

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1172 be amended to read as follows:

- 1 Page 22, between lines 18 and 19, begin a new paragraph and insert:
2 "SECTION 14. IC 16-34-1-5.5 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2008]: **Sec. 5.5. (a) A pharmacist may not be**
5 **required to dispense or sell a drug or medical device if the**
6 **pharmacist believes that the drug or medical device would be used**
7 **to:**
8 **(1) cause an abortion; or**
9 **(2) cause the death of a person by means of assisting suicide**
10 **(IC 35-42-1-2.5), euthanasia, or mercy killing.**
11 **However, before a pharmacist refuses to dispense a drug or**
12 **medical device under subdivision (2), the pharmacist shall contact**
13 **the prescribing physician to clarify the clinical condition of the**
14 **patient and the appropriateness of the prescribed drug or medical**
15 **device.**
16 **(b) If a pharmacist refuses to dispense or sell a drug or medical**
17 **device under subsection (a)(1), the pharmacy where the pharmacist**
18 **is employed shall have a policy in place to dispense or sell the drug**
19 **or medical device.**
20 **(c) A pharmacist's refusal under this section to dispense or sell**
21 **a drug or medical device may not be the basis for:**
22 **(1) a claim for damages against the pharmacist or the**
23 **pharmacy where the pharmacist is employed; or**
24 **(2) disciplinary, recriminatory, or discriminatory action**
25 **against the pharmacist by the employer.**
26 **(d) An employer who knowingly or intentionally takes**
27 **disciplinary, recriminatory, or discriminatory action against a**
28 **pharmacist employed by the employer because the pharmacist**
29 **refused to dispense or sell a drug or medical device under**
30 **subsection (a) commits pharmacy discrimination, a Class A**
31 **misdemeanor. However, the offense is a Class D felony if the**

1 **employer has a prior unrelated conviction for a violation of this**
 2 **subsection.**

3 **(e) If an employer is convicted of pharmacy discrimination**
 4 **under subsection (d), the Indiana board of pharmacy may assess**
 5 **against the employer a fine of not more than five thousand dollars**
 6 **(\$5,000) for a first offense and a fine of not more than ten thousand**
 7 **dollars (\$10,000) for a second or subsequent offense. A fine**
 8 **assessed under this subsection is in addition to any fine or other**
 9 **penalty imposed under subsection (d)."**

10 Page 56, between lines 15 and 16, begin a new paragraph and insert:

11 "SECTION 51. IC 25-26-13-4, AS AMENDED BY P.L.204-2005,
 12 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2008]: Sec. 4. (a) The board may:

14 (1) promulgate rules and regulations under IC 4-22-2 for
 15 implementing and enforcing this chapter;

16 (2) establish requirements and tests to determine the moral,
 17 physical, intellectual, educational, scientific, technical, and
 18 professional qualifications for applicants for pharmacists'
 19 licenses;

20 (3) refuse to issue, deny, suspend, or revoke a license or permit or
 21 place on probation or fine any licensee or permittee under this
 22 chapter **or fine an employer under IC 16-34-1-5.5;**

23 (4) regulate the sale of drugs and devices in the state of Indiana;

24 (5) impound, embargo, confiscate, or otherwise prevent from
 25 disposition any drugs, medicines, chemicals, poisons, or devices
 26 which by inspection are deemed unfit for use or would be
 27 dangerous to the health and welfare of the citizens of the state of
 28 Indiana; the board shall follow those embargo procedures found
 29 in IC 16-42-1-18 through IC 16-42-1-31, and persons may not
 30 refuse to permit or otherwise prevent members of the board or
 31 their representatives from entering such places and making such
 32 inspections;

33 (6) prescribe minimum standards with respect to physical
 34 characteristics of pharmacies, as may be necessary to the
 35 maintenance of professional surroundings and to the protection of
 36 the safety and welfare of the public;

37 (7) subject to IC 25-1-7, investigate complaints, subpoena
 38 witnesses, schedule and conduct hearings on behalf of the public
 39 interest on any matter under the jurisdiction of the board;

40 (8) prescribe the time, place, method, manner, scope, and subjects
 41 of licensing examinations, which shall be given at least twice
 42 annually; and

43 (9) perform such other duties and functions and exercise such
 44 other powers as may be necessary to implement and enforce this
 45 chapter.

46 (b) The board shall adopt rules under IC 4-22-2 for the following:

47 (1) Establishing standards for the competent practice of

- 1 pharmacy.
- 2 (2) Establishing the standards for a pharmacist to counsel
- 3 individuals regarding the proper use of drugs.
- 4 (3) Establishing standards and procedures before January 1, 2006,
- 5 to ensure that a pharmacist:
- 6 (A) has entered into a contract that accepts the return of
- 7 expired drugs with; or
- 8 (B) is subject to a policy that accepts the return of expired
- 9 drugs of;
- 10 a wholesaler, manufacturer, or agent of a wholesaler or
- 11 manufacturer concerning the return by the pharmacist to the
- 12 wholesaler, the manufacturer, or the agent of expired legend drugs
- 13 or controlled drugs. In determining the standards and procedures,
- 14 the board may not interfere with negotiated terms related to cost,
- 15 expenses, or reimbursement charges contained in contracts
- 16 between parties, but may consider what is a reasonable quantity
- 17 of a drug to be purchased by a pharmacy. The standards and
- 18 procedures do not apply to vaccines that prevent influenza,
- 19 medicine used for the treatment of malignant hyperthermia, and
- 20 other drugs determined by the board to not be subject to a return
- 21 policy. An agent of a wholesaler or manufacturer must be
- 22 appointed in writing and have policies, personnel, and facilities
- 23 to handle properly returns of expired legend drugs and controlled
- 24 substances.
- 25 (c) The board may grant or deny a temporary variance to a rule it
- 26 has adopted if:
- 27 (1) the board has adopted rules which set forth the procedures and
- 28 standards governing the grant or denial of a temporary variance;
- 29 and
- 30 (2) the board sets forth in writing the reasons for a grant or denial
- 31 of a temporary variance.
- 32 (d) The board shall adopt rules and procedures, in consultation with
- 33 the medical licensing board, concerning the electronic transmission of
- 34 prescriptions. The rules adopted under this subsection must address the
- 35 following:
- 36 (1) Privacy protection for the practitioner and the practitioner's
- 37 patient.
- 38 (2) Security of the electronic transmission.
- 39 (3) A process for approving electronic data intermediaries for the
- 40 electronic transmission of prescriptions.
- 41 (4) Use of a practitioner's United States Drug Enforcement
- 42 Agency registration number.
- 43 (5) Protection of the practitioner from identity theft or fraudulent
- 44 use of the practitioner's prescribing authority.
- 45 SECTION 52. IC 34-30-2-70.5 IS ADDED TO THE INDIANA
- 46 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 47 [EFFECTIVE JULY 1, 2008]: **Sec. 70.5. IC 16-34-1-5.5 (Concerning**

- 1 **a pharmacist or pharmacy that refuses to dispense or sell certain**
- 2 **drugs or medical devices)."**
- 3 Renumber all SECTIONS consecutively.
(Reference is to EHB 1172 as printed February 22, 2008.)

Senator DROZDA