House
Legislative
Analysis
Section

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PSYCHOTROPIC DRUG USE IN SCHOOLS

House Bill 5083 as passed by the House
Sponsor: Rep. Gary Woronchak

House Bill 5085 as passed by the House
Sponsor: Rep. Sue Tabor

House Bill 5086 as passed by the House
Sponsor: Rep. Thomas George

Second Analysis (12-20-01)
Committee: Education

THE APPARENT PROBLEM:

Recently, two policy institutes have released reports about Ritalin abuse: The Heritage Foundation published "Why Ritalin Rules" in Policy *Review* (April/May 1999); and, the Mackinaw Center for Public Policy issued a *Viewpoint on Public Issues* entitled "A Mixed Message to Children: Say "No" to Drugs, but "Yes" to Ritalin?" (January 8, 2000).

According to these and other reports, in the year 2000 approximately six million children in the United States—roughly one child in every eight, or 12½ percent—were taking a medication called Ritalin. This was an increase of millions over 1975 when the Food and Drug Administration first approved the drug for behavior problems. Then only 150,000 children took Ritalin. Ritalin use among schoolchildren seems to be a cultural practice that is prevalent mostly in the United States, although Canada and Australia also report a significant increase in the incidence of prescription and use. Indeed, five percent of the world's population now accounts for 85 percent of the world's consumption of the drug. Among the fifty states, Michigan ranks third in per capita use of Ritalin, and one report indicates that five percent of pediatricians in this state prescribe 50 percent of the drug.

Ritalin, or methylphenidate, is one of a wide array of psychotropic drugs generally categorized in seven categories and used to treat many different diseases and conditions. Generally, the drug Ritalin is prescribed for children who have an abnormally high level of activity, or what has come to be called attention-deficit hyperactivity disorder (ADHD). According to the National Institute of Mental Health, about three to five percent (some say six percent) of the general population has the disorder, which is characterized by agitated behavior and an inability to focus on tasks, and it is diagnosed eight times more often in boys than girls.

Ritalin is a central nervous system stimulant. It has effects similar to, but more potent than, caffeine and less potent than amphetamines. Despite the fact that it is categorized as a stimulant, it has a notably calming effect on hyperactive children, and also a focusing effect on those with ADHD. Increasingly there are reports that those without ADHD use the drug, as well, including college students whose aim it is to sharpen their memory during study sessions, and also reduce their desire for sleep and food.

The increased levels of use and abuse of Ritalin nationwide have prompted major plaintiffs' attorneys in the tobacco and asbestos suits to charge Ritalin's manufacturer, Novartis (formerly Ciba Geigy) with fraud and conspiracy in class action suits. See *BACKGROUND INFORMATION* below.

Some have speculated that the market-driven restructuring of the health care industry has contributed to the increase in Ritalin use, since it is much cheaper for a health maintenance organization to treat ADHD with drugs rather than psychiatric analysis and other behavioral therapies. (A typical month-long prescription of Ritalin is $30 to $60, while a typical psychiatric analysis is $1,500, or at least twice as much as the coast of Ritalin for a year.) Further, physicians are pressured to spend less time with patients, and evaluation of those whose diagnosis may be ADHA takes time. Yet others have speculated that Ritalin use has increased because

school environments require more order and self-control as the students there focus more carefully on academic achievement to meet higher subject matter standards and pass high stakes tests. Those who suspect a school-based cause for the increase in Ritalin use say teachers customarily recommend that parents have their children evaluated for attention disorders, if their behavior in school seems to warrant doing so.

Ideally diagnosis of a child involves a visit with the child, reports on his or her schoolwork, examination of his or her home life, and discussions with parent and teachers to develop a profile of the child and his or her situation. The disorder is complex, based on behavior that is to one degree or another present in all children. Deciding when a child is affected is a matter, then, of judging degrees. The diagnosis is even more difficult because ADHD frequently appears with other disorders, including Tourette Syndrome, lead poisoning, fetal alcohol syndrome and retardation. In addition, many other conditions—depression, manic depressive illness, substance abuse, anxiety and personality disorder—share similar symptoms.

In order to ensure that the diagnosis of ADHD is carefully undertaken only by physicians, to delineate the role of educators in making evaluations and referrals, and also to help ensure that the use of Ritalin is more appropriately prescribed by physicians, legislation has been introduced.

THE CONTENT OF THE BILLS:

The bills would amend the Public Health Code and the Revised School Code to establish policies concerning the use of psychotropic medication by children in schools. Generally the bills would require that a 15-member psychotropic drug use advisory council be established in the Department of Community Health; that a model policy about chronic behavioral issues and psychotropic medication for students be developed and distributed by the Department of Education so local policies could be put in place before the 2002-2003 school year; and, that teachers and school officials be provided with a brochure that describes frequently prescribed psychotropic drugs. A detailed summary of each bill follows.

House Bill 5083 would amend the Public Health Code (MCL333.2217) to create the Psychotropic Drug Use Advisory Council within the Department of Community Health. The council would be required to investigate, hold public hearings, compile a report, and recommend policies pertaining to psychotropic drug use among children.

The council would be required to use the following information and issues as guidelines in formulating its report:

-relevant literature and current research, including professional practice guidelines;

-surveys conducted by the advisory council on the extent of behavioral disorders and the policies and treatments used in treating those disorders;

-the relationship between behavioral disorders and learning disabilities, and their differences;

-similarities and differences between school district policies that deal with the recommended or mandated use of psychotropic drugs and their relationship to school attendance (under the bill, this review of policies would include general school policies, as well as special education policies);

-the pattern of psychotropic drug use among children over the past 25 years; and

-psychotropic drug use among children by age; gender, and school district.

In conducting its investigation, the advisory council would be required to hold at least three public hearings in various geographic and socioeconomic areas throughout the state. Further, the bill would require that the advisory council submit its report to the legislature before January 1, 2003.

The advisory council would have 15 members, appointed by the department. The members would include: one representative from the Department of Community Health, the Department of Consumer and Industry Services, and the Department of Education; a licensed physician; a licensed psychologist; a licensed psychiatrist; a state-certified special education teacher; a certified general education teacher; a school principal; a school counselor; a certified school psychologist; a state-approved social worker; a certified school nurse; and, two parents.

House Bill 5085 would amend the Revised School Code (MCL 380.1180) to require that not later than 90 days after the effective date of this legislation, the Department of Education develop and distribute to all school districts, intermediate school districts, and public school academies, a state model policy concerning chronic behavioral issues and

psychotropic medication for pupils. Under the bill, the state model policy would be required to include all of the following:

• that, if school personnel suspect a child has a chronic behavioral condition, or if requested by a child's parent, school personnel would be permitted to do any of the following:

i) discuss the child's behavior with the child's parent;

ii) if appropriate and with parental consent, refer the child for an educational evaluation by appropriate educational evaluators;

iii) if appropriate, recommend to the child's parent that the child be evaluated by an appropriate health care provider;

iv) refer the parent to appropriate health professionals affiliated with the school district, intermediate school district, or public school academy for possible evaluation of the child; and,

v) if behavior issues persist after taking the steps under subparagraphs i) to iv), follow local procedures to provide specialized educational services as appropriate for the child.

• that a teacher would not be permitted to:

i) make a psychological or medical diagnosis of a behavioral condition or disorder in a child; or,

ii) recommend a psychotropic drug for any child.

Further, House Bill 5085 specifies that not later than the beginning of the 2002-2003 school year, the board of a school district, a local act school district, or intermediate school district, or the board of directors of a public school academy, would be required to adopt and implement a local policy concerning chronic behavioral issues and psychotropic medication for pupils that was consistent with the state model policy. However, the bill specifies that if a school district or intermediate school district operates or provides educational services for students in a residential care facility for court-placed children, the local policy could exclude that facility, and the children and teachers in that facility. Under the bill, a board or board of directors would be required to notify parents of the local policy, and the bill specifies that the notification could be made by including the policy in a student handbook that was distributed to students and parents at the beginning of each school year. [Under the bill, "parent" is defined to mean a child's parent, legal guardian, or other person in parental relation. Further, "education evaluator" means appropriate school personnel, including certified school psychologists, approved school social workers, approved or certified speech pathologists, school nurses, and school counselors.]

House Bill 5086 would amend the Public Health Code (MCL 333.9171) to require the Department of Community Health to consult with appropriate professional organizations, and to develop and make available on its Internet web site, information regarding psychotropic prescription drugs that are most frequently prescribed to minors in this state. Under the bill, the department would be required to assure that the information made available contained at least all of the following:

-the medical condition or conditions for which each psychotropic drug is prescribed and the intended benefit;

-the actual and possible long-term and short-term side effects, including the signs and symptoms of each effect and the frequency of each; and,

-other information considered relevant by the department.

BACKGROUND INFORMATION:

Ritalin abuse. Because of its stimulant properties, there have been reports of methylphenidate abuse by people for whom it is not a medication. Some individuals abuse it for its stimulant effects: appetite suppression, wakefulness, increased focus/attentiveness, and euphoria. When abused, the tablets are taken either orally, or crushed and snorted. Some abusers dissolve the tablets in water and inject the mixture. Because the medicine has the potential for abuse, the U.S. Drug Enforcement Administration (DEA) has placed stringent Schedule II controls on their manufacture, distribution, and prescription. For example, DEA requires special licenses for these production and distribution activities, and prescription refills are not allowed. In addition, states may impose further regulations, such as limiting the number of dosage units per prescription.

Class action suits. Class action suits for fraud and conspiracy in over-promoting the stimulant medication Ritalin (methylphenidate) have been filed in three states by leading tobacco and asbestos trial attorneys. The first suit was brought in a Texas court

by the Dallas law firm, Waters and Kraus, and will be nationwide in scope. Waters and Kraus are leaders in major asbestos cases. Two additional suits have now been filed in federal court in California and New Jersey. A plaintiffs' attorney best known for his work in the tobacco litigation, Richard Scruggs of Pascogoula, Mississippi, is leading the attorneys bringing the suits.

The initial class action suit, filed in Texas, alleges that the manufacturer of the drug Ritalin, the American Psychiatric Association, and an association of people with attention deficit problems called CHADD (an acronym for Children and Adults with Attention-Deficit/Hyperactivity Disorder) have "planned, conspired, and colluded to create, develop and promote the diagnosis of Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD) in a highly successful effort to increase the market for the drug Ritalin." The law firm Waters & Kraus, which specializes in cases related to toxic exposure and cancer, has filed the suit entitled *Hernandez, Plaintiff, Individually and on Behalf of all Others Similarly Situated v. Ciba Geigy Corporation, USA, Novartis Pharmaceuticals Corporation, Children and Adults with Attention-Deficit/Hyperactivity Disorder (CHADD), and the American Psychiatric Association.* The suit states allegations based on fraud and conspiracy from approximately 1955 through 1995. For more information visit the web site for the suits at www.ritalinfraud.com.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that with regard to House Bill 5083, administrative costs are anticipated as the Psychotropic Drug Use Advisory Council would be required to hold at least three public hearings throughout the state, as well as to investigate and compile a report pertaining to psychotropic drug usage among children that would be submitted to the legislature before January 1, 2003. The agency notes that there is potential for the administrative costs to be covered or offset with existing funds and resources of the Department of Community Health. (12-20-01)

A spokesperson for the Department of Community Health has observed that the commissions of this sort that the department has convened previously require a budget of about $250,000 annually.

Further, the House Fiscal Agency notes that House Bill 5086 has fiscal implications which should be able to be accomplished within the existing resources of the Department of Community Health that are committed to development and maintenance of the department's web site. (12-21-01)

Finally, the agency notes that House Bill 5085 would have no fiscal impact. (12-20-01)

ARGUMENTS:

For:

Proponents of this legislation note that the frequency of Ritalin use among Michigan school children is alarming, and they suggest the amount of medication prescribed suggests a problem of epidemic proportions. They note that a sharp rise in diagnoses of attention deficit disorder (ADD) is directly tied to a 700 percent increase in the amount of Ritalin produced in the United States, and that an increase of this magnitude in the use of a single medication is unprecedented for a drug that is categorized and regulated as a controlled substance. During committee deliberations, proponents reported that Dr. Lawrence Diller, M.D., a behavioral pediatrician who practices in California, recently compiled the following information from the National Disease and Therapeutic Index of IMS Health (a drug company rating organization): In a recent survey of doctors to determine changes in their use of psychotropic drugs for children between 1995 and 1999, stimulant drug use was up 23 percent; the use of Prozac-like drugs for children under 18 was up 74 percent, for those between seven and 12 it was up 151 percent, and for youngsters under six, it was up 580 percent. For young people under 18, the use of mood stabilizers other than lithium was up 40 fold, and the use of new anti-psychotic medications such as Risperdal had grown nearly 300 percent.

Proponents of these bills note that increases in drug use by young people of this kind and magnitude warrant the attention of policymakers. That is especially true in Michigan, they argue, because the state ranks third in the nation for psychotropic drug use by children.

Supporters of the legislation report they "are hearing from many parents" who say "some teachers are not only implying that a child is ADD or ADHD, based on their own observations and comparison to other students, but are actually suggesting and even recommending that a particular child be put on Ritalin." These parents feel pressured "and in some cases threatened by the teacher or school official to put their child on Ritalin, or else…"

The increase in psychotropic drug use among school children, the fact that nationally Michigan ranks third in use, and the reports of real (or even perceived) threats by school personnel, indicate that Michigan needs a comprehensive study of psychotropic drug use in the state. In addition to a careful study of diagnostic and prescription practices, each school needs to adopt a set of policies to ensure appropriate evaluations and referrals by school personnel. These bills would establish a statewide advisory committee, require that a state model policy be developed and distributed to school districts, and give more information about psychotropic drugs to school personnel.

Against:

Opponents of this legislation note that the actual decision to place a child on psychotropic drugs is already by law a medical decision. Only physicians can write prescriptions. They note that while reports indicate that Kalamazoo County is in the top 1.4 percent of counties in the nation in the number of prescriptions for ADHD per capita, and that 4.53 percent of children in that county take medication for ADHD, this rate is within the guidelines set by the United States Surgeon General since the overall prevalence of ADHD nationwide is between three and five (some say six) percent. Some opponents of the bills point out that Kalamazoo County "could be doing it right" and that other counties could be denying much-needed benefits to children with behavior disorders. Or, opponents say, there could well be other explanations for the relatively high incidence in Kalamazoo County, explanations that demystify the differences in use among various regions of the state. For example, there could be a concentration of certain specialists in medical care in certain areas; or it could be that many families travel from a surrounding rural area to a population center in order to receive specialized medical care at a centrally located state-of-the-art facility; or, the socio-economic status of the population may generate more frequent medical evaluations; or, the region may be one in which parents have higher than average expectations for academic performance among children.

Opponents of the legislation also note that there seems to be a persistent misunderstanding about the evaluation services provided by school personnel for children with behavior problems. They note that "most schools do not have *medical* personnel on staff. They do have psychologists, social workers and/or licensed professional counselors, and state certified special education teachers available, who work together as a team to assess the special needs of children and develop intervention strategies so that each child can experience learning success to the best of his or her ability." Often these teams are based in the intermediate school district office, and they serve individual school districts as consultants. The team's school-based assessments save poor families money, since a psychological assessment customarily takes between three and five hours and can cost (in west Michigan, according to testimony) between $315 to $550 if performed in the private sector.

Others who expressed concern that the bills would stigmatize those who need the services of school-based clinics point out that "teachers have a very real role in the evaluation of a child for potential ADHD. Like many mental disorders and many chronic disorders, the diagnostic criteria for ADHD involves patient history and behavioral assessment without the benefit of laboratory or radiologic confirmation. The criteria require the physician to confirm the existence and persistence of symptoms and behaviors in both the home and the school (or work) environment." However, before a referral to a physician is contemplated and medication prescribed, the National Association of School Psychologists recommends a series of nine effective interventions, each tailored to the unique strengths and needs of every student." These interventions require classroom modifications, behavior management systems, direct instruction, collaboration and consultation with families, monitoring by a case manager, education of school staff, access to special education services, collaboration with community agencies, and interventions to develop self esteem.

The National Association of School Psychologists observes that "research indicates that medication can be an effective treatment for many students with attention problems, and can enhance the efficacy of other interventions. The NASP believes that a decision to use medication rests with parents, and is not an appropriate contingency for school placements and interventions." The organization's "Position Statement on Students with Attention Problems" (adopted in July 1998) continues "A thorough, differential assessment is essential prior to pharmacological intervention to assure that the most appropriate medication (if any) is prescribed. Furthermore, medication should be considered only after attempting or ruling out alternative, less invasive treatments. When medication is considered, NASP strongly recommends: 1) that behavioral and academic data be collected before and during blind medication trials to assess baseline conditions and the efficacy of medication; and 2) that communication between school, home, and medical personnel

emphasize mutual problem solving and collaborative teamwork; and 3) that the student's health, behavior, and academic progress while on medication are carefully monitored and communicated to appropriate medical providers."

Finally, some opponents of the legislation note that Ritalin, and other similar products used to treat ADHD, have earned the approval of the Federal Drug Administration for use in pediatric populations. Indeed, these products "may be among the most thoroughly researched medications on the market today," according to the spokesperson for the Michigan Psychiatric Society. However, "the persistent controversy and what might be termed a 'climate of fear' prompted the Council of Scientific Affairs of the American Medical Association to conduct an exhaustive review of the research, which was reported in the Journal of the American Medical Association in 1998. The investigators discovered that the condition is more likely to be under-diagnosed than over-diagnosed. The evidence suggests that stimulants in ADHD populations are simply being used more broadly, for longer periods, and without interruptions in recent years than was done previously. The disorder is now being recognized to be persistent into the adolescent and adult years." Further, "another significant recent study found that medications are the single most effective way to treat ADHD. The study emphasized careful evaluation and did recommend that medications be used in conjunction with other therapeutic behavioral approaches, but these approaches alone are not effective."

Those who raise these issues seek a positive approach to evaluation and treatment that fosters understanding and cooperation. They fear this legislation singles out a mental disorder, casts it negatively, and could well stifle the important conversation between parents and teachers about the well-being of children.

POSITIONS:

The Department of Education supports House Bill 5085. (12-20-01)

Oakland Schools supports the bills. (12-20-01)

The Michigan Education Association supports the bills as amended on the House floor. (12-20-01)

The Michigan Federation of Teachers and School-Related Personnel supports House Bills 5083 and 5086, and has no position on House Bill 5085. (12-20-01)

The Middle Cities Education Association supports House Bills 5083 and 5086. (12-20-01)

The Michigan Association of Secondary School Principals supports the bills. (12-20-01)

The Department of Community Health opposes House Bill 5083 because there is no funding for the statewide advisory council despite its comprehensive and important charge. (12-20-01)

The Michigan Association of School Administrators supports House Bills 5083 and 5086. (1-4-02)

The Michigan Association of School Psychologists supports the concept of the House Bill 5083 but seeks amendments. The association supports House Bills 5085 and 5086 but seeks an amendment to each that would define psychotropic drug. (1-4-02)

The Michigan Chapter of the National Association of Social Workers supports House Bill 5083. The chapter supports House Bills 5085 and 5086 but seeks an amendment to each that would define psychotropic drug. (1-4-02)

The Michigan Association of School Social Workers supports the House-passed version of House Bill 5083. The association supports House Bills 5085 and 5086 but seeks an amendment to each that would define psychotropic drugs. (1-4-02)

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.