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Special Committee on Medical Marijuana
Presented by Alexandra Blasi, Executive Secretary
On behalf of
The Kansas State Board of Pharmacy
October 12, 2022

Chairman Olson, Vice Chairman Barker, and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this testimony regarding medical marijuana in Kansas, specifically related to H Sub for SB 158 and SB 560. The Board licenses individuals and facilities in relation to the practice of pharmacy, with the mission of protecting the public health, safety, and welfare. The Board is also responsible for overseeing, tracking, and monitoring the dispensing/sale of controlled substances, drugs of concern, and over-the-counter methamphetamine precursors. The Board appreciates the opportunity to provide testimony concerning several aspects of proposed legislation.

Kansas Prescription Monitoring Program (K-TRACS)

The Board supports inclusion of medical marijuana dispensations in the Kansas prescription monitoring program, K-TRACS, as well as a physician requirement to review K-TRACS records prior to recommending medical marijuana for a patient. In 2008, the legislature created the Prescription Drug Monitoring Act under the Board's authority to establish and maintain a system to collect and store prescription dispensing information for all Schedule II through IV controlled substances and other drugs of concern. Each dispenser (pharmacy) is required to electronically submit information to K-TRACS for each controlled substance prescription or drug of concern dispensed in an outpatient setting. Kansas has joined 54 other states and U.S. districts/territories in using a prescription drug monitoring program in an effort to reduce the diversion and improper use of controlled substances and drugs of concern, while ensuring continued availability of these medications for legitimate use. K-TRACS includes all retail and outpatient dispensing records for any controlled substance or drug of concern dispensed in or into Kansas. If a prescriber or a pharmacist has a concern about a patient, they can look up the patient's prescription history in K-TRACS. Because K-TRACS is a real-time, web-based system, patient information can be obtained instantly from any location at any time with the proper login credentials. Prescribers and pharmacists must register for K-TRACS through the Board prior to utilizing the system.

The Board supports requiring physicians to query K-TRACS and review a patient's medical marijuana and controlled substance history prior to recommending medical marijuana. Only the proposed language in SB 560 achieves this, but both bills confuse the reporting issue. Physicians should not report anything to the program. This is inconsistent with how the program functions and K-TRACS does not have this capability. Instead, physicians should be required to review a patient's K-TRACS record and then the retail dispensary should be required to report the dispensation to K-TRACS, which is already required in the bills.

Both bills require retail dispensaries report to K-TRACS the information required by K.S.A. 65-1683. The Board previously provided testimony that has been reviewed by the legislature and incorporation of rulemaking authority for the Board has resolved all previous issues.

Recently, SB 200 amended the Prescription Monitoring Program Act to include the term "delegate." Therefore, the Board recommends updating the term "physician designee" to "delegate" in the proposed legislation, since it is a defined term under K.S.A. 65-1682.

As for enforcement, the Board inquires of the Committee: How will Alcoholic Beverage Control know if a retail dispensary is timely or accurately reporting to K-TRACS? How will the Board of Healing Arts or Kansas Department of Health and Environment know if a physician has requested the appropriate patient report from K-TRACS? Due to the sensitive nature of patient data contained within K-TRACS, it would be inappropriate to provide broad K-TRACS access to additional state agencies, but it would be possible to authorize the Board to provide certain reports or information to other agencies vested with enforcement similar to provisions set forth in K.S.A. 65-1685. Board staff would be able to remove or redact K-TRACS information not relevant to the enforcement action to better protect patient privacy. However, this is not addressed in the proposed legislation.

The Board also supports the proposed language that ensures protection of the sensitive information contained in K-TRACS: "Information submitted to or received from the prescription monitoring program database shall be privileged and confidential, and shall be subject to the requirements of K.S.A. 65-1685 and 65-1687, and amendments thereto." The Board also notes multiple provisions throughout the bills making patient and caregiver information confidential and not subject to further disclosure. Once this information is reported to K-TRACS, it will be available to all K-TRACS users, including physicians, pharmacists, APRNs, dentists, optometrists, coroners/medical examiners, and their registered delegates. Board staff and authorized regulatory agencies would have access, as well. Furthermore, the Board is connected to two national interstate data sharing hubs for prescription monitoring information, and shares patient data with 36 states, as well as the Military Health System, Veterans Health Administration, and Indian Health System. The Board is unaware of system controls that would segregate controlled substance prescriptions from medical marijuana dispensations, which could allow this information to travel to similar providers in other states that query Kansas patients.

Finally, the Board contracts with a vendor for the K-TRACS software and data hosting services. Fees and terms are set by the contract between the vendor and the Board and will require revision to the current agreement. K-TRACS is not currently configured to accept anything except controlled substance prescription medication information. Fortunately, the vendor has provided medical marijuana reporting and hosting services in other states and this change would require minimal software reconfiguration. The one-time implementation costs ($50,000) and ongoing annual contractual fees ($20,000) have been included in previous fiscal impact statements, in addition to other agency overhead. The Board appreciates the legislature's willingness to authorize necessary transfers to the Board of Pharmacy fee fund from medical marijuana revenues to cover these costs.

Pharmacist Involvement

The Board supports the requirement for a pharmacist consultant at each medical marijuana dispensary. Arkansas and Louisiana both require retail dispensaries to consult with a licensed pharmacist who is available during operating hours to assist with operations, develop policies, and provide patient counseling. Since medical marijuana can interact with other drugs on the patient profile, a pharmacist consultant can provide much-needed expertise with regard to drug interactions or other contraindications. A secondary concern is the amount of science/calculation required at the dispensary with which a pharmacist might assist. Because potency of each "batch" of medical marijuana is different, the recommending physician provides the quantity/day and days supply. The Board's understanding is that employees of the dispensary calculate the amount (weight) for the dispensation based on the potency of the particular product being dispensed. A pharmacist consultant would be very beneficial and ensure patient safety.

The Board requests that the Committee consider authorizing the Board to collect a fee associated with the pharmacist consultant registration to cover costs of administrative overhead for the agency. While both bills authorize the Board to adopt regulations for this registration, they are silent on whether the Board may charge a fee. Clarification on this matter would be appreciated.

Labeling, Packaging, and Storage

The Board supports requirements to carefully label medical marijuana products, mandate child-resistant packaging, and encourage safe storage to prevent accidental ingestion or other adverse events. Sixteen states require child-resistant or similar packaging. There is also growing evidence in pediatric populations of accidental ingestion due to the allure of edibles considered "look-a-likes" of common foods, candies, or beverages. Labeling or advertising that appeals to children can be dangerous and many states have taken steps to prohibit these practices. Seven states have opaque packaging requirements so children cannot see what's inside. The Board respectfully requests the Legislature carefully consider these issues prior to finalizing language.

Other Responsibilities

The Board is ready and willing to take on all other responsibilities assigned in the proposed legislation, including serving on the Medical Marijuana Advisory Committee and adoption of necessary administrative regulations.

Respectfully submitted.