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Statement of
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Before The
Senate Committee on Aging
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Good afternoon Chairman Kohl and Members of the Special Committee on Aging. Thank you for the opportunity to be here today and discuss with you the concerns surrounding the dispensing of controlled substances to patients in long term care facilities.

I represent the National Association of Boards of Pharmacy (NABP), the association of state and provincial pharmacy regulatory boards and jurisdictions in the United States, Guam, Puerto Rico, the Virgin Islands, Canada, Australia, and New Zealand. Our purpose is to assist states and provinces in protecting the public health.

With me today is William Winsley, executive director of the Ohio Board of Pharmacy and President-elect of NABP. Mr Winsley is uniquely qualified to speak on the issues before your committee today because of his extensive background in pharmacy practice and regulation and his was the first state to be challenged by these issues.

NABP appears before you today as an objective third party with our only interest being the protection of the patient and maintenance of the integrity of the medication distribution and dispensing systems. As an association of state regulatory agencies, we are not involved in the economics of the profession of pharmacy and therefore are removed from any direct concern with the economic impact on long term care and long term care practitioners that compliance with federal and state laws and regulations may have unless patient care suffers as a result of burdensome regulation.

Mr Chairman and Committee members it is important to temper today's hearing with the realization that emotions are running high and some of the dire consequences predicted to occur have been extrapolated beyond reason and in all likelihood will probably not occur or will not occur to the extent indicated. Furthermore, the accusations which characterize this struggle have clouded the issue and obstructed necessary avenues of communication. We concur that patient care is affected but also acknowledge that diversion is a serious concern. To what extent each of these unfortunate outcomes is occurring and the reasons for their occurrence are at the heart of this hearing.

As NABP approached this issue we sought to ignore the inflammatory comments and tried instead to determine what the facts are and what possible solutions exist. In this regard we posed two questions to those with whom we spoke:

To the practitioners and long term care industry, we asked whether compliance with the statutes and regulations that the DEA indicated are intractable could occur but has not occurred because of the cost and inconvenience to the industry. To the DEA and regulatory authorities we asked whether the basis for declaring that industry standards were illegal was statutory and regulatory or interpretation of statutes and regulations.

To be perfectly honest, NABP believes that the inflexible positions advanced are not entirely correct or absolute. Furthermore, addressing the issues under consideration today in an isolated way, even if approached with the wisdom of Solomon might prevent the child from being split but ultimately would result in further complications and conflicts because the issues encompass significant areas and interpretations of the Controlled Substances Act (CSA). To this end, NABP's member states adopted a resolution at their fall regional meetings, for final consideration at our May Annual Meeting, calling for NABP to invite the DEA and all stakeholders, those in long term care and other practice settings, to work with us to review and pose revisions to the Controlled Substances Act that address the issues under consideration today as well as other issues that need to be addressed because of significant changes in practice and patient care, technology, and regulation. NABP is hopeful that this Committee will support this effort and, through whatever authority available to it, bring the parties to the table to engage in this much needed and valuable effort on behalf of the patient and integrity of the medication distribution and dispensing systems.

To the immediate questions under review by this Committee and affecting patient care in long term care practices, NABP recommends the following course of action: the DEA establish a new registration category for LTC facilities, as defined by the states, with similar privileges and responsibilities as now exist for hospitals. If this could be enacted the dilemma surrounding "chart orders" and the "agent of the prescriber" could move forward toward a resolution. Presently, the NABP Model Act and a report (Attached) developed in collaboration with the American Society of Consultant Pharmacists (ASCP) define LTC facilities within the definition of "Institutional Facilities." That definition includes hospitals and would place upon LTC facilities the same legal and regulatory standing. It should be noted however, that diversion, unacceptable standards of care for our elderly and outdated regulations would not be resolved by this immediate action. For those broader and more encompassing considerations, we again recommend a more comprehensive analysis and revision of the CSA as we indicated earlier.

Thank you for the opportunity to appear here today and share our insight. Mr Winsley and I would be glad to respond to any questions that you or members of the Committee might have for us.