media, and when you are trying to increase by any degree the amount of advertising of whether it is a controlled or a boarder-line controlled substance, you are committing a monsterous crime to the social fabric of the city of Minneapolis.

REPRESENTATIVE SIEBEN: Mr. Chairman, I don't want to be argumentative and I won't get into any long extended discussion on this point; except to say that I am a lawyer and I don't think that lawyers or any other

professional people or group of citizens or for that matter across the country, that any people have a unique or a special obligation to cut down on drug abuse. We all do. We are all concerned. We would all like to see it restrained and controlled to the extent that we can.

The point you are touching upon though and I think that the point you are trying to make is that allowing advertising may result in an increase of drug abuse in the state of Minnesota. I tried to deal with the point as seriously as I could as a legislator, by writing to all of the other states in the country and finding out whether or not they now allow advertising. And of the states that we found that have changed their law so they allow advertising, we asked them the question: Have you seen an increase in drug abuse as a result of the allowing of advertising of prescription drugs? And I didn't get any states that said that they saw an increase in drug abuse.

The problem was quite candidly and frankly there aren't any studies that can causally relate the two. All I can tell you is in my best judgment, we are talking about prescription drugs, not drugs you can buy at will over the counter, as you know. And you have to get a doctor's written authorization in most cases in order to get the drugs. And I think we have to rely upon the doctor's best professional ethics to make sure that the drugs are prescribed

when they ought to be. I really don't think there is any evidence and it never came forward in the three years I have sponsored legislation like this and I think it would have, we would have heard it, if there is any evidence at all that those states that allow advertising of prescription drugs have seen any increase of drug abuse because of the passage of legislation.

HEARING OFFICER: Any other questions for Representative Sieben?

MS. ALCOTT: I would like to ask you if when you made the survey on the states, how many of those states allowed media advertising and how many allow only posting of drugs?

REPRESENTATIVE SIEBEN: My recollection is and I should have brought my file over with me and I would be happy to share it with you, Kitty, at a later time. My recollection is that there are twenty-six that allow advertising of prescription drugs, media advertising. I don't know of any states that do what Minnesota does; I know that the city of Boston requires posting of drugs. I don't know of any states that do, however.

So of those twenty-six states, we asked for the answers to whether or not they had seen an increase in drug abuse and I told you the answer.

HEARING OFFICER: Are there any

other questions directed to Representative Sieben?

MR. ANDERSON: My name is Lowell Anderson and may I make one comment on the subject of drug abuse. The Governor's Drug Abuse Council, two or three years ago, and Mr. Bache reported that eighty per cent of all drug abuse in Minnesota is legal. Therefore, eighty per cent is in the realm of the prescription and the prescriber and that is what we are talking about in this room,, is the prescription. So we are talking a bout eighty per cent of all drug abuse and twenty per cent is the street drug abuse. And so I think it is very germane.

REPRESENTATIVE SIEBEN: I am not saying it isn't germane, but I thing there is no evidence to indicate if we allow for advertising, we will necessarily see an increase in drug abuse. And I don't know of any evidence that has come forward to indicate that fact. If there isn't any evidence, I think you should allow evidence --

MR. ANDERSON: That is it.

HEARING OFFICER: Are there any other comments to be directed to Representative Sieben?

REPRESENTATIVE SIEBEN: Mr. Chairman, thank you for the opportunity and I appreciate your putting me on.

HEARING OFFICER: You are welcome and we appreciate your coming.

Mr. Butler, we had interrupted you and I apologize for doing so. If you would like to continue at this point --

MR. BUTLER: Thank you. Getting back to Subsection Two about the controlled drugs, a thought occurred to me as I said, a number of people that do use phenobarbital, Ritalin and this would be effectively done away with, as far as any advertising by this proposed regulation. But also the Board is probably aware, Valium and Librium will be going on controlled status and these, I think -- and correct me if I am wrong -- Valium is the number one drug in this country.

Now, does that mean that probably two per cent of the people in the country would use this and will not be able to get information about Valium? And effectively, that is what would happen with this regulation. Librium is probably number four or five on the list of the most commonly prescribed drugs. And so, again, you are taking care of the drugs that people need this information about.

For the record, I would like to say that I agreed with Representative Sieben about the third portion and they are really what I was trying to get at in this section. I don't think there is any reason to expand upon it.

And Number Four, the price charged for a prescription for at least three specific numbers of commonly prescribed dosage units of tablets or capsules or a specific quantity

of other drug dosage forms shall appear. I can understand the rationale of this section, but I would like to comment upon the end result of this section. Basically, I guess you could conceivably advertise birth control pills one, two, three months; conceivably, you could do it. How much benefit that would be to the consumers that get it in either a one-month or a six-month supply, I don't know. But you have effectively done away with the advertising on nitroglycerin. There are federal regulations that state you can only dispense it in the manufacturer's original packaging and I believe that that is commonly a hundred. How can we advertise any other quantity besides that? Basically, we can't.

I would also direct your attention to such products as Medrol Dos Pack that come in a standard package, a standard dispensing unit. This regulation means we cannot give the people the information on the price of that product. And nearly all of our antihypertensives, as of late, have started to be packed in a month's supply, a reminder package. Again, another broad group of drugs that would be effectively not advertised.

Number Five, the price stated as that charged for a prescription shall include all charges to the consumer including, but not limited to, the cost of the drug product, professional fees, and handling fees, if any. I think if any advertiser

in this day and age is aware of the consumer sentiment and will do this voluntarily, because once consumers find out that they are being deceptive in their advertising by not giving this information, that retailer or that pharmacist has lost that customer, because that customer has lost confidence in him. It doesn't have to be regulated; this is a fact of life, especially with the consumer movement.

Number Six, the price stated as that charged for a prescription shall remain unchanged for a period of at least sixty days from the date first provided to the public... I wish I was able to predict the future, but unfortunately I can't. And what this has done and what the net result will be, especially in these inflationary times, as the prices increase, it is conceivable that sixty days hence, we will be caught in a situation where by law or by regulation we would be forced to sell a product below cost. I am sure there are some laws in the books of the State of Minnesota against this and if not, it is covered in the federal statutes. We can't sell anything under cost. So if this has that result, again you are putting us in jeopardy.

The last part, Number Seven, the availability or non-availability of the following services shall be included in all advertising... Again, I think that that refers back to Part Five and in the consumers in this age, they are aware of these services and if they want and need these

services and they are willing to pay for the services, if they fit in with their drug needs. So if a retailer didn't voluntarily give this information, again, a consumer would find out about it and the net result would be that that particular retailer would lose a patient.

Basically, as Mr. Abrohams has pointed out, we do not think that any regulations are needed in this area. Our reasoning is that there are enough regulations at the federal level concerning deceptive advertising practices to cover pharmacy as well as the other retail enterprises in this country. New regulations are not needed.

Basically, we feel that we need less regulations. The Board of Pharmacy is or should be interested in the public health and not economic issues.

If there are any other questions, Mr. Hearing Officer, I will be glad to entertain them.

HEARING OFFICER: Mr. Butler, it has come to my attention that several other persons would like to give some statements and for that reason, I suggest that questions that may be directed to Mr. Butler or to other persons, who gave statements, be held for the time being and then we will get back to the questions.

Mrs. Chenoweth.

MRS. CHENOWETH: Thank you, Mr. Stich.

HEARING OFFICER: Excuse me, Mrs. Chenoweth, will you identify yourself for the record so it will show up properly.

MRS. CHENOWETH: Sherry Chenoweth, Director of the Office of Consumer Services for the State of Minnesota.

I am appearing before you this morning to lodge my strong, strong disapproval of the proposed regulation in the advertising policy of the State Board of Pharmacy. The proposal I think makes a complete mockery of the spirit and intent of prescription price advertising.

I wonder if the members of the Board are aware of how callously they are treating the consumers of this state as well as members of their own profession. I view the proposed changes in the advertising policy as merely a tokenary attempt to placate the public.

Indeed this revision of 37K is a classis example of over-regulation. By imposing such restrictive and self-serving guidelines, the Minnesota Board of Pharmacy is doing nothing more than attempting to maintain the status quo. And the status quo is an advertising ban. In my opinion, these proposals are unnecessarily restrictive.

In comparison with Respresentative Michael Sieben's House File Number 29, now approved by the House of Representatives, your revised regulation would inhibit rather than encourage

the advertising of prescription drug prices.

The proposal would be injurious to both druggists as well as consumers, requiring pharmacists to advertise prices for a minimum of sixty days is unreasonable and would certainly inhibit price advertising. Once the price was advertised, a pharmacist would be unable to compete pricewise with area druggists. One could conceivably wait until a neighboring pharmacist advertised his price and then proceed to underprice him.

Under the proposed regulation, the pharmacy first to advertise, Pharmacy A, would be prevented from advertising his price in order to be in price competition with Pharmacy B. In other words, as soon as a druggist may advertise his prices, Druggist B can rush out and undercut his prices and meanwhile, Druggist A is locked in to his advertised price. In other words, the first one in is a rotten egg.

In addition, druggists would certainly hesitate to advertise and pass along any reduction in the cost from the distributor, since they would be locked into the price for sixty days and would be helpless if the wholesale cost for that drug was suddenly increased.

In my opinion, few pharmacies would choose to advertise under the proposed revision of 37K and consequently Minnesota consumers would be forced to continue to pay artificially high prices for prescription drugs. For it is almost

indisbutable that only vigorous and truthful advertising will result in lower drug prices.

The Federal Trade Commission estimates that between 1.1 and 10 billion dollars could be cut off the national drug bill over the next ten years if competitive price advertising was encouraged. A study by John Cader, who is a Professor of Marketing at the University of Arizona, has found that prescription drug prices in states which prohibit price advertising are 4.3 per cent higher than in those states which allow it. Numerous surveys have already been done, which emphasize the wide variations and prices for the identical prescription within a state or a city. The existence of these potential savings, however, are relatively unknown to consumers.

There is an immediate need for consumers today to have accurate and comparable cost information as they relate to prescription drugs. I believe that in today's economy, free and open advertising would provide the most effective means for the consumers. I further believe that any regulation should encourage rather than inhibit price advertising and should allow pharmacists complete discretion when it comes to the type of retail price advertising.

I am far from alone in this belief. Over twenty states now allow price advertising and there are fourteen cases and bills pending in many more, striking down bans that

prohibit advertising. Many courts and states have also struck down unnecessary restrictions upon advertising. In Denver, a District Court ruled that druggists could use their own discretion in advertising and stated that added restrictions upon advertising contributed to the perpetuation of anti-competitive prices. In Maryland, the Court of Appeals found that drug stores could advertise competitive prices for drugs, overturned prohibitions against using such terms as discount or cutrate in advertising.

I would also like to call to your attention the position of the United States Department of Justice in this matter, in a letter addressed to my office, they expressed their concern about both blanket restrictions on drug advertising and restrictions on the type of advertising which may be used; specifically, prohibitions on the use of terms such as cutrate or discount. They state that the Department supports the removal of unnecessary restrictions in the area of drug advertising, allowing pharmacies complete discretion in the type of retail prescription drug price advertising they choose to engage in, as long as no misrepresentation is involved.

I am certain you are also well aware of the actions pending on the federal level. The recent task force of the Federal Trade Commission recommended that the F.T.C. invalidate all state laws and regulations, which prohibit or

restrict drug price advertising. The United States Supreme Court is also reviewing all state bans on prescription drug advertising.

In summary, while the proposed revision of 37K may appear to permit advertisement of prescription drug prices, it is my opinion that the excessive restrictions you have built into the rule have made it more of an albatross than a permit to advertise and at a time when all government regulations are concerned with variance and competition and they are counting on an increasing amount of scrutiny across the country, it seems to me that Rule 37K, as revised, is terribly out of tune with the times. Thank you.

HEARING OFFICER: Thank you, Mrs. Chenoweth. Mr. Tobler.

MR. TOBLER: Thank you very much, Mr. Chairman. My name is Adolph Tobler and I live at 915 Edmund and I represent the Metropolitan Senior Federation and the Minnesota Senior Caucas. I do have a statement, which I will leave with your secretary, for the record, if you desire.

HEARING OFFICER: Would you like to have it marked as an exhibit, sir?

MR. TOBLER: I don't care if you do or not. I don't know what that means. All I know is that I have it here and you can put it in the record and call it

an exhibit or whatever you want.

HEARING OFFICER: If you want it put into the record, we will mark it.

MR. TOBLER: All right, I also have a copy of a survey we made that I believe should also be in the record. Thank you very much.

Members of the Committee, I have given you my name. I am speaking today as chairman of the Health Task Force of the Metropolitan Senior Federation. The Senior Federation represents over one hundred and fifty senior citizen organizations in the metropolitan area and approximately sixty thousand elderly.

Further, because of action by the Minnesota Senior Caucas, I am also bringing the views of representatives of over one hundred thousand elderly in outstate Minnesota. They comprise five outstate senior coalitions, which are the Range Area Senior Federation, the Duluth Coalition, the Seven-County Senior Federation, the Central Minnesota Senior Federation and the Southeast Senior Federation.

The views I am about to express were not come by lightly. We have, as you are undoubtedly aware, been concerned over the cost and quality of prescription drugs for over two years. We have completed in that time four comprehensive prescription drug surveys in the metropolitan area, which have shown drug price discrepancies over four hundred per cent. A copy

of our latest survey will be given to you and has been submitted to you.

In the last two months, similar surveys have been conducted in outstate Minnesota, including the following counties: Chisago, Aitkin, Mille Lacs, Carlton, Pine County, and Goodhue County, Rice County, Steele, Olmsted, St. Louis, Wabasha, Stearns, Sherburn, Meeker and Wright Counties. Similar drug price disparities have also been shown in these rural areas.

These surveys have all shown what we believe to be generally artificially high prescription drug prices made possible only because of the lack of drug price competition on the retail level. Because of the lack of advertising, simple drug price comparison cannot be made.

We would call to your attention that seniors have a greater need for prescription drugs than any other segment of the population. While composing approximately eleven per cent of the state's population, we purchase over twenty-five per cent of the prescription drugs.

Mr. Chairman, we have grave concerns about your proposed revisions in Regulation 37K. If adopted, the regulation, for all practical purposes will effectively block any drug advertising except by large pharmaceutical concerns. This will force the independent pharmacy into an impossible situation where they will not be able to advertise, even if they

wanted to increase their business.

And aside, let me say this, I have been wined and dined by three various large drug advertising pharmaceutical firms that have come into this area since we have been involved, to convince us that they are not bad boys. And I have no quarrel with people who want to stay in business. I was a businessman myself when I was younger and my father had a business. And he used to say, look, if I can make six per cent profit, I will be happy; but he went out of business, because he couldn't even make that. In fact, automation caught up with us. This will force the independent pharmacy into an impossible position, as I have already said.

Secondly, the information required in your proposed revisions will only serve to completely confuse most elderly who desparately need this information since it is needed to be easily understood.

The Senior Federation has no severe problems in the proposed revisions numbered Number One, Number Two, Number Five and Number Six. However, we would urge you to delete provisions Numbered Three, Four and Seven.

Specifically, Number Three would force a large increase in the size of the ad and give no useful information to most consumers. The generic substitution bill, now before the conference committee, even makes this provision more meaningless.

Provision Number Four, which forces at least three specific numbers of dosage units, while helpful, would still be detrimental to most elderly. Its net effect would be to discourage pharmacists to advertise.

Provision Number Seven also would effectively discourage pharmacies from advertising. While the listing of such services is helpful, it should not be mandatory to list what services they do or do not have.

Services such as patient profile system should not be a question of advertising. Instead, such a service should be mandatory either through pharmacy board regulations or state law.

Let me point out, Mr. Chairman and members, that the Senior Federation is only interested in one thing. As consumers, we have no choice if the doctor says to me, look, you've got to get a drug and usually he has a nice way of having on the prescription the name of a drug store that you could go to. This is not done by intent, I am sure, and if the doctor can save some money by having somebody do some of his printing for him, that is fine. And I don't quarrel with that. But when I go to that drug store then and that drug store has told me, as has happened to me, that he determines the price and I can either take it or leave it, what choice have I got? If I have an ache some place, as has happened and then I am going to have to look around, because I

can't find it in advertising, so I will have to go from one drug store to another, believe me I am pained right now and I need help right now. I won't run around to half a dozen places to find out whether I can buy a drug cheaper. And I dig down in my pocket, as it is in this instance, and pay him, even though I knew the prescription a month before -- this prescription was now a dollar and forty-five cents higher than a month before. Granted that some of these prices change, but they don't change that fast. Our surveys, we have made four altogether inside of two years, have indicated that to me.

And so, basically, all I am saying is for the senior citizen, we are concerned that we have some basis of making comparisons and being able to then buy the drugs at the cost that we can afford to pay. And if we don't and if we can't get it that way, it simply means that many of us eat less.

And so, Mr. Chairman, in conclusion let me also point out this: The Senior Federation had been involved in a lawsuit against the State Pharmacy Board concerning Regulation 37K. If you go ahead with your proposed regulation, we believe that the net effect will be the continuation of the prohibition of prescription drug advertising and hence, we would have no choice but to continue with our lawsuit.

Please let me just say in final conclusion, I think I

speak for the people that are on the firing line. I think I speak for the people who are on very, very limited incomes. Let me ask you this question: A person who is on a hundred and eighty to two hundred dollars income, social security, how can that person pay fifty-five dollars a month for drugs? And this is actually happening, because I have seen it. What does that mean to that person in these high prices? It only means one thing, ladies and gentlemen, you are not going to eat the way you should and you are going to get sicker.

Thank you very much for your kind attention.

(Whereupon, Exhibits Nine and Ten were duly marked for purposes of identification.)

HEARING OFFICER: Thank you, Mr. Tobler. I think perhaps in the interest of our Court Reporter, it might be an appropriate time to take a recess and a short break.

(Whereupon, a short recess was taken.)

HEARING OFFICER: Ladies and gentlemen, the meeting will be called to order again at this time.

Mr. Tobler has advised me that he has another appointment to get to and so if anyone has any questions at this time, would you do so at this time.

MR. HOLMSTROM: Mr. Hearing Officer. Mr. Tobler, before you leave could I get one bit of

information from you? You mentioned in your message that you delivered, that you received prescriptions with the name of the drug store on the presecription blank. As you may be aware, this is in violation of the regulation of the Minnesota State Board of Pharmacy and if you have information of physicians and/or pharmacists participating in this type of arrangement or agreement, I would appreciate having the names and addresses of those involved so we can take the proper action against these individuals.

MR. TOBLER: Mr. Chairman and members, let me just say this. I can give you the doctor's and the dentist's names, they are friends of mine and I am not going to do it; but I can tell you where you can go and find out and I will tell you privately where you can go and find out.

I will not give it to you, because I think that this doctor is a friend of mine. And he does it unconsciously, because he is in the same building as the drug store. And so when I go and my wife and I go there, automatically he has a blank that has the druggist's name on it in the same building. In fact, I can bring you in the prescription if you want it.

MR. HOLMSTROM: I would appreciate it very much.

MR. TOBLER: All right. And by the

way, let me point out what happened here. I went to the doctor and I had my -- what do you call it -- the gums operated upon, you know, I was getting pyorrhea, I guess that is what they call it. And they took half of my jaw and operated upon it and it took me about an hour and it was pretty painful. And when I got all through, he gives me a prescription. What for? I suppose I could have taken aspirin, I don't know and maybe it would have relieved the pain, but instead he gave me a prescription.

And I went to the druggist and he looked at the prescription and he gave me a capsule about this long (indicating). I don't know the name and I can't read the name of it and he charged $4.25 for about twenty-five of them, I guess that is what they were. And I don't know what they were.

A month later, the other jaw or the other side, the same doctor, pain and it hurts and the doctor says, when it hurts bad enough, he says, take a pill. And he gave me the prescription and now the price is six and a half. And I had a ten dollar bill lying on the counter and I said, what is the price? And he said, six and a half. And I picked up my ten dollar bill and I said, hey, wait a minute, I said, I know prices are going up, but not that much.

And I was told, look, if you don't want it, you know that prices go up from time to time. And this was within

a month.

And now, again, I don't know if that drug went up that much, because I don't know what it is; but I didn't go back to that drug store. Now, this is the kind of thing that senior citizens are getting.

Now, I told you in testimony that I believe a druggist is entitled to a fair return for his investment. Everybody else is. No businessman stays in business if he doesn't make a profit. I guess I can tell you that from the experience my father had when we were in business together. I was in Swiss embroidery, if you know what that is. I am a qualified Swiss embroidery operator. So what? We are out of business; dad couldn't make a living and dad used to say six per cent is a good profit.

Apparently, thirty-seven and thirty-eight per cent -- Mr. Rosenthal in the survey that was made in 1972 and I didn't mention it because it is that old, but Congressman Rosenthal in New York indicated that the profits ran thirty-eight, thirty-seven, forty per cent. Now, that is fine, but I don't believe that I, as a senior citizen, ought to be subject to that kind.

I am sorry that I have taken so long.

HEARING OFFICER: Are there any further questions for Mr. Tobler?

MR. BROCHIN: May I ask, Mr. Tobler,

what your reaction is when a hospital charges a hundred to a hundred and thirty-four dollars a day? When the pro time goes from a couple of bucks to eight dollars a day, which is completely automated? What your reaction is to the doctors charging from eight to twelve dollars a visit? How is your organization or what are they doing about that? I think if you look at the overall picture of health care in the United States, the amount spent for prescription drugs is a minute amount compared to doctor bills, hospital bills, ambulance service and so on.

MR. TOBLER: Mr. Chairman, may I respond. I don't know what relation that has to do with drug advertising, but I will try to answer the question.

I paid one dollar when my wife was in the hospital for two aspirin tablets, that is beside the point. I paid the hospital bill.

The Senior Federation is presently engaged in the health care program, of which I am chairman, negotiating rates for senior citizens in hospitals.

We have a contract with Mt. Sinai in Minneapolis, where they will accept senior citizens of our organization for the Medicaid-Medicare costs without the $60.00 doctor deductible, without the seventy-two dollar hospital deductible. We have a contract with Samaritan Hospital in St. Paul, where they will take us on for a thousand people and we started the

first of January and it is half filled already. It indicates to us, as senior citizens, that there is a need there to take care of the health problems of senior citizens. So I guess that we are saying, in response to the question, we are concerned about costs, because if we don't take care of things for ourselves, nobody will.

And let me point out and it may be a cliche by now, but let me point it out: The senior citizen is only concerned, because he has been forced into being concerned. I can't go to the union any more and negotiate my wages. I used to do it when I was a business agent. I can't do it any more.

My costs are fixed; my income is fixed. And so when the drug prices and everything else rise, I either eat less or a I buy the drugs or get sick. And, of course, I don't want to get sick. I still want to be around in a few years.

Thank you, I am sorry.

HEARING OFFICER: Are there any further questions for Mr. Tobler, that has some relation to the regulation?

MR. AXELSON: Mr. Hearing Officer.

Mr. Tobler, what would be your reaction of the senior citizens, if in order to remain competitive with advertised prices, a community store had to e ither eliminate some of the services, for example, delivery to the high rises or charge each patient for those services? Again, I can't

predict the future, but I think that this is a very realistic possibility, that the community pharmacist will have to charge for their services or else eliminate them altogether.

MR. TOBLER: I think your question is a very good one, Mr. Axelson. I agree with you that there is a possibility that this may happen. But we have an arrangement in the Senior Federation where we can get our drugs mailed to us on twenty-four hour service. And it is working very well. In fact, it is working so well that the pharmacist hired another pharmacist.

Now, to say that that is the answer isn't quite true, because if you are sick enough so you can't get out and you need a delivery, I suppose then you have to call a druggist that can give you that delivery.

I have a druggist within three blocks from where I live who will deliver, but his prices are out of this world, believe me; but if I was sick and in bed and my wife couldn't get the prescription, I suppose I would use that service that one time. But it is possible to make those kinds of arrangements, because we have made them.

Now, as far as the rural area is concerned and as far as this -- I suppose the statement that in the rural area you will drive pharmacists out of business, from studies that we have made on the national level and we have done some of that, too, by correspondence and by writing to the various agencies,

such as yours, in states where they have them; we have found that none of the druggists that have this regulation and have the drug advertising have gone out of business.

I can show you a drug store that went out of business, but he went out of business because there wasn't any population around him. I am talking about the Summit Hill area, if you know where that is.

HEARING OFFICER: We have a question from up here. Mr. Jones.

MR. JONES: Sir, I would just like to ask, have you considered that perhaps ths reason that the druggist, who charges so much in this area where you are, maybe that is the reason he has to charge so much; because the only time you go there is when you can't go anywhere else. Maybe if you went there regularly, his prices could possibly be lowered on a volume basis.

MR. TOBLER: Do you want me to be more sick than I am? I go when I need his services. In fact, the point is -- well, I won't get into it, it is beside the point. My answer to you is simply this: If I need his services, I question now whether I will go to him again, because of the kind of shakedown he gave me the last time; but basically this man has been there a long time and it is a father and son operation and now the son is operating it and he has gotten wealthy, that is all I know about it.

HEARING OFFICER: Are there any further questions for Mr. Tobler?

Thank you, Mr. Tobler.

MR. TOBLER: Thank you for permitting me to give my testimony.

MR. HOLMSTROM: Mr. Hearing Officer, if Mr. Abrohams or Mr. Butler would entertain a question, I would have a question or two of them.

HEARING OFFICER: I believe there are other persons who had requested to give a statement and the time being as it is, perhaps we should allow the other two persons, who have requested to make a statement to do so at this time and then we will have a question and answer session.

MR. HOLMSTROM: Fine.

HEARING OFFICER: Mr. Dee.

MR. DEE: Thank you, Mr. Hearing Officer. I am Donald Dee, Executive Director of the State Pharmaceutical Association. With me today is Mr. Lowell Anderson, Vice Speaker of our House of Delegates. Previously or earlier this morning, Mr. Russell Boogren, Chairman of our Board of Directors, was here; but he was unable to stay through the morning.

The Minnesota State Pharmaceutical Association is a ninety-one year old professional association of approximately

two thousand members. Over eighty per cent of the actively practicing pharmacists in the state belong as members and the membership roles include community pharmacists, hospital pharmacists, pharmacy educators, pharmacists employed in the pharmaceutical manufacturing industry and others.

Through the years, MSPhA has opposed the public promotion of prescription drugs. Our position in the legislature and in the courts has been consistent in opposing changes in the laws or regulations which would allow pharmacists or others to advertise -- and by that we mean publicly promote -- prescription drugs in any fashion. On that basis, we have steadfastly supported the retention of Regulation 37K as it now exists as a regulation of the Board of Pharmacy.

While MSPhA has not changed its position with regard to the public promotion of prescription drugs as a public health hazard, we have changed our position regarding Regulation 37K. In general, it is the position of MSPhA to support the proposed revision of Regulation 37K as offered by the Board of Pharmacy at this hearing. We would, however, like to make several suggestions as to specific sections of the proposed regulation.

The proposed revision should be modified to limit the public promotion of prescription drugs to the holder of a pharmacy license. Note that we specify a pharmacy license rather than a pharmacist license. We do not feel it

appropriate to allow a pharmaceutical manufacturer, wholesaler, or other person to publicly promote prescription drugs the way we currently witness non-prescription drugs advertised either in the press or on radio or television. Moreover, only a pharmacy can provide the services enumerated in Section Seven of the proposed revision.

With respect to Section Three of the proposed revision, reference is made to a requirement that the and I am quoting "name of the manufacturer, packager or distributor as it appears on the label" need be disclosed. With enactment of manufacturer disclosure legislation, which we anticipate will take effect on August 1 of this year, we suggest that the regulation be changed to require the "name of the manufacturer of the finished dosage form" consistent with this statute.

In Section Seven of the proposed revision, it is our position that this is an extremely significant section and that it will provide the patient with information as to the availability or nonavailability of critically significant professional and convenience services. With the possible exception of Section Seven (E), which is merely a consumer convenience function, they are all fully justifiable from the standpoint of public health. We would emphasize the need to require the positive or negative disclosure of which services enumerated are available and which are not available,

along with any separate charge for any such service.

We would offer two suggestions however. In Seven (A), rather than merely stating that the pharmacy has a patient profile system, we would suggest greater specificity such as "maintenance of patient medication profile, consultation with prescribers and information to patient as indicated or requested." The merely mechanical record keeping of a medication profile system may not provide the patient or the prescriber with the desirable full professional service of the pharmacist.

In Seven (D), we propose that the regulation be revised to require the placement of the telephone number to be used for after-hours emergency prescription service. The availability of after-hours emergency prescription service is of little value to the patient in need of it but who does not know the telephone number through which he can obtain that service.

Although the Minnesota State Pharmaceutical Association feels strongly that there are potential public health hazards in the completely unrestricted public promotion of prescription drugs, we feel that the proposed revision of 37K with the above modifications will provide some safeguards to allow the public to receive meaningful information regarding prescription drug prices and accompanying pharmaceutical services.

Mr. Chairman, I would be happy to respond to any questions.

HEARING OFFICER: Do you have anything in writing to submit?

MR. DEE: Yes, I have.

HEARING OFFICER: Will you mark this as Exhibit Eleven.

(Whereupon, Exhibit Eleven was duly marked for purposes of identification.)

HEARING OFFICER: There is one more person, who indicated a desire to be heard and perhaps that person should be heard at this time and then we can proceed with the questions. Mr. Olson.

MR. OLSON: Yes, My name is Roy H. Olson and I am the immediate past president of the Minnesota State Board of Pharmacy and I would like to speak for the adoption of the revised regulation 37K.

After witnessing the trials and tribulations of 37K during the past five years, it became apparent that it needed revision, but in a way as to prevent deception and fraud. I believe that the regulation should be written so as to conform and complement the proposed FTC and FDA regulations.

It has also been my opinion that the regulation should require a minimum number of prescription drugs for a minimum period of time, because of the affect of the period of time on the refill situation.

Previous Boards have always agreed with the patient's right to know and to be informed, but have recognized that by their very nature of being potentially lethal and dangerous substances; prescription drugs had to be regulated with caution so as not to enhance or encourage their use or desirability.

It is also my hope that a revised 37K might become a model for other boards and professionals to use in their efforts to better inform the public. Thank you.

HEARING OFFICER: Mr. Rasmussen.

MR. RASMUSSEN: I signed to speak also, but I guess I was passed over.

HEARING OFFICER: I am sorry, I inadvertently passed over you. If you would like to make a statement at this time, will you please do so.

MR. RASMUSSEN: Thank you. Mr. Chairman and Members of the State Board of Pharmacy, my name is Duane Rasmussen and I am the editor and publisher of the Forest Lake Times and a member of the legislative committee of the Minnesota Newspaper Association. This is a trade association of three hundred and seventy-four newspapers, weeklies, suburbans and dailies in the state of Minnesota.

A copy of my remarks will be sent this week to every state newspaper and I will file a copy of it with you at my conclusion.

We have three points to make about the proposed revision

of Regulation 37K. First, we do not understand it because it seems to contradict itself. Second, if it says what we think it says, then we believe you are skirting with basic constitutional questions as found in the First Amendment in your opening paragraph. Third, if you are in fact going to recognize the fact of the constitional right of freedom of expression, then we believe you are still loading advertising down with so much unnecessary information that the rules in fact make advertising in newspapers quite impractical, if not impossible.

Concerning the first point, in your first paragraph you continue to say as you have in the past that promotional advertising of prescription drugs in the media shall be "unprofessional conduct." It seems clear by this that if any licensed pharmacist were to advertise, he would stand in jeopardy of losing his license.

But then you go on to say the -- and I quote -- prescription drug price information may be provided to the public so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met... We are not sure how the second paragraph squares with the first. What are you talking about in Paragraph Two, posting, direct mail? You don't seem to be talking about price advertising in the media.

The Supreme Court has agreed to decide whether a Virginia statute punishing the advertising of prescription drug prices is constitutional. The statute classifies such publication by a pharmacist as unethical conduct, subject to license suspension. That issue is a 1942 Supreme Court decision that constitutional free speech quaranties do not protect commercial advertising. A lower federal court had ruled in favor of a consumers' group based upon a putative First Amendment right to know price information.

Also, a Texas District Court Judge has struck down a state law prohibiting pharmacists from advertising their prices for prescription drugs. Judge Mathews said the law against advertising violated the Texas constitution's equal protection and due course of law quaranties.

These two court examples show national concern surrounding prescription drug advertising as a serious issue. It may be that the Supreme Court may make the issue beyond question, except as to regulations which in fact do prevent advertising because of their impractical nature.

Assuming that you have come around to accept the idea that giving consumers the prices of prescription drugs is a good idea, let's knock out Paragraph One. This would remove the "unprofessional conduct" provision so that a licensed pharmacist could, without endangering his license, advertise the price of prescription drugs in the news media.

But, it still wouldn't work, because you are attaching so many conditions to advertising that it would make advertising very difficult if not impossible.

Let's first discuss the requirements in Item Three. You require six items to be present in a price ad.

One, proprietary or trade name of the drug. That's all right, you've got to have the name.

Two, established name of the drug, if any. That's all right, too. Perhaps there should be a cross reference, in case a drug has two names, commonly known to the general public.

Three, the established name and quantity of each active ingredient in the drug product. Why this? Aren't we loading down the ad with technical, non-essential information? What possible difference could it make to the consumer what is in his drug, as far as the advertisement is concerned? Isn't that information on the label of the bottle or box when he picks up the prescription? Isn't it enough to know that your doctor has ordered you to take so many pills, so many times a day? Four, the name of the manufacturer, packer or distributor as it appears on the label of the drug product. Why this? What advantage is there to the consumer to know this? Five, the dosage form. That's all right. Perhaps it is important for the consumer to know that the medicine comes in pills, capsules, fluid ounces or whatever.

Six, the primary manufacturer of the finished dosage form. I understand this is to conform with a practice that may be mandatory from a federal agency, but why include this in the items advertised? It might be of some value on the label, but certainly not on the advertisements.

Now, let's go to your Item Number Seven. This would add five other conditions, which would have to be present in an ad: Patient profile system, charge accounts, delivery service, emergency service and prescription purchase summary for tax or other purposes.

Why do you want to make it mandatory for pharmacists to include all this information in advertising the price of prescription drugs? If a customer comes into the average drug store right now, he has to walk up and ask the pharmacist if he has a patient profile system, a system of charging his accounts, delivery service and the rest. Why do you insist on forcing this information into ads when consumers don't even get this information now?

It might be a good idea to put some or all of these additional services into an ad. Many retailers actually do this. But by making such information mandatory, you are further loading down the ad with information which is of limited use to the consumer.

If it is important, then why not the fact that the pharmacist buys the consumer a cup of coffee or a soft drink

while he waits? Or why not indicate, if he has a parking problem, that the druggist will pay his parking ticket for his rental of space?

What the consumer wants and what he has a right to have is the price of the prescription drug. He has a right to get this information easily, not having to phone up and ask for it, not Mickey Mousing around by learning from trial and error, but to get this information from the mass media. He should be able to open up his newspaper and read a list of commonly used prescription drugs. All he really needs is the name of the drug, perhaps with a cross-reference, the dosage form and the price and the name of the place that he can get the drug.

An awful lot has been made by pharmacists who say that price advertising is going to wipe out the little guy. It hasn't worked that way in other lines of business. Advertising often is a means by which the "little guy" competes with the big boys, a means by which the small independent merchant gains entry into the market. Witnesses in the past hearings have asserted that price advertising of drugs would make it possible for the big chains to take out big, full page ads, thus dominating and destroying the little guys. We do not believe this is true.

As advertising specialists, we know that ads which have specific information in them, as opposed to generalized

puffery, get more readership than those which do not. The most specific, the most vital part of an ad is what the thing costs.

Classified ads are very small, very inexpensive ads. They don't take up a lot of space and yet these tiny ads move an enormous mountain of goods and services, because they contain specific information.

If the owner of a corner pharmacy were to run a two-column ad in his community newspaper and if he were only required to list names of the drug, dosage form and price; he could comfortably list fifteen, twenty separate drug items. But to include all of the items in your numbers Three and Seven, he would have to buy a lot more space. This would not work to the benefit of those little pharmacists we hear so much about.

Summing up, we are unsure what the regulation means. If it means that restrictions are still to be placed against price advertising, we feel a constitutional question is involved.

But if it means that you would allow price advertising of prescription drugs with the seven conditions in your proposal, then you are placing an additional burden on pharmacists who advertise. We do not believe this is in the public interest. Just give the consumer the name of the drug, the dosage form and the prices of the drug in the three

common quantities. Thank you.

HEARING OFFICER: Could we please have this marked as an exhibit.

(Whereupon, Exhibit Twelve was duly marked for purposes of identification.)

HEARING OFFICER: Mrs. Alcott.

MS. ALCOTT: Could I ask Mr. Butler a couple of questions?

MR. BUTLER: Sure.

MS. ALCOTT: You are from the Osco Drug firm, is that correct?

MR. BUTLER: Yes, I am.

MS. ALCOTT: You have stores in other states, other than Minnesota, I that correct?

MR. BUTLER: Yes, we operate in eighteen different states.

MS. ALCOTT: Are there some of those states that allow prescription drug price advertising?

MR. BUTLER: Yes, they do. Vermont, I believe, off the top of my head, without giving you a complete list. I think Vermont has no regulation covering it.

MS. ALCOTT: How about Wisconsin?

MR. BUTLER: Wisconsin, they have no regulation.

MS. ALCOTT: They have no regulations or statutes?

MR. ABROHAMS: Pardon me, they did have a regulation, which was declared invalid by the Wisconsin State Court in 1973.

MS. ALCOTT: Does Osco advertise in the news media in Wisconsin and Vermont?

MR. BUTLER: Yes, we do. We advertise the fact that we have a prescription price book, that is part of that advertisement. There might be a page shown from that book with the prices readible, also in those advertisements. You would be able to see our price posting board, especially in Vermont. We do run advertisements showing our price posting board, which lists a hundred and two items that represent, according to our statistics, forty-three per cent of our volume. And so using that method, we are able to get the most good out of the least amount of space.

I would also like to point out that with these proposed regulations, it would effectively eliminate us from doing that, because it would crowd the pages so much. We wouldn't be able to put this information into the newspaper.

MS. ALCOTT: In any state do you advertise price prescriptions in say a list of prescription drugs and their prices?

MR. BUTLER: If you are talking about having a column, where we have Darvon, for example,

$1.32; you could, I imagine, assume that our price board will fill that function, if you would read it, because it would give the name of the drug and the quantity of that drug and it would give that price for that quantity. If you are talking about a list of that nature, yes, I guess it would fill that definition.

MS. ALCOTT: You don't actually put a list or actually advertise a list in the paper; you just take a picture of a price board or a picture of your book or something like that, is that what you are telling me?

MR. BUTLER: What is your definition of a list, as opposed to my definition. My price board is a list of drugs with quantities and prices. Now, if you can read that in the newspaper, then that would be a price list.

MR. HOLMSTROM: Mr. Butler, perhaps I can expand upon this a little bit. Are the price boards in all of your stores the same? Do they all contain the same items and the same prices?

MR. BUTLER: The same items, yes; but the prices would vary around the country on account of the number factors.

MR. HOLMSTROM: Do the prices on the boards and booklets vary within the state of Minnesota?

MR. BUTLER: I believe there are

two prices in Minnesota.

MR. HOLMSTROM: So, by showing a page of the booklet or the price poster in an ad, one couldn't necessarily be sure that those prices would be applicable to the Osco store to which he was intending to go?

MR. BUTLER: Sure, they would, because the prices are good throughout a given market. Now, if you are referring to Minnesota as a market, which I don't prescribe to; then your definition would be correct, but if you take like Rochester, Minnesota, where we have a number of stores, I think three now, they are all the same.

MR. HOLMSTROM: Well, what I was getting at Mr. Butler was I think when you visited us before on the matter of your price booklet, we found that the picture that you were showing of the price booklet, while it applied to the Rochester stores, did not apply to the Osco stores in Austin and Albert Lea, which are only some fifty miles away.

The people were getting confused that the prices shown in the ads were not the prices available in the store.

MR. BUTLER: I think to refresh your memory at this meeting that we had, we established that the Board of Pharmacy had picked up an ad from one town and compared it with a book from another town. And I do not remember it being Albert Lea and those stores.

So, I think you might be exaggerating the situation a little bit, because what had happened is there were two ads and if I remember correctly, they took an ad from Mankato and the book, I believe, from Rochester or you had the book that we sent to you.

HEARING OFFICER: To avoid falling into any further argument here, do you have any specific questions to be directed? Mr. Anderson, I believe you indicated you did or you had your hand up?

MR. ANDERSON: No.

HEARING OFFICER: Mr. Holmstrom.

MR. HOLMSTROM: Mr. Hearing Officer, I have a couple more questions. As long as we are on the Osco price booklet that they did produce --

HEARING OFFICER: Mr. Holmstrom, we are on Regulation 37K.

MR. HOLMSTROM: Right, I will tie the two together, Mr. Hearing Officer.

Mr. Butler, maybe we can go down the list of items in the second paragraph of the proposed Regulation 37K and perhaps you could indicate to the Board where the price booklets distributed by Osco Company comply with the various provisions in proposed Regulation 37K.

MR. ABROHAMS: I really don't see any relevance to this at all to the proposed 37K.

HEARING OFFICER: Pursuant to the rules for conducting this hearing, anyone who prefers not to respond to a question may do so. If you prefer not to respond to the question, it is not compulsory that you do so.

MR. BUTLER: I would prefer not to respond to that question, since it isn't in my opinion relative to our discussion of 37K.

HEARING OFFICER: Are there any other questions to be directed to any of the other speakers or to any of the persons that were heard this morning?

MR. BERG: I have a question.

HEARING OFFICER: Mr. Berg.

MR. BERG: For Mr. Johnson, does Snyder advertise prescription prices in newspapers in Wisconsin?

MR. JOHNSON: Where?

MR. BERG: In Wisconsin.

MR. JOHNSON: No, not to my knowledge.

HEARING OFFICER: Are there any other questions to be directed to any of the other speakers? Is there anything further that anyone would like to say, either in support or against the regulation?

MR. ABROHAMS: I am sorry, I do have

one question, which I believe would be germane to this. I would like to ask the appropriate spokesman for the Board, the statutory authority for 37K, where in existence or maybe for the proposed regulation.

HEARING OFFICER: Mr. Holmstrom, would you like to respond to that?

MR. HOLMSTROM: Yes, I would. Mr. Abrohams, the statutory authority is found in Minnesota Statutes 151.06, where the statute delineates the powers and duties of the Board.

MR. ABROHAMS: Which says? I would like to read that into the record.

MR. HOLMSTROM: Fine.

HEARING OFFICER: Mr. Holmstrom, will you read that section into the record?

MR. HOLMSTROM: It says, 151.06 POWERS AND DUTIES. Subd. 1, the state Board of Pharmacy shall have the power and it shall be its duty:

(1) To regulate the practice of pharmacy;

(2) To regulate the manufacture, wholesale and retail sale of drugs or medicines within this state;

(3) To regulate the identity, labeling, purity and quality of all drugs and medicines dispensed in this state, using the United States Pharmacopeia and the National Formulary, or any revisions thereof, or standards adopted under the

Federal Act as the standard;

(4) It may, by its duly authorized representative, enter and inspect any and all places where drugs or medicines are sold, vended, given away, compounded, dispensed, manufactured, wholesaled or held; it may secure samples or specimens of any drug or medicine after paying or offering to pay for such samples; it shall be entitled to inspect and make copies of any and all records of shipment, purchase, manufacture, quality control and sale of drugs or medicines provided, however, that such inspection shall not extend to financial data, sales data, or pricing data;

(5) To examine and register as pharmacists all applicants whom it shall deem qualified to be such;

HEARING OFFICER: Excuse me, do all of these sections apply to the response to Mr. Abrohams' question?

MR. HOLMSTROM: Yes, sir, they do. In 151.06, there are some ten sections of Subd. 1 and then there is Subd. 2, Subd. 3 and Subd. 4. Does Mr. Abrohams want all of them read into the record? Perhaps we could enter a copy of the statute into the record, rather than read them all.

MR. ABROHAMS: That would be fine; the one I would like to be specifically read in is 151.06, Subd. 10.

MR. HOLMSTROM: Section 10 of Subd. 1?

MR. ABROHAMS: Yes.

MR. HOLMSTROM: Under Subd. 1 of 151.06, Number 10: For the purposes aforesaid it shall be the duty of the Board to make and publish uniform rules and regulations not inconsistent herewith for carrying out and enforcing the provisions of this chapter.

HEARING OFFICER: Mr. Anderson.

MR. ANDERSON: Mr. Hearing Officer, may I ask Mr. Johnson one more question?

HEARING OFFICER: Yes.

MR. ANDERSON: In your earlier statement you said that the result of this oppressive regulation would be that no one would advertise. Now, I just heard you answer to Mr. Berg that in Wisconsin, where there are no prohibitions on advertising, you do not advertise.

May I then assume that the result of whether or not there is any regulation concerning advertising, the net result will be that you won't advertise? And there will be no advertising.

MR. JOHNSON: That isn't a valid assumption whatsoever. The striking down of a similar prohibition in Wisconsin is a relatively new thing in Wisconsin and we have very few stores there and I don't think that it is fair to assume that merely because we presently do not --

and I don't know that to be a fact, but I am assuming it to be a fact -- the mere fact we don't presently advertise in Wisconsin, does not mean we won't advertise is Minnesota if this prohibition is eliminated.

MR. ANDERSON: I think that was struck down a year ago.

MR. JOHNSON: I don't know exactly when.

MR. ANDERSON: January of 1974?

MR. JOHNSON: I don't know.

MR. ANDERSON: A year and three months ago and it isn't relatively a short time. I would hope that if this regulation goes into effect, a year and three months from now you don't come in and say: I told you so, there is no advertising. That is all, Mr. Hearing Officer.

HEARING OFFICER: Thank you. Does anybody have any further questions to be directed to any of the speakers or any members of the Board? Does anybody have anything further they would like to add in support of the regulation or against the proposed regulation? Does anybody have anything further that they would like to submit in writing to be made a part of the record.

(Whereupon, Exhibit Number Thirteen was duly marked for purposes of identification.)

HEARING OFFICER: That being the

case, the hearing will be adjourned at this time. You are all reminded that any person who desires, will have twenty days within which to submit additional written material, which will be considered by the Board before making any final decision on the proposed regulation.

The meeting will then be adjourned.

* * * * * *

(Whereupon, the meeting was concluded at approximately eleven-forty o'clock a.m.)

* * * * * *

CERTIFICATION

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

This is to certify that I, Lana M. Fruke, a Notary Public of Ramsey County Minnesota, do free lance court reporting in the cities of Minneapolis and St. Paul; that I reported in stenotype and was typewriting under my direction the foregoing proceedings as had before the Minnesota State Board of Pharmacy, at the State Administration Building, 50 Sherburne Avenue, in the city of Saint Paul, Minnesota, at the time indicated; that the foregoing transcript, pages 1 through 92, incl., is a true and complete transcript of my stenotype notes taken as aforesaid.

Dated this 21st day of April, 1975.

/s/ Lana M. Fruke

(Seal)

LANA M. FRUKE
Notary Public, Ramsey County, Minn.
My Commission Expires Dec. 10, 1977

Russell A. Boogren Jr.

— Richard O Johnson - yes

— Jami Aimond - yes Arimond

Jerry Aimond

Bob Dolezahl

Lin Cyr

— Ben J. Abrahamson - yes

— David C Burby - yes

— Donald Dee - testify for MSPhA

— Roy W. Olin yes

Joseph V. Brecha

Lowell Anderson

Dd

T d

Mike Lieber

Duane A. Rasmussen for Minnesota Newspaper Assn.

A. Fobler — wish to testify.
Sherry Cleveland " " "
Fred Axelson observer
Robert Faust " "
Mike Sieben Testify

Tues., Dec. 19, '72 ST. PAUL DISPATCH

DRUG EXPERTS MEET IN PARIS

Strict Curbs on Pharmaceutical Product Ads Urged

PARIS (UPI) — Drug experts called today for strict controls on advertising of tranquilizers, headache tablets and energy pills to reduce their attraction to youths tempted by narcotics.

The call was part of an international effort to combat drug problems.

Experts from 20 countries have been meeting for more than a week in a conference organized by the U.S. Educational, Scientific and Cultural Organization (UNESCO).

THE EXPERTS said that while young people used "new drugs" such as marijuana, opiates and hallucinogens, both youths and adults were prey to "cultural" drugs — compulsive buying, mass information and advertising.

An adult addiction, specified by the experts, was pharmaceutical products.

"The advertising of pharmaceutical products, whatever their toxicity, should be strictly controlled and restricted to the professions directly concerned in their use and distribution — chemists and doctors," they said.

The experts also attacked television advertising of tobacco and drink.

"EVEN WHEN tobacco advertising is strictly controlled or even forbidden in some countries," they said, "most television programs contribute to the persistent glamorization of the use of tobacco and alcohol and give a privileged situation to 'cultural' addictions."

Recommending prevention through treatment, the experts said former addicts and youths should take part in antidrug programs.

"Drug addicts should be oriented toward more specialized structures which would be concerned with both treatment and social rehabilitation," they said. "This formula would thus provide for the participation of some former addicts in educational action among young people."

Exhibit 1
4/3/75 ewl



In treating a young patient, inspiring confidence, as above, is important. There are, of course, a host of factors involved in evaluating a physician.

Exhibit 2
4/2/95
dmb

How Good Is Your Doctor?

by Dr. Marshall Goldberg

Educational Chief of Medicine at Hurley Hospital, Flint, Mich.

FLINT, MICH.

Who still believes in the harassed, hard-working family doctor now making $60,000 a year? Has that vast reservoir of trust and goodwill the public once held for the Dr. Kildares among us finally dried up?

Of course not. Surveys show that medicine still remains the most respected of professions. Nevertheless, it must be admitted, that a small number of doctors *are* sick, senile, or unethical.

So it's a problem: How can a private citizen keep out of the clutches of the medical quacks and incompetents?

The best way to get a good doctor is to find out who the doctors' doctors are. So here's one approach: Soon after moving to a new town, a man's son falls ill. He goes to the nearest doctor's office, waits his turn to be seen, and then says: "Doc, I got a sick kid, but I don't want *you* to see him. Here's the ten dollars for this visit; just tell me who takes care of your kids?"

If you happen to live in a city with a medical school or a large teaching hospital, try phoning the chief resident in the specialty you need. Or try catching him alone in the hospital cafeteria. Virtually all such specialists-to-be, having not yet faced the harsh realities of private practice, are idealistic, savvy, and thoroughly down on bad doctors.

But is all this snooping around really necessary? Why not a doctor directory —a pick 'em yourself consumer's guide for patients that, in addition to name, address, and office hours of a particular doctor, might include his medical school and postgraduate hospital training, whether he is certified in his specialty, whether he holds any academic positions at a medical school or hospital (not all good doctors are good teachers, but almost all good teachers are good doctors) and finally what are his standard fees.

What fees mean

The question of publicizing fees remains a touchy point with some doctors. But what can you tell about a doctor by his fees? Most doctors, especially the specialists I know charge $25 to $50 for a first appointment. But that's just for the stripped-down model. What about the extras?

Each potential patient should know beforehand what the *routine* work-up of a particular doctor consists of—whether it includes a pelvic and Pap smear, a complete blood count, urinalysis, battery of blood chemistries, such as sugar and cholesterol determinations, chest X-ray, electrocardiogram, etc.—and what each costs.

Most, if not all, of these diagnostic tests are well worth having at least once. In fact, some, like the Pap smear and sigmoidoscopic exam, are just about the best safeguards there are against dying of certain common and potentially curable cancers. A patient, by the way, should also ascertain at the time of the initial visit what portion of the expense will be picked up by his insurance company.

Exposing "bad" doctors

If only a small number of doctors are "bad," why can't we simply get rid of them? Doubtless we could if 1) doctors were not licensed for life and 2) in less than half of the 50 states can a medical license currently be challenged for professional incompetence. Many solutions, such as professional standards review organizations or tying relicensure to the requirement that each doctor attend a certain number of continuing education courses per year, have been proposed to meet this pressing problem. But in my opinion there is a less expensive, less bureaucracy-ridden and surer way; namely—periodic reexamination and recertification of all physicians every five to seven years to insure a minimum standard of competency among them.

But until that time when all the proof you need that your doctor is able and up-to-date is the recertification certificate hanging on his wall, what can you do to make reasonably sure you're in good hands?

A good work-up

Let's start with the initial work-up. The good doctor considers the whole patient. He starts by doing a thorough history and physical examination. A good history, one in which the patient's main complaint is carefully analyzed and a check list of about a hundred health-related questions asked, takes around 20-25 minutes: the companion physical about the same. Thus, the initial work-up by a primary physician averages 40 to 60 minutes. I certainly wouldn't quibble with the doctor who is so superbly organized that he can do one in less than 40 minutes, but I take strong issue with the one who is content to treat just symptoms and never bothers to do an initial work-up.

Second, a good doctor is never so busy that he can't take time to explain a patient's condition to him and the rationale for his treatment.

Third, a good doctor is never afraid to admit that he either does not know what is wrong with a patient, or else does not feel he is the man to treat it.

So much for what a good doctor does; *what he doesn't do is harm*. He doesn't push unnecessary pills, shots, operations or X-rays. But before any of you nod too vigorously at this last criticism, let me hasten to shift part of the blame for these abuses onto your shoulders.

Patients' demands

Twenty years ago, a patient used to say to me, in effect, "Here's my money, keep me alive." No longer! Now they say, "Here's my money, keep me alive *and keep me happy*." An exaggeration? Hardly. It's reliably estimated that 10-15 percent of all admissions to general hospitals these days are for drug-induced diseases.

So watch out for the overly accommodating "doctor-drug pusher." Don't be too insistent on getting your money's worth each time you visit him. Most doctors like me must keep to a schedule that allows 10 to 15 minutes for each follow-up visit. How then do we deal with the individual who is not so much sick as lonely and over-talkative. Kick him out? We have a slicker way: reach for the prescription pad. But all too often what the patient gets is some needless and potentially dangerous drug. I readily admit that I use my prescription pad too—only most of the time I write for a lab test, not a pill. A copout, doctor? You bet. But no patient of mine has ever died from having a superfluous serum cholesterol or blood sugar drawn.

Good doctors don't do unnecessary surgery. Since our country now has an overabundance of surgeons, in relation to estimated need, there is probably a good deal of unnecessary surgery going on. The only advice I can give when, say, a woman is told she needs her thyroid or gall bladder removed is: get a second opinion.

Sound like a lot of extra expense and trouble? It is. But so is what follows botched-up surgery—for those who survive it.

Busy psychiatrists

Who heads the list of being the hardest type of good doctor to find? The psychiatrist wins hand-down. The reason is simple: Almost all the really top-notch psychiatrists I know are no longer accepting new patients. They are too busy treating doctors who have been driven to distraction by the public's love-hate attitude toward them or plunged into full-bloom paranoia by self-appointed experts like me.

What, they ask, ever happened to *omerta*: the rule of silence that forbade any doctor from criticizing the profession in public. It certainly had its day, its uses, serving us well when we neither knew or could do too much. But then, as eventually all good things in life, do, it went—along with house calls.

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

HANDLING OF NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Proposed Expenses and Rate of Assessment for Fiscal 1973–74

This notice invites written comment relative to proposed expenses of $387,450, and a rate of assessment of $0.013 per carton of oranges to support the activities of the Navel Orange Administrative Committee for the 1973–74 fiscal year under Marketing Order No. 907.

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That the expenses that are reasonable and likely to be incurred by the Naval Orange Administrative Committee during the period November 1, 1973, through October 31, 1974, will amount to $337,450.

(2) That there be fixed, at $0.013 per carton of oranges, the rate of assessment payable by each handler in accordance with § 907.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same in quadruplicate with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than December 3, 1973. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: November 16, 1973.

FLOYD F. HEDLUND,
Fruit and Vegetable Division, Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.73-24803 Filed 11-20-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1]

PRESCRIPTION DRUGS

Proposed Revision of Reminder Advertisements and Reminder Labeling Regulations

Regulations concerning reminder advertisements and reminder labeling for prescription drugs, §§ 1.105 and 1.106 (21 CFR 1.105 and 1.106), are not consistent in the requirement regarding the declaration of quantitative formula information. Reminder advertisements are required under § 1.105(e)(2)(i) to declare the quantity of each active ingredient of the drug product. Reminder labeling does not have to declare quantitative formula information, being exempt under the provisions of § 1.106(b)(4)(ii). The difference between those items deemed to be advertisements and labeling is set forth in § 1.105(1).

The Commissioner of Food and Drugs has determined that requirements for reminder advertisements and reminder labeling for prescription drugs should be the same, since they are clearly so closely related. He has concluded that no protection is afforded the public by having different requirements for reminder advertisements and reminder labeling. Any difference in the requirements regarding reminder advertisements and reminder labeling only serves to confuse those persons responsible for advertisements and labeling for prescription drugs.

Therefore, the Commissioner proposes to revise the regulations concerning reminder advertisements and reminder labeling for prescription drugs in order to eliminate any difference in these regulations. Reminder advertisements and reminder labeling for prescription drug products will be exempt from the requirements of §§ 1.105(e)(1) or 1.106(b)(4), respectively, if the proposal is adopted. The exemption will apply if the reminder advertisements and reminder labeling contain only the proprietary or trade name of the drug product, if any; the established name of the drug product, if any; the established name of each active ingredient in the drug product; and, optionally, information relating to dosage form, quantity of package contents, price, the name and address of the manufacturer, packer, or distributor or other written, printed, or graphic matter containing no representation or suggestion relating to the drug product. The Commissioner may withdraw these exemptions for a specific drug if he finds that there is evidence of significant incidence of fatalities or serious damage associated with the use of that drug. The revised regulations will continue to prohibit reminder advertisements and reminder labeling for a drug for which an announcement has been published pursuant to a review of the labeling claims for the drug by the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, and for which no claim has been evaluated as higher than "possibly effective."

In addition, it is the policy of the Food and Drug Administration not to inhibit public disclosure of the prices charged for prescriptions for particular drugs. This policy extends to all reminder advertisements and reminder labeling intended to provide consumers with information regarding the price charged for prescriptions including price lists, catalogs, and other promotional material; whether mailed, posted in a pharmacy, placed in a newspaper, or aired on radio or television. In order to assure that the regulations concerning prescription drug reminder advertisements and reminder labeling clearly reflect this policy, the Commissioner has concluded that it is appropriate to establish a separate regulation dealing with this matter.

The proposed regulation establishes conditions whereby prescription drug reminder advertisements and reminder labeling will be exempt from the requirements of §§ 1.105 and 1.106 provided that the sole purpose of the reminder advertisement or reminder labeling is to convey price information to consumers, and the reminder advertisements or reminder labeling contains no representation or suggestion concerning the safety, effectiveness, or use of the drug product. The proposed regulations shall require that the reminder advertisements or reminder labeling contain the proprietary or trade name of the drug product, if any; the established name of the drug product, if any; the established name and quantity of each active ingredient in the drug product; the name of the manufacturer, packer, or distributor as it appears on the label of the drug product; the dosage form; and the price charged for a specific number of dosage units or quantity of the drug product. The declaration of the established name and quantity of each active ingredient is optional if the drug product contains more than three active ingredients. However, this option

Exhibit 3
4/2/75 lmy

does not apply to drug products containing aspirin, phenacetin, and caffeine in combination with one or two other active ingredients. The price is to include all charges to the consumer including, but not limited to, the cost of the drug product, professional fees, handling fees, and mailing fees, if any.

In addition, information such as the National Drug Code (NDC) number and the package or dosage form trade name may be included in the remainder advertisements and reminder labeling. No representation or suggestion may be made concerning the drug product's safety, effectiveness, or indications for use.

In order to further clarify the kinds of information which must be included in such reminder advertisements and reminder labeling, as well as the kinds of optional information which may be included, the Commissioner offers the following as an example of reminder advertisements and reminder labeling which meet the requirements of the proposed regulations:

Phenobal elixir (phenobarbital 20 mg/teaspoonful).	Amal Manufacturing Co.	8 fluid oz	$4.25
Mepromate (meprobamate) tablets	XYZ Drug Co.	100/200 mg tablets 100/400 mg tablets	4.50 7.50
Alpha ophthalmic solution (0.5% prednisolone sodium phosphate).	Alpha Laboratories	5 cc. plastic squeeze bottle	5.70
Copate (codeine sulfate) tablets	Cozy Chemical Co.	25/30 mg tablets	5.50
Chloi Cream (0.5% chloramphenicol)	C. D. E. Laboratories	15 mg tube	6.50
Octonyl 1-50 (norethindone 1 mg and mestranol 0.05 mg) tablets.	Octo Laboratories	3 compact dispensers of 21 tablets each.	7.35
Proacetin capsules (propoxyphene HCl 65 mg, aspirin 227 mg, phenacetin 162 mg, and caffeine 32.4 mg).	Pro Pharmaceutical Co.	50 capsules	6.00
Thipine (hydrochlorothiazide 25 mg and reserpine 0.125 mg) softcaps.	ABC Drug Co.	100 capsules	9.75
Myxin-B ointment (polymyxin B sulfate 5,000 units, zinc bacitracin 400 units, and neomycin sulfate equivalent to neomycin 3.5 mg).	Capital Manufacturing Co.	1 oz tube	6.70

The Commissioner is aware that there may be other ways of including the required and optional information in the reminder advertisements or reminder labeling other than that indicated in the example. It is not the intent of the proposed regulations to specify the format of the reminder advertisements or reminder labeling provided that the reminder advertisements or reminder labeling meet all of the requirements of the proposed regulations.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(m), 502, 701(a), 52 Stat. 1041, 1051 as amended by 76 Stat. 791, 1055; 21 U.S.C. 321(m), 352, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Part 1 be amended as follows:

1. In § 1.105 by revising paragraph (c) (2) (i) to read as follows:

§ 1.105 Prescription-drug advertisements.

* * * * *

(c) * * *

(2) * * *

(i) *Reminder advertisements.* Reminder advertisements are those which call attention to the name of the drug product but do not include indications or dosage recommendations for use of the drug product. These reminder advertisements shall contain only the proprietary or trade name of the drug product, if any; the established name of the drug product, if any; the established name of each active ingredient in the drug product; and, optionally, information relating to dosage form, quality of package contents, price, the name and address of the manufacturer, packer, or distributor or other written, printed, or graphic matter containing no representation or suggestion relating to the advertised drug product. If the Commissioner finds that there is evidence of significant incidence of fatalities or serious damage associated with the use of a particular prescription drug, he may withdraw this exemption by so notifying the manufacturer, packer, or distributor of the drug by letter. Reminder advertisements which are intended to provide consumers with information concerning the price charged for a prescription of a particular drug product are exempt from the requirements of this section if they meet all of the conditions contained in § 1.111. Reminder advertisements, other than those subject to the requirements of § 1.111, are not permitted for a drug for which an announcement has been published pursuant to a review of the labeling claims for the drug by the National Academy of Sciences—National Research Council (NAS–NRC), Drug Efficacy Study Group, and for which no claim has been evaluated as higher than "possibly effective." If the Commissioner finds the circumstances are such that a reminder advertisement may be misleading to prescribers of drugs subject to NAS–NRC evaluation, such advertisements will not be allowed and the manufacturer, packer, or distributor will be notified either in the publication of the conclusions on the effectiveness of the drug or by letter.

* * * * *

2. In § 1.106 by revising paragraph (b) (4) (ii) and by adding a new paragraph (b) (6) as follows:

§ 1.106 Drugs and devices; directions for use.

* * * * *

(b) * * *

(4) * * *

(ii) The same information concerning the ingredients of the drug as appears on the label and labeling on or within the package from which the drug is to be dispensed.

* * * * *

(6) Reminder labeling which calls attention to the name of the drug product but does not include indications or dosage recommendations for use of the drug product is exempted from the provisions of paragraph (b) (4) of this section. This reminder labeling shall contain only the proprietary or trade name of the drug product, if any; the established name of the drug product, if any; the established name of each active ingredient in the drug product; and, optionally, information relating to dosage form, quantity of package contents, price, the name and address of the manufacturer, packer, or distributor or other written, printed, or graphic matter containing no representation or suggestion relating to the drug product. If the Commissioner finds that there is evidence of significant incidence of fatalities or serious damage associated with the use of a particular prescription drug, he may withdraw this exemption by so notifying the manufacturer, packer, or distributor of the drug by letter. Reminder labeling which is intended to provide consumers with information concerning the price charged for a prescription for a particular drug product shall meet all of the conditions contained in § 1.111. Reminder labeling, other than that subject to the requirements of § 1.111, is not permitted for a drug for which an announcement has been published pursuant to a review of the labeling claims for the drug by the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, and for which no claim has been evaluated as higher than "possibly effective." If the Commissioner finds the circumstances are such that reminder labeling may be misleading to prescribers of drugs subject to NAS–NRC evaluation, such reminder labeling will not be allowed and the manufacturer, packer, or distributor will be notified either in the publication of the conclusions on the effectiveness of the drug or by letter.

* * * * *

3. By adding a new § 1.111 to read as follows:

§ 1.111 Prescription drugs; reminder advertisements and reminder labeling to provide price information to consumers.

(a) Prescription drug reminder advertisements and reminder labeling intended to provide price information to consumers are exempt from the requirements of §§ 1.105 and 1.106 if all of the following conditions are met:

(1) The only purpose of the reminder advertisement or reminder labeling is to provide consumers with information concerning the price charged for a prescription for a particular drug product, and the reminder advertisement or reminder labeling contains no representation or suggestion concerning the drug's safety, effectiveness, or indications for use.

(2) The reminder advertisement or reminder labeling contains the proprietary or trade name of the drug product, if any; the established name of the drug product, if any; the established name and quantity of each active ingredient in the drug product; the name of the manufacturer, packer, distributor as it appears on the label

the drug product; the dosage form; and the price charged for a prescription for a specific number of dosage units or quantity of the drug product. The established name and quantity of each active ingredient in the drug product is optional if the drug product contains more than three active ingredients, but this option does not apply to drug products containing aspirin, phenacetin, and caffeine in combination with one or two other active ingredients.

(3) The reminder advertisement or reminder labeling may also include information such as the National Drug Code (NDC) number and any package or dosage form trade name.

(4) No representation or suggestion may be made concerning the drug product's safety, effectiveness, or indications for use.

(5) The price stated in the reminder advertisement or reminder labeling as that charged for a prescription shall include all charges to the consumer including, but not limited to, the cost of the drug product, professional fees, handling fees, and mailing fees, if any.

(b) This exemption from §§ 1.105 and 1.106 is applicable to all prescription drug reminder advertisements and reminder labeling solely intended to provide consumers with information regarding the price charged for prescriptions including price lists, catalogs, and other promotional material; whether mailed, posted in a pharmacy, placed in a newspaper, or aired on radio or television.

Interested persons may, on or before January 21, 1974, file with the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: November 12, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-24766 Filed 11-20-73;8:45 am]

[21 CFR Part 102]

RESTRUCTURED FOODS

Proposal To Establish Common or Usual Name

Correction

In FR Doc. 73-15695 appearing at page 20746 in the issue of Thursday, August 2, 1973, the sixth line of § 102.13 reading "Made From Diced Onions,' the blank to" should read "Made From Diced ------ Onions,' the blank to".

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-NE-30]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Keene, New Hampshire, 700-foot Transition Area (38 FR 512).

A new VOR standard instrument approach procedure will be established for the Turners Falls Airport, Turners Falls, Massachusetts. This will require alteration of the Keene, New Hampshire, 700-foot Transition Area to provide controlled airspace for aircraft executing the procedures for this new approach.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received on or before December 21, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Operations, Procedures and Airspace Branch, New England Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Keene, New Hampshire, proposes the airspace action hereinafter set forth:

§ 71.181 [Amended]

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Keene, New Hampshire, 700-foot Transition Area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface bounded by a line beginning at 43°01'00" N., 72°13'00" W. To 42°55'00" N., 72°00'00" W. To 42°51'30" N., 71°54'00" W. To 42°28'00" N., 71°54'00" W. To 42°28'00" N., 72°27'00" W. To 42°22'00" N., 72°27'00" W. To 42°22'00" N., 72°35'00" W. To 42°28'00" N., 72°35'00" W. To 42°-28'00" N., 73°00'00" W. To 43°01'00" N., 73°00'00" W. To the point of beginning excluding that portion within the Boston, Mass., Pittsfield, Mass., and Chicopee Falls, Mass., Transition Areas.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Burlington, Massachusetts on October 19, 1973.

FERRIS J. HOWLAND,
Director, New England Region.

[FR Doc.73-24783 Filed 11-20-73;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 73-26; Notice 1]

STANDARDS APPLICABLE TO POLICE VEHICLES

Advance Notice of Proposed Rulemaking; Correction

In FR Doc. 73-23871, appearing at page 31017-18 of the issue for Friday, November 9, 1973, the date before which individuals wishing to participate in the public meeting on standards applicable to police vehicles should contact Mr. Guy Hunter, should read "December 5, 1973."

Issued on November 16, 1973.

ROBERT L. CARTER,
Associate Administrator, Motor Vehicle Programs.

[FR Doc.73-24817 Filed 11-20-73;8:45 am]

[49 CFR Part 571]

[Docket No. 71-13; Notice 5]

MOTOR VEHICLE SAFETY STANDARDS

Brake Fluids

This notice proposes performance requirements for brake fluids of low water tolerance, presently unspecified by 49 CFR 571.116 Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*. The notice also proposes amendments affecting color and determination of clarity of all DOT brake fluids.

An advance notice of proposed rulemaking was published on June 24, 1971 (36 FR 12032), requesting substantive data on the performance levels of types of fluid other than polyglycol and similar synthetic fluids, for use in central hydraulic systems and conventional brake systems. Many of the comments stated that it was premature to specify comprehensive regulations for fluids to be used in systems that are still under development and that may require fluid characteristics not yet defined. The National Highway Traffic Safety Administration concurred with these opinions and did not propose definitive perform-

FOR YOUR INFORMATION

DEC 10 1974

Demise of Independent Pharmacies Warned in Nader Consumer Study

A consumer's guide to Sacramento area pharmacies was published in October by consumer activist Ralph Nader's California Citizen Action Group. The 31-page guide contains a breakdown of 131 Sacramento pharmacies and their prices for each of 11 of the 100 most frequently prescribed medications.*

The report in addition reveals which pharmacies offer the professional and convenience services listed on the prescription price poster (e.g., patient profiles, consultation, emergency services, etc.).

The Nader group also offered their own observations and warnings. Alerting bargain hunters not to fall into their own trap, the report cautioned that "a stampede by consumers to the chain stores and away from independent pharmacies may cost you more money in the long run. Low prescription prices are indeed attractive in these days of rising prices, but driving independent pharmacies out of business may not benefit you either.

"The independent pharmacy is competition to the chains," the study warned, "and without competition, the chains would be free to charge whatever they want for drugs. The most effective way to combat high drug prices is to back legislation aimed at monitoring and controlling the activities of the drug manufacturers. They are at the root of the inequities of the drug pricing structure."

The report continued to say "discount and chain stores have the lowest average prices on drugs. In our survey, of the 30 stores with the lowest prices, 23 are chains. But, beware — there are variations within chains. Generally discount stores do not offer the services you may wish or require. And some large discount stores practice 'prescription baiting.' They offer low drug prices to lure you into the store. Then they keep you waiting an unnecessarily long time hoping that you will buy other products."

The Nader group also found that "low income areas do have their share of pharmacies with low prices. However, drugs are most expensive at pharmacies located in professional buildings. Additionally, drugs purchased in hospitals are more costly than drugs bought elsewhere."

In its conclusion, the consumer team offered their own observations and recommendations, admonishing consumers to have their physicians prescribe by generic name. Although the report concedes that "sometimes the generic name may not be available," and that "some pharmacists are doubtful about the consistency of the quality of generic named drugs," it nevertheless advises consumers to "ask your doctor to give you a prescription with the generic name of the drug he is prescribing rather than the brand name.

"The generic name is the exact chemical composition of the drug. The brand name is the name the supplier gives the drug. Brand named drugs often cost twice as much as their generic counterparts. Although the brand name drug manufacturers insist otherwise, the U.S. Department of Health, Education and Welfare says that in most cases the generic named drugs are equal in quality and effectiveness to the brand named drugs.

"There are two points to be made here," the report continues, "the first point is that sometimes the generic equivalent my not be available, since it cannot be produced until 17-year patent *(sic)* for a new brand name drug has elapsed. The second is that some pharmacists are doubtful about the consistency of the quality of generic named drugs. Thus, if your doctor does prescribe the generic name of the drug, you and he must rely on the knowledge and judgement of the pharmacist. The pharmacist must make the decision on whether to give you a generic or brand name drug based on current information about the quality of generic drugs."

This "shoppers guide" received wide publicity on television, radio, and newspapers in the Greater Sacramento area. In an interview by the Sacramento *Bee*, Robert C. Johnson, CPhA executive vice-president, remarked, "They did a commendable job letting people know they get what they pay for. The Nader group seems to have conducted a fair survey. They have pointed out so-called chain stores often use 'loss leaders' or 'hot listed' items — usually the most commonly prescribed drugs — to get the public in their stores. These don't always represent their overall drug price."

Johnson brought out that, across-the-board, chain stores may have prices as high or higher than smaller independents.

The report's recommendation that consumers ask physicians to prescribe by generic rather than brand name won praise from Johnson. He pointed out one survey finding that when ampicillin was asked for by a brand name, Polycillin, it could cost the consumer as much as $13.50 more.

"This is due to discriminatory practices by drug manufacturers," Johnson charged. He also said that drug companies would like to sell in large volume and are willing to give cut rates to pharmacies who will go along. But, he said, most independents cannot afford to do this.



* Actifed Syrup, ampicillin, Chlor-Trimetron, Darvon, Erythrocin, Lasix, Ortho-Novum, Premarin, Polycillin, tetracycline, and Valium.

The public promotion, direct or indirect, including but not limited to advertisement through any of the media of drugs requiring a prescription, narcotics, depressants or stimulants is hereby declared to be an act of unprofessional conduct by a pharmacist causing such public promotion or by the pharmacist-in-charge of a pharmacy engaged in such public promotion. The reference in any advertisement in any media or other means of the terms "cut rate", "discount", "bargain", or terms of similar connotation in connection with drugs requiring a prescription, narcotics, depressants or stimulants or for pharmaceutical services related thereto shall be included within the meaning of public promotion.

Prescription drug price information may be provided to the public so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

1) no representation or suggestion concerning the drug's safety, effectiveness, indications for use or competitive comparisons shall be made;

2) no reference shall be made to controlled substances listed in Schedule II-V of the lastest revision of the Federal Controlled Substances Act, and the Regulations of the Minnesota State Board of Pharmacy;

3) the proprietary or trade-name of the drug product, if any; the established name of the drug product, if any; the established name and quantity of each active ingredient in the drug product; the name of the manufacturer, packer or distributor as it appears on the label of the drug product with the size and prominence required by 21 USC 352 (n) and detailed by 21 CFR 1.105 (e) to prevent the article from being misbranded; the dosage form; and the primary manufacturer of the finished dosage form shall be included. (The established name and quantity of each active ingredient in the drug product is optional if the drug product contains more than three active ingredients);

4) the price charged for a prescription for at least three specific numbers of commonly prescribed dosage units of tablets or capsules or a specific quantity of other drug dosage forms shall appear;

5) the price stated as that charged for a prescription shall include all charges to the consumer including, but not limited to, the cost of the drug product, professional fees, and handling fees, if any;

6) the price stated as that charged for a prescription shall remain unchanged for a period of at least 60 days from the date first provided to the public and the termination date shall be stated in the ad. Delivery on dispensing of such product shall be rendered in a reasonable time after demand for same at said price level;

7) the availability or nonavailability of the following services shall be included in all advertising together with the additional cost to the consumer therefor, if any;

   a) patient profile system
   b) charge accounts or other charge services
   c) delivery service
   d) after hours emergency service
   e) prescription purchase summary for tax or other purposes

DEH:mw 2/28/75

Exhibit 5 4/2/75

My name is Jennie Arimond. I'm a homemaker, and a mother of six children. I've been interested in consumer legislation at the Legislature and have spent time there lobbying, as a lay person, for a variety of bills. Included in this was lobbying for drug price advertising at the last legislative session. My interest in this has been accented by the fact that one of my children has been on maintenance drugs for fifteen years. I think the public has the right to know comparative prices especially in the area of maintenance drugs. My original experience in trying to get this information was met with refusal of prices over the phone, and negative reaction at the counter as if I were asking for something I had no right to have. The present Board of Pharmacy 's proposals indicate they agree with my right to know. Coupled with my strong feelings about my right to know are equally strong feelings against promotional advertising. As a lay person, I would be unable to evaluate the claims made in drug advertising. I think the promotional advertising of over the counter drugs on television today, is dishonest and a disservice to the consumer. I would hate to see this happen with prescription drugs as well.

To me as a consumer, I want to know the price of the drug I'm asking for and the generic name so I can compare that with other brands; what the price in several dosage units is; and what, if any additional fees will be added to the cost of the prescription. A week-end special would be unlikely to do me any good, so there is a need for the requirement that the advertised price be in effect for an extended period of time. Finally, the ad should specify if this is indeed a reduced price, or the regular price of the prescription.

I approve of what the Board of Pharmacy is now proposing.

Exhibit 6

My name is Ben J. Abrohams and I am an attorney with the law firm of Foley & Lardner, Milwaukee, Wisconsin. I am appearing here today on behalf of Osco Drug, Inc. I have previously represented Osco in connection with various consumer information programs in the State of Wisconsin.

With me today is Mr. David Butler who is the Director of Professional Services for Osco Drug, Inc. Mr. Butler is a graduate of the University of Pittsburgh School of Pharmacy. He is a Registered Pharmacist in Illinois and Pennsylvania.

We welcome this opportunity to present our views concerning prescription drug advertising. As you may be aware, Osco Drug has maintained a position supporting the consumer's right to know and have available prescription price information. Osco demonstrated its convictions by being the first drug chain in America to post prescription prices in its drug stores, in October of 1971.

We believe that only through a free, competitive environment, with effective removal of all restraints on price disclosure, will equity in prescription pricing be reflected in the consumers' prescription bill.

Ex Exhibit 9
Dmf 4/2/75

Prior to the posting of prescription prices in October of 1971, an Osco task force examined the desirability of open price information for the consumer. This task force included three registered pharmacists in Osco management and two outside consultants. Major findings were evidenced from the activity, and may be summarized as follows:

1. It is extremely difficult for the patient to ascertain the price he must pay for a prescription drug in advance; an atmosphere of secrecy effectively prevents patients from comparing prescription prices among competing pharmacies, or even at the same pharmacy from one visit to the next.

2. There are great price disparities between pharmacies in the same towns for the same prescriptions; these disparities, and high costs, coupled with prescription price secrecy, have received increasing publicity around the country, seriously undermining the "professional" image of all retail pharmacists by making them appear as "dishonest merchants" who are primarily interested in keeping their price secrets within their own closed clubs, in order to profiteer freely at the public's expense.

We believe that the elimination of restrictions related to the advertising of prescription medication would be a step in rectifying this situation.

Arguments have been made by those in opposition to price disclosure that advertising of prescription drugs would increase the demand for and use of those products. We believe this argument has no merit since prescriptions are only dispensed upon receipt of a written prescription of a duly licensed physician. No valid research or statistical basis, to our knowledge, has yet been found to suggest that demand would increase, and we believe this argument is advanced by those opposing price disclosure merely to play on public fears about drug overuse and abuse. In any event, there has been enough price disclosure by Osco and other companies that those advancing this argument should be required to produce evidence to support such an allegation.

We feel that the open communication of drug pricing will tend to strengthen the relationship between our pharmacists and the patients they serve. The elimination of the mystery surrounding the pricing of prescription products by the open communication

of drug prices will, in our opinion, increase the trust the public has in the profession of pharmacy.

Quite clearly, pharmacy is in a unique position since it deals in selling a product and a service rather than the traditional service only concept usually associated with a profession. This inclusion of product considerations by virtue of the dual role of the pharmacist has forced consumers to view pharmacists on one hand as a professional and on the other hand as a retailer.

The elimination of any disputes concerning the disclosure of prescription prices will tend to force attention on the broader issue of the professional services pharmacists offer the public. This will occur since the open advertising of prescription products will tend to eliminate the great disparity in prices which exist today. Once this disparity has been neutralized, consumers will demand and, quite rightly, expect, appropriate levels of pharmaceutical services. This cannot help but benefit consumers and the pharmacists.

From time to time, private interest groups have maintained that the advertising of prescription prices will increase the price of prescriptions to the extent needed to cover the total cost of advertising. We dismiss this argument as being totally

unfounded and not consistent with modern economic thought.

It is clear to us that the open availability of retail prescription price information would have the net effect of lower drug prices for consumers. Probably the greatest effect would be the elimination of the wide price disparities which give all pharmacists a "black eye". It would seem logical, too, that through the removal of restraints prohibiting full price disclosure a generally more competitive environment would result. The consumer would certainly be made more aware of the prices drug stores charge for prescriptions and would be able to shop and compare. The market should, therefore, seek its own level which would predictably be lower than in a strictly regulated market. Currently, the consumer's ability to make a decision on price is simply not practical in those locations where such restraints exist.

The elimination of the secrecy surrounding the pricing of prescription drugs will tend to make the prescription market free and open. In any free market environment, it is incumbent upon a retailer to price his goods and services with or below his competition. This competitive pricing of product forces

retailers to find more efficient, productive, and economical means of serving the public. Naturally, we believe that the open advertising of prescription products should be devoid of deceptive advertising practices. Groups have raised the objection that, since prescriptions are -- as a general rule -- refilled, organizations should not advertise prescription specials. Osco believes that the true service it can offer consumers is in the area of informing them of its everyday price and not in running "week-end specials".

Our firm conviction is, that given a free marketplace:

1. Consumers would have the ability to choose the best value for the prescriptions they need consistent with the particular services they feel are necessary.

2. It would strengthen the relationship between professional pharmacists and the consumers they serve.

3. The benefits of drug savings would be passed on to consumers because the marketplace would be competitive.

4. The consumer economic awareness of drug prices would cause pharmacy to look toward more efficient means of providing service, thus maintaining prices at a level both equitable to consumers and the profession of pharmacy.

In short, our view is that we need less regulation and fewer barriers on information. As a result, Osco Drug strongly supports the elimination of Regulation 37K in its entirety.

It has been, unfortunately, my experience that boards of pharmacy throughtout the country have been extremely reluctant to adopt the concept of price advertising and recognize its validity. The result of this apparent attitude, predictably, has been manifested in litigation and a close scrutiny by various Federal governmental agencies. We have witnessed, over the past few years, the judicial striking down of statutes or regulations which prohibit price advertising as being unconstitutional or otherwise invalid by virtue of a lack of statutory authority to promulgate such administrative rules, as the case may be.

In this regard, I am sure you are aware of judicial decisions in Wisconsin, Pennsylvania, Maryland, Oregon and Virginia. The common thread of these decisions is that the arguments advanced by those in opposition to open price advertising are totally without merit. You are undoubtedly aware that the United States Supreme Court has agreed to review the Virginia decision which held unconstitutional a state statute prohibiting prescription drug price advertising as being violative of the First Amendment

rights of the consumer.

We submit that the proposed 37-K is totally unreasonable, unworkable and would effectively prohibit any meaningful form of price advertising. If the proposal before us is intended to open up price advertising, it fails. Subsequent to the Pastor decision in Pennsylvania (which held unconstitutional a statute which prohibited prescription drug price advertising), the Pennsylvania board adopted a similar "smother-with-affection" type of regulation. Thereafter, the Pennsylvania Attorney General advised the board that it could not do indirectly that which it could not do directly. Intended or not, the proposed 37-K has such a result.

You today have the opportunity to be among the leaders in recognizing an "idea whose time has come". We urge you to meet this challenge by eliminating Regulation 37-K.

Mr. Butler and I would be happy to entertain any questions you may have. I will leave a copy of my remarks with you.

MICHAEL R. SIEBEN
DISTRICT 51B
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1652 CEDAR LANE
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LEGISLATURE: 296-4250
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LAW OFFICE: 437-3148



COMMITTEES:
COMMERCE AND ECONOMIC DEVELOPMENT,
VICE-CHAIRMAN
APPROPRIATIONS
LOCAL AND URBAN AFFAIRS

State of Minnesota
HOUSE OF REPRESENTATIVES
MARTIN OLAV SABO, Speaker

April 1, 1975

David Holmstrom
State Board of Pharmacy
1965 Ford Parkway
St. Paul, Minnesota 55155

Dear Dave:

I have reviewed the proposed revision of Regulation 37K and would like to offer the following comments in regard to it.

I think that the regulation as it is currently proposed could be counter-productive because of the existence of unnecessary restrictions contained in the proposed regulation. I am concerned that if we write too many restrictions into the regulation that nobody will advertise because of the large number of restrictions.

First, I don't think there should be a blanket prohibition of advertising of controlled substances. There are many controlled substances which are used by elderly people and this would deprive them of the opportunity to shop in the newspapers for the best buy on these items.

Second, I think that your requirement that the ads should include the trade name, the established name of the drug product, name and quantity of the actual ingredients and primary manufacturer of finished dosage form is also unnecessarily restrictive. I am not so sure that it is necessary to have both the trade name and also the established name of the drug product in the advertisement.

Third, the requirement that any advertising include three different prices also appears unnecessarily restrictive. The price information at various quantities may be helpful, but at the cost of cutting down on advertising.

Exhibit 8
Emf 4/2/75

Fourth, your requirement that the advertised price be unchanged for at least sixty days is also unnecessarily restrictive. I don't see any reason why there should be a requirement that for two months after the advertisement is inserted, the price remain the same. This would restrict flexibility of the advertiser and also have the net effect of reducing the number of advertisements in the newspapers.

Finally, I think your requirement that the availability or non-availability of all the itemized services must be included in the advertising is also unnecessary and counter-productive.

I am seriously concerned that with all of the above indicated restrictions in your proposed regulation, that the rule you are promulgating will be a fraud on consumers. I believe that if you pass a regulation which would allow advertising of prescription drugs, you should not pass a regulation which is so restrictive that there will actually be no advertising.

Thank you for your consideration of these comments.

Very truly yours,

Mike Sieben

Michael R. Sieben
State Representative

MRS:kg

METROPOLITAN SENIOR FEDERATION MINNESOTA SENIOR CAUCUS
1951 University Avenue
St. Paul, Minn. 55104

Statement to Minnesota State Board of Pharmacy

From: Mr. Adolf Tobler

April 2, 1975

"Statement on Prescription Drug Advertising as it Affects Older Minnesotans"

Mr. Chairman, Members of the Committee:

I am Adolf Tobler. I live at 915 Edmond in St. Paul.

I am speaking today as Chairman of the Health Task Force of the Metropolitan Senior Federation. The Senior Federation represents over 150 senior citizen organizations in the Metropolitan Area and approximately 60,000 elderly.

Further, because of action by the Minnesota Senior Caucus, I am also bringing the views of representatives of over 100,000 elderly in outstate Minnesota. They comprise five outstate Senior Coalitions which are the Range Area Senior Federation, the Duluth Coalition, the Seven County Senior Federation, the Central Minnesota Senior Federation, and the Southeast Senior Federation.

The views I am about to express were not come at lightly. We have, as you are undoubtedly aware, been concerned over the cost and quality of prescription drugs for over two years. We have completed in that time four comprehensive prescription drug surveys in the Metropolitan Area which have shown drug price discrepancies of over 400%. A copy of our latest survey will be given to you. In the last two months, similar surveys have been conducted in outstate Minnesota including the following counties: Chisago, Aiken, Mille Lacs, Carlton, Pine County and Goodhue County, Rice County, Steele, Olmstead, St. Louis, Wabasha, Stearns, Sherburne, Meeker and Wright Counties. Similar drug price disparities have also been shown in these rural areas.

Exhibit 9
Conf 4/1/

These surveys have all shown what we believe to be generally artificially high prescription drug prices made possible only because of the lack of drug price competition on the retail level. Because of the lack of advertising, simple drug price comparison cannot be made.

We would call to your attention that seniors have a greater need for prescription drugs than any other segment of the population. While composing approximately 11% of the state's population, we purchase over 25% of all prescription drugs.

Mr. Chairman, we have grave concerns about your proposed revisions in Regulations 37-K. If adopted, the new regulation for all practical purposes will effectively block any drug advertising except by large pharmaceutical concerns. This will force the independent pharmacy into an impossible situation where they will not be able to afford to advertise even if they wanted to increase their business.

Secondly, the information required in your proposed revisions will only serve to completely confuse most elderly who desperately need this information is as easily understood form as possible.

The Senior Federation has no severe problems in the proposed revisions numbered #1, #2, #5 and #6. However, we would urge you to delete provisions #3, #4 and #7.

Specifically, number 3 would force a large increase in size of the ad and give no useful information to most consumers. The generic substitution bill now before the Conference Committee even makes this provision more meaningless.

Provision #4, which forces at least three specific numbers of dosage units, while helpfull, would still be detrimental to most elderly. Its net effect would be to discourage pharmacists to advertise.

Provision #7 also would effectively discourage pharmacies from advertising. While the listing of such services is helpful, it should not be mandatory to list what services they do or do not have.

Services such as a patient profile system should not be a question of advertising. Instead, such a service should be mandatory either through pharmacy board regulations or state law.

Exhibit 10 DMB 4/2/75

FEDERATION PRESCRIPTION DRUG PROGRAM

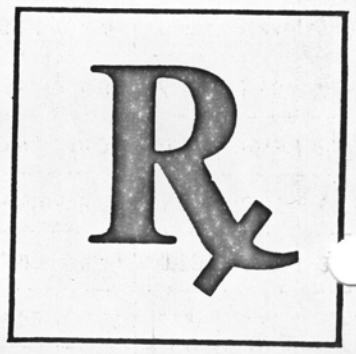
The Metropolitan Senior Federation, in fighting to get lower prices on prescription drugs for senior citizens, realized the amount of a particular discount on drugs was only important in relationship with the regular selling price upon which any "senior discount" is based.

The Senior Federation, in negotiations with the Medicine Shoppe, has been able to set up a special Federation Fee Schedule which is substantially lower than their regular fee schedule. The Federation Fee Schedule is guaranteed to be as low or lower than every other prescription drug retail outlet in the Twin Cities. On the basis of the following survey, The Medicine Shoppe had to drop over forty drug prices for Buying Plan card holders. Based on the lowest fee schedule in the Twin Cities, The Medicine Shoppe will then take another 5 percent off of its price. This means you will pay 5 percent less than you are paying now, and on the average you will pay 15 percent to 30 percent less.

TO USE THE FEDERATION-MEDICINE SHOPPE PLAN:

1. Have your doctor call the Medicine Shoppe at 781-3419 or 781-3410.
2. Call the Medicine Shoppe and give the pharmacist your name, Federation Card number, and information from your prescription bottle.
3. The Medicine Shoppe will mail out your prescription, FREE OF CHARGE, the same day—which means you should get it the next day (see note).
4. If you need a prescription drug quickly, or if the Medicine Shoppe is closed, buy your prescription at any retail store in the Twin Cities. You will pay at least 5 percent higher than at the Medicine Shoppe, so call the Medicine Shoppe and ask for a quote on the price. Medicine Shoppe will then credit the difference you paid, and what you would have paid at the Medicine Shoppe, plus 25 cents for your inconvenience.

Note: The Medicine Shoppe will charge Buying Plan members the exact postage on large liquid prescriptions and other non-prescription drugs. Also note that certain narcotics cannot be sent through the mails. Other arrangements can be worked out with the Medicine Shoppe in this case.



If, by chance, you are now paying less on some drug — **tell us!!** Once documented, that lower price will become the basic Federation Fee and you will pay 5 percent lower than that price. In this way, you will help all Buying Plan card holders!!!

Prescription Drug Comparison Survey

Over 50 Senior Federation members participated in a major drug survey conducted by Senior Federation Services. The survey was made necessary by the ever increasing price surge in drug costs. With the Federation Prescription Drug Program, you can help combat these higher prices.

The survey was conducted on one hundred and eleven different prescription drugs commonly used by older persons. They constitute about 75 to 80 percent of the total senior prescription market. The pharmacies surveyed were those with the reputation of having the lowest prices in the metropolitan area. They include Target, Walgreens, Daytons, Shoppers City, Loop and Snyders. (Union Prescription was also surveyed and their prices are available on request from the Federation office.) In addition, a random selection of independents were also surveyed.

The following comparisons are the results of an intensive survey conducted between November 25 and December 2, 1974. All steps have been taken to assure accuracy. If any errors are found, they will be reported in the **Clarion.**

The Federation Fee Schedule and free mailing apply only to Senior Federation Buying Plan Card holders.

Prices quoted are for 100 unless otherwise noted.

FEDERATION FEE SCHEDULE - MEDICINE SHOPPE - Members will pay 5 percent lower than prices quoted		Generic	Walgreen	Snyders *	Shoppers * City	Daytons	Loop *	Target	Independent
Afrin Spray	1.80		1.95	1.80	2.95	2.80	3.24	2.15	3.70
Aldactazide	10.95		11.00	11.27	11.25	11.00	11.39	11.00	12.20
Aldomet 250mg	7.50		7.73	7.95	7.50	7.73	7.97	7.95	8.30
Aldoril 15mg	9.40		10.20	10.56	9.95	10.50	9.49	10.30	11.95
Aldoril 25mg	10.40		11.25	12.16	11.10	10.75	10.44	11.60	13.50
Antivert 12.5mg	6.70	4.70	8.18	7.47	6.85	8.50	7.59	7.90	7.50
Arlidin 6mg	7.95		8.79	9.16	8.50	9.90	10.11	9.45	8.25
Artane 2mg	2.25		2.25	3.00	3.20	4.10	3.83	2.90	2.25
Atromid S	7.25		7.27	7.27	7.60	7.95	7.50	7.25	8.25
AzoGantanol	9.95		11.09	10.96	10.00	12.00	11.77	11.45	11.90
AzoGantrisin	5.30		6.30	5.65	5.35	6.60	6.80	6.10	5.75
Benemid 0.5	6.90		8.30	8.07	7.35	7.00	7.12	7.25	7.25
Bentyl 10mg	5.50		6.53	7.21	5.75	6.80	6.09	6.00	7.90
Bentyl 20mg	7.35		8.40	7.45	7.45	8.80	8.77	7.70	10.55
Bentyl 10mg Pb	5.80		7.25	5.92	6.20	7.10	7.49	6.45	8.60
Bentyl 20mg Pb	7.70		12.26	8.24	8.80	9.30	9.61	8.65	7.70
Butozolidin 100 mg	8.90		9.54	8.99	9.10	10.30	10.44	9.65	9.25
Butazolidin Alka	9.60		9.70	11.90	9.95	10.06	10.44	10.85	10.25
Butisol Na 30mg	2.70		3.40	2.82	3.50	4.40	4.73	4.05	3.75
Cerespan	11.50		13.22	11.56	12.10	14.50	14.28	14.10	12.95
Chlortrimeton 4mg	3.15		3.90	3.28	4.05	3.64	5.02	4.05	3.15
Chlortrimeton 12mg	6.85		8.45	6.90	7.30	7.15	9.18	8.25	7.75

FEDERATION FEE SCHEDULE - MEDICINE SHOPPE - Members will pay 5 percent lower than prices quoted		Generic	Walgreen	Snyders *	Shoppers * City	Daytons	Loop *	Target	Independent
Colbenemid	8.20		8.43	9.33	8.60	8.80	9.25	8.30	8.55
Coumadin 2mg	4.70		6.55	5.91	4.75	5.47	6.58	6.25	5.40
Coumadin 5mg	4.45		4.47	4.48	5.50	5.47	5.22	4.60	7.38
Crystodigin .1mg	1.00		1.50	1.47	1.40	1.60	3.33	1.75	1.13
Cyclospasmol 200mg	8.95		10.65	9.41	9.35	10.90	9.02	9.50	9.86
Cytomel 25mg	3.50		3.68	3.66	4.20	4.70	4.67	4.05	4.60
Darvon 65	6.50	4.90	8.65	8.25	8.30	8.00	7.59	8.95	6.50
Darvon Cmp 65	6.50	5.25	8.00	8.35	7.95	9.90	7.59	7.95	6
DBI TD 50mg	11.20		11.23	11.27	12.05	12.00	11.87	13.95	12.05
Diabenase 250mg	10.95		11.23	11.27	12.30	11.99	11.39	10.95	12.45
Digitoxin .1mg	1.20		1.47	1.63	1.40	1.60	2.97	1.75	2.80
Dilantin 100mg	1.50		1.53	2.27	1.65	2.14	2.46	1.55	2.97
Diupres 250mg	7.10		7.50	8.37	7.55	8.00	8.21	7.20	7.97
Diupres 500mg	9.15		10.45	9.67	9.45	11.10	10.74	10.80	11.97
Diuril 250mg	4.75		4.84	5.35	5.10	4.84	6.18	4.95	5.75
Diuril 500mg	5.95		6.43	6.47	6.00	7.80	6.66	6.50	7.75
Donnatal Tabs	2.00		2.40	2.42	3.00	2.10	3.83	2.65	3
Dymelar 250mg	5.00		6.09	6.36	5.60	8.20	6.71	6.05	5.75
Dymelar 500mg	5.50		9.57	9.86	8.95	10.20	10.34	9.35	9.40
Elavil 10mg	5.75		5.88	6.36	5.90	5.85	6.93	5.90	6.90
Elavil 25mg	9.45		10.70	10.86	10.00	9.90	11.41	9.44	12.45
Empirin Cpd-3 (20)	1.80		2.16	2.65	2.30	2.25	3.23	1.95	2.95
E Mycin 250mg	9.95		17.95	13.35	11.65	12.00	13.56	16.85	15.00

FEDERATION FEE SCHEDULE - MEDICINE SHOPPE - Members will pay 5 percent lower than prices quoted		Generic	Walgreen	Snyders *	Shoppers * City	Daytons	Loop *	Target	Independent
Equanil 400mg	7.05	3.00	8.70	8.98	7.15	7.25	7.99	8.60	8.95
Equagesic (50)	5.00		5.50	5.49	6.30	5.75	6.71	5.00	6.95
Fiorinal Tabs	3.65	2.35	3.98	3.98	4.65	4.11	4.74	3.70	5.95
Gantrisin	2.80	2.40	2.83	3.79	3.80	2.87	4.74	2.85	5.20
Gantanol	6.95		8.34	7.98	6.95	8.80	9.18	8.20	9.75
Hydrodiuril 25mg	4.80	3.50	4.90	4.82	5.10	5.70	5.87	4.95	5.75
Hydrodiuril 50mg	5.95	4.50	6.47	6.47	6.00	6.35	6.33	6.50	8.20
Hydropres 25mg	6.80	3.95	7.50	7.17	6.90	7.60	8.23	7.20	8.20
Hydropres 50mg	8.90	5.25	10.45	10.86	9.40	8.95	9.78	10.80	10.20
Inderal 10mg	4.40		4.50	5.35	4.55	4.50	6.30	4.50	5.50
Inderal 40mg	7.10		7.50	8.27	7.10	8.80	9.25	7.50	7.16
Indocin 25mg	7.90		7.93	8.97	8.65	8.95	8.69	7.95	9.95
Isordil 40mg	11.40		12.50	12.65	11.45	12.60	14.32	11.60	12.50
Isordil 10mg	5.65	4.15	6.29	6.27	5.65	6.60	7.16	5.70	6.95
Kaon Pt.	5.25		6.63	5.65	5.70	6.09	5.70	6.60	7.51
Lanoxin .25mg	1.25		1.73	1.77	1.40	1.50	1.90	1.90	2.55
Lasix 40mg	8.85		8.93	8.98	9.20	8.88	9.50	9.00	9.99
Librax	6.90		7.34	7.34	7.05	6.95	10.10	8.00	7.75
Librium 5mg	5.85		6.34	6.34	5.95	6.34	6.99	6.95	6.75
Librium 10mg	7.25		7.37	7.37	7.30	7.37	8.99	7.95	7.95
Mebaral ½gr	1.50		2.25	1.64	2.40	2.45	3.33	1.50	2.69
Mebaral ¾gr	2.45		3.15	2.55	3.00	3.20	4.03	2.65	3.49
Mellaril 25mg	9.50		11.01	9.94	10.05	9.50	12.12	10.80	10.50
Meprobamate 400mg	3.00		4.95	4.95	3.15	4.00	3.40	4.65	4.95
Miltown 400mg	7.15	3.00	8.75	7.95	7.90	9.20	7.50	8.60	11.15
Nitrobid 25	7.85	5.95	9.44	8.15	8.95	9.90	8.50	9.55	10.15
Nitroglycerin	.95		1.47	1.50	1.25	1.25	.99	1.25	1.95
Norgesic	10.20		10.95	10.49	10.35	10.70	12.26	11.60	11.25
Orinase (200)	15.80		15.90	16.00	17.80	16.00	15.98	15.90	19.25
Pavabid	9.50	7.75	9.93	9.97	9.85	9.55	10.35	10.00	10.89
Pen G. 250mg (30)	1.30		1.47	1.89	1.90	1.75	2.88	2.25	2.86
Peritrate S A 80mg	8.65	6.50	8.67	8.97	8.95	8.85	9.49	8.95	10.53

FEDERATION FEE SCHEDULE - MEDICINE SHOPPE - Members will pay 5 percent lower than prices quoted		Generic	Walgreen	Snyders *	Shoppers * City	Daytons	Loop *	Target	Independent
Phenobarb ¼ & ½ gr.	.90		1.47	1.50	1.40	.99	1.19	1.25	1.25
Prednisone 5mg	1.95		1.95	1.97	2.60	2.50	4.13	2.50	2.45
Premarin 1.25mg	6.90	6.00	6.93	7.87	7.05	7.87	7.99	6.95	7.95
Premarin 2.5mg	13.85		16.36	15.86	13.90	18.20	17.85	15.25	22.20
Premarin .625mg	4.40		4.49	4.97	4.75	4.95	4.99	4.50	7.85
Probanthine 15mg	5.25	3.95	7.33	5.49	6.10	6.80	8.06	5.95	7.75
Proloid ½gr	1.50		1.50	1.77	1.90	2.10	3.23	2.05	1.68
Proloid 1gr	1.50		1.50	1.87	1.95	2.45	3.43	2.30	1.68
Pronestyl .5	9.80	7.95	10.41	11.66	10.75	9.90	13.19	10.75	10.50
Raudixin 100mg	7.85	4.95	8.25	9.16	8.35	10.90	7.99	9.20	8.95
Rauzide	9.40		9.46	11.36	10.70	12.30	9.99	9.50	9.95
Regroton	11.25		11.81	12.65	11.45	11.82	14.27	13.35	11.30
Reserpine .25mg	1.25		1.58	1.50	1.90	2.10	2.63	1.25	3.70
Salutensin	12.15		13.30	13.40	12.20	13.40	15.11	14.15	13.90
Serax 15mg	8.25		8.45	8.43	8.60	9.20	9.10	8.65	9.54
Serapes	7.35	5.95	7.50	7.97	8.35	7.95	8.11	7.35	10.75
Serpasil .25mg	5.50	1.25	6.85	5.92	5.65	8.50	6.74	6.45	6.98
Tedral	4.25		6.00	4.47	4.35	6.40	5.22	6.25	7.25
Tenuate Dospan (30)	4.25		4.77	4.77	6.20	4.50	7.09	4.95	7.60
Tepanil Tentabs (30)	4.45		6.67	4.77	6.20	6.95	7.09	6.40	8.50
Tetracycline 250mg	3.50		3.93	4.00	3.65	3.95	5.44	4.25	8.06
Thorazine 25mg	5.40		5.70	5.86	5.55	6.20	6.39	5.75	6.73
Thyroid ½ & 1 gr.	1.25		1.47	1.50	1.25	1.25	1.42	1.25	1.49
Tofranil 25mg	11.25		11.65	13.94	11.65	13.40	13.78	12.50	11.38
Tolinase 250mg	11.65		12.51	13.73	12.85	13.40	11.99	11.95	11.65
Triavil 2-25	11.40		11.43	13.94	13.85	12.40	14.15	13.00	11.61
Valium 2mg	6.85		6.94	7.34	6.90	6.95	7.59	6.95	9.95
Valium 5mg	8.15		8.94	8.94	8.15	8.50	8.54	8.50	10.95
Valium 10mg	11.30		12.73	12.74	11.65	15.00	11.39	13.95	15.95
Vasodilan 10mg	7.90		8.85	8.07	7.90	9.20	9.80	8.40	9.05
Vasodilan 20mg	13.50		14.55	14.27	13.65	16.00	16.00	14.80	14.45

* Prices at these pharmacies **include** a Senior Citizen discount.

BUYING PLAN MERCHANTS

(continued from Page 3)

Economy Drug
1017 W. Broadway - 10 percent discount on presc. drugs, 15 percent disc. other items (except tobacco, candy, sale and fair trade items)
Minneapolis, Phone: 522-3522

Desnick Bros. Drug
Lexington and Univ. Ave. - 5 percent disc. on presc. drugs and over-the-counter items
St. Paul, Phone: 645-3443

Keith Soban, Shoe Repair Services
2556 7th Ave. E. - 10 percent disc. shoe rep.
No. St. Paul - no delivery

Sick Room Services
6002 Excelsior Blvd.
Minneapolis, Phone: 920-5475
10 percent disc. sale or rental sickroom supl. and equip. Free delivery on all rental equipment and other orders $10 or more.

Marvin's Beauty Salon
2115-2nd Ave. No.
Anoka, Phone: 421-2930
15 percent disc.-no delivery Sat.

Starlite Cleaners
Anoka Shopping Center
530 West Main
Anoka, Phone: 421-9830
10 percent disc.-no delivery

George's Barbershop
3906 Thomas Ave. No.
Minneapolis, Phone: 521-3728
10 percent disc. every day except Saturday

Dey Brothers Greenhouses, Inc.
1215 N. Dale St.
St. Paul, Phone: 489-1397
10 percent disc. on flowers, plants and shrubbery. Free delivery on order $6.00 or more.

Riverside Florists
4100 44th Ave. So.
Minneapolis, Phone: 722-3044
10 percent disc. flowers, shrubs, wreaths, etc. Free del. orders over $8.00

Lincoln Hills Hardware: OK Hdw.
6708 Penn Ave. S. - 10 percent discount
Richfield, Phone: 869-2459
Disc. on retail hdw., affil. items and labor except fair trade items.

Shakopee Hardware
810 E. First St. - 10 percent discount
Shakopee, Phone: 445-3525
Disc. on retail hardw., affil. items and labor except fair tr. items.

Jenson's Dept. Store
112 E. Main
Anoka, Phone: 421-5343
10 percent disc. except mark-down mdse.

Vilage Square Cleaners
Inver Grove Heights, Phone: 451-3849
1838 Oakdale Ave. West
West St. Paul, Phone: 455-3453
25 percent disc.-dry cleaning, free delivery - Twin Cities

The Time Shop
4149 Lyndale Ave. N.
Minneapolis, Phone: 522-1913
15 percent disc. all types of jewelry and repairs except fair trade items

(continued on Page 6)

STATEMENT OF THE MINNESOTA STATE PHARMACEUTICAL ASSOCIATION BEFORE THE MINNESOTA STATE BOARD OF PHARMACY RE REGULATION OF PRESCRIPTION DRUG ADVERTISING - APRIL 2, 1975

The Minnesota State Pharmaceutical Association is a 91 year old professional association of approximately 2,000 members. Over 80% of the actively practicing pharmacists in the state belong as members and the membership rolls include community pharmacists, hospital pharmacists, pharmacy educators, pharmacists employed in the pharmaceutical manufacturing industry, and others.

Through the years, MSPhA has opposed the public promotion of prescription drugs. Our position in the legislature and in the courts has been consistent in opposing changes in the laws or regulations which would allow pharmacists or others to advertise - and by that we mean publicly promote - prescription drugs in any fashion. On that basis, we have steadfastly supported the retention of Regulation 37K as it now exists as a regulation of the Board of Pharmacy.

While MSPhA has not changed its position with regard to the public promotion of prescription drugs as a public health hazard, we have changed ourposition regarding Regulation 37K. In general, it is the position of MSPhA to support the Proposed Revision of Regulation 37K as offered by the Board of Pharmacy at this hearing. We would, however, like to make several suggestions as to specific sections of the proposed regulation.

The proposed revision should be modified to limit the public promotion of prescription drugs to the holder of a pharmacy license. Note that we specify a pharmacy license rather than a pharmacist license. We do not feel it appropriate to allow a pharmaceutical manufacturer, wholesaler, or other person to publicly promote prescription drugs the way we currently witness non-prescription drugs advertised either in the press or on radio or television. Moreover, only a pharmacy can provide the services enumerated in Section 7 of the proposed revision.

With respect to Section 3 of the proposed revision, reference is made to a requirement that the "name of the manufacturer, packager or distributor as it appears on the label" need be disclosed. With enactment of manufacturer disclosure legislation which we anticipate will take effect August 1 of this year, we suggest that the regulation be changed to require the "name of the manufacturer of the finished dosage form" consistent with the statute.

In Section 7 of the proposed revision, it is our position that this is an extremely significant section in that it will provide the patient with information as to the availability or non-availability of critically significant professional and convenience services. With the possible exception of Section 7 (e) which is merely a consumer convenience function, they are all fully justifiable from the viewpoint of public health. We would emphasize the

Exhibit 11
Dkt 4-2-75

need to require the positive or negative disclosure of which services enumerated are available and which are not available, along with any separate charge for any such service. We would offer two suggestions, however. In 7 (a), rather than merely stating that the pharmacy has a patient profile system, we would suggest greater specificity such as "maintenance of patient medication profile, consultation with prescribers and information to patient as indicated or requested." The merely mechanical record-keeping of a medication profile system may not provide the patient or the prescriber with the desirable full professional service of the pharmacist. In 7 (d) we propose that the regulation be revised to require the replacement of the telephone number to be used for after hours emergency prescription service. The availability of after hours emergency prescription service is of little value to the patient in need of it but who does not know the telephone number through which he can obtain that service.

Although the Minnesota State Pharmaceutical Association feels strongly that there are potential public health hazards in the completely unrestricted public promotion of prescription drugs, we feel that the proposed revision of 37K with the above modifications will provide some safeguards to allow the public to receive meaningful information regarding prescription drug prices and accompanying pharmaceutical services.

- 0 -

Public Hearing

April 2, 1975

State Board of Pharmacy

Mr. Chairman and members of the State Board of Pharmacy:

My name is Duane Rasmussen. I am the Editor and Publisher of the Forest Lake Times and a member of the Legislative Committee of The Minnesota Newspaper Association. This is a trade association of 374 newspapers--weeklies, suburbans and dailies--in the State of Minnesota. A copy of my remarks will be sent this week to every state newspaper, and I will file a copy of it with you.

We have three points to make about the proposed revision to Regulation 37-K:

First, we do not understand it because it seems to contradict itself.

Second, if it says what we THINK it says, then we believe you are skirting with basic constitutional questions as found in the First Amendment in your opening paragraph.

Third, if you are in fact going to recognize the constitutional right of freedom of expression, then we believe you are still loading advertising down with so much unnecessary information that the rules in fact make advertising in newspapers quite impractical, if not impossible.

Concerning the first point:

In your first paragraph you continue to say as you have in the past, that promotional advertising prescription drugs in the media shall be "unprofessional conduct." It seems clear by this that if any licensed pharmacist were to advertise, he would stand in jeopardy of losing his license.

But then you go on to say the--and I quote--"Prescription drug price information may be provided to the public so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all

Exhibit 12 Hearing Report (more)

of the following conditions are met:" We are not sure how this second paragraph squares with the first one. What are you talking about in paragraph two? Posting? Direct mail? You don't seem to be talking about price advertising in the media.

The Supreme Court has agreed to decide whether a Virginia statute punishing the advertising of prescription drug prices is constitutional. The statute classifies such publication by a pharmacist as unethical conduct, subject to license suspension. At issue is a 1942 Supreme Court decision that constitutional free speech guarantees do not protect commercial advertising. A lower federal court had ruled in favor of a consumers group based upon a putative First Amendment right to know price information.

Also, a Texas district court judge has struck down a state law prohibiting pharmacists from advertising their prices for prescription drugs. Hudge Mathews said the law against advertising violated the Texas Constitutionss equal protection and "due course of law" guarantees.

These two court examples show national concern surrounding prescription drug advertising as a serious issue. It may be that the Supreme Court may make the issue beyond question except as to regulations which in fact do prevent advertising because of their impractical nature.

Assuming that you have come around to accept the idea that giving consumers the prices of prescription drugs is a good idea, let's knock out paragraph one. This would remove the "unprofessional conduct" provision so that a licensed pharmacist could, without endangering his license, advertise the price of prescription drugs in the news media.

But it still wouldn't work, because you are attaching so many conditions to advertising that it would make advertising very difficult if not impossible.

(more)

Let's first discuss the requirements in item three. You require six items to be present in a price ad:

One: Proprietary or trade name of the drug. That's all right. You've got to have the name.

Two: Established name of the drug, if any. That's all right, too. Perhaps there should be a "cross reference," in case a drug has two names commonly known to the general public.

Three: The established name and quantity of each active ingredient in the drug product. Why this? Aren't we loading down the ad with technical non-essential information? What possible difference could it make to the consumer what is in his drug as far as the advertisement is concerned? Isn't that information on the label of the bottle or box when he picks up the prescription? Isn't it enough to know that your doctor has ordered you to take so many pills so many times a day?

Four: The name of the manufacturer, packer or distributor as it appears on the label of the drug product. Why this? What advantage is there to the consumer to know this?

Five: The dosage form. That's all right. Perhaps it is important for the consumer to know that the medicine comes in pills, capsules, fluid ounces or whatever.

Six: The primary manufacturer of the finished dosage form. I understand this is to conform with a practice that may be mandatory from a federal agency. But why include this in the list of items advertised? It might be of some value on the label, but certainly not in the advertisement.

Now, let's go to your item number seven. This would add five OTHER conditions, which would have to be present in an ad: Patient profile system, charge accounts, delivery service, emergency service and prescription purchase summary for tax or other purposes.

(more)

Why do you want to make it MANDATORY for pharmacists to include all this information in advertising the price of prescription drugs? If a consumer comes into the average drug store right now, he has to walk up and ASK the pharmacist if he has a patient profile system, a system of charging his accounts, delivery service and the rest. Why do you insist on forcing this information into ads when consumers don't even get this information now? It might be a good idea to put some or all of these additional services into an ad. Many retailers actually do this. But by making such information MANDATORY, you're further loading down the ad with information which is of limited use to the consumer. If it is important, than why not the fact that a pharmacist buys the customer a cup of coffee or a soft drink why he waits?

What the consumer wants, and what he has a RIGHT to have, is the price of the prescription drug. He has a right to get this information easily, not have to phone up and ask for it, not Mickey Mouse around by learning from trial and error, but to get this information from the mass media. He should be able to open up his newspaper and read a list of commonly used prescription drugs. All he REALLY needs is the name of the drug, perhaps with a cross reference, the dosage form and the price...and the name of the place where he can get the drug.

An awful lot has been made by pharmacists who say that price advertising is going to "WIPE OUT THE LITTLE GUY." It hasn't worked that way in other lines of business. Advertising often is a means by which the "little guy" competes with the big boys, a means by which the small independent merchant gains entry into the market. Witnesses in the past hearings have asserted that price advertising of drugs would make it possible for the big chains to take out big, full page ads...thus dominating and destroying the little guys.

We do not believe this is true. As advertising specialists, we know that ads which

have SPECIFIC INFORMATION in them--as opposed to generalized puffery--get more readership than those which do not. The most specific, the most vital part of an ad is what the thing costs.

Classified ads are very small, very inexpensive ads. They don't take up a lot of space. Yet these tiny ads move an enormous mountain of goods and services because they CONTAIN SPECIFIC INFORMATION.

If the owner of a corner pharmacy were to run a two column ad in his community newspaper--AND IF HE WERE ONLY REQUIRED TO LIST NAMES OF THE DRUG, DOSAGE FORM AND PRICE--he could comfortably list 15, 20 separate drug items. But to include all of the items in your numbers three and seven he'd have to buy a lot more space. This would not work to the benefit fo those little pharmacists we hear so much about.

Summing up, we are unsure what the regulation means. If it means that restrictions are still to be placed against price advertising, we feel a constitutional question is involved. But if it means that you would allow price advertising of prescription drugs with the seven conditions in your proposal, then you are placing an additional burden on pharmacists who advertise. We do not believe this is in the public interest. Just give the consumer the name of the drug, the dosgage form and the prices of the drug in the three common quantities.

Thank you.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA

STATE BOARD OF PHARMACY

In the Matter of the Proposed
Adoption of Revised Regulation 37K
Relating to the Advertising of
Prescription Drugs

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M. S. 1974, Section 15.0412, Subdivision 4, in the above entitled matter in Room A, Veteran's Service Building, Capitol Complex, St. Paul, Minnesota on Wednesday, April 2, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed regulations by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

Copies of the proposed revised Regulation 37K are now available and may be obtained by writing to David E. Holmstrom, Secretary, Minnesota State Board of Pharmacy, 1965 Ford Parkway, St. Paul, Minnesota, 55116. Additional copies will be available at the door on the date of the hearing.

MINNESOTA STATE BOARD OF PHARMACY

By David E. Holmstrom

David E. Holmstrom, Secretary

DEH:bf
2-27-75

Ex Exhibit 13
Docket 41

FEB 28 1975

MINNESOTA STATE BOARD OF PHARMACY

PROCEDURAL RULES FOR HEARING

The purpose of the hearing is to allow interested parties to express their views and present facts bearing upon the proposed regulations. So as to provide for an orderly presentation of evidence, the following rules will be in effect during the hearing specified in the attached Notice of Hearing:

1. Anyone wishing to be heard should indicate by signing the speaking sheet, listing his name, address, and the group which he represents. The speaking sheet will be available at the main entrance to the hearing room. It is requested that each group select one speaker only to present its views.

2. The first time the witness makes a statement he should spell his name and identify the group he is representing. Prior to making any subsequent statements he should state his name and the group which he represents. He may be sworn upon his request but it is not required. If he elects not to be sworn, that may be considered in determining the weight to be given to his testimony.

3. By giving testimony, a witness, including one who may also be a member of the panel, subjects himself to questioning by the panel. However, he is subject to cross-examination by non-members of the panel only if he affirmatively consents to being so examined. A refusal to be cross-examined may be considered in determining the weight to be given to his testimony.

4. All parties interested in introducing any written matter may do so by having it marked as an exhibit and then introduced for the record. Unsworn written matter may be received, but the fact that it is unsworn may be considered in determining the weight to be given it.