

Testimony concerning HB 2219
House Judiciary Committee
Presented by Alexandra Blasi, Executive Secretary
On behalf of
The Kansas State Board of Pharmacy
February 18, 2019

Mr. Chair and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this testimony regarding HB 2219. The Board licenses a variety of facilities and individuals in relation to the practice of pharmacy, with the mission of ensuring that all persons and entities conducting business relating to the practice of pharmacy in this state are properly licensed and registered in order to protect the public's health, safety, and welfare. While the Board understands the need for transparency in government and supports the tenants of the Kansas Open Meetings Act, HB 2219 creates some challenges for our agency that could ultimately result in increased costs and inefficiencies. In fact, the Board believes so strongly in public involvement at our meetings that we have increased accessibility by making them available via phone and video conference for all members of the public.

The proposed amendments to K.S.A. 75-4318 are of concern to the Board for four key reasons:

1. The brief timeline for accomplishing review, finalization, and posting of the recording on the Board website;
2. The lack of Board review or approval of audio or video recordings made available to the public;
3. The cost to the Board associated with increased web storage for archive recordings; and
4. The quality of current recording equipment and potential costs associated with upgrades and monitoring.

To accommodate scheduling conflicts, Board meetings are routinely held on Friday from 8:30 a.m. to 4:30 p.m. This bill would require staff make meeting audio available by 4:30 p.m. on a Saturday, which would necessitate work while our office is closed on Friday night or during the day on Saturday. This is not reasonable. In addition, the Board is authorized under the Kansas Open Meetings Act to go into executive session for certain confidential matters and sometimes suspends their open meeting to handle matters under the Kansas Administrative Procedures Act. This often results in multiple (10-20) recording fragments over the course of a one-day meeting, some of which contain confidential data and private health information. The process of reviewing each recording, piecing the entire open meeting audio together, and then uploading the official recording to the website could be time-consuming. Since the final product will be a public record available on the web for all eternity, it may also be important for a supervisor to review the audio before it is posted to ensure there were no "glitches" with the recording or accidental captures of other confidential proceedings. Other state boards have been sued as a result of failing to redact documents, accidentally publishing confidential aspects of applications or disciplinary actions, or posting private information on their websites. A thorough review may even require consulting with the Board's attorney or listening to the entire audio which, depending on the length of the meeting, could take quite a bit of staff time. This is all further complicated if the Board schedules a multi-day meeting. Therefore, the Board strongly encourages the

Committee consider amending the bill to provide a more reasonable timeline, and would suggest a minimum of five business days to upload these recordings.

At most agencies, written minutes are compiled or prepared by agency staff. Since staff carry out the direction of the board, each board has a responsibility to review the minutes prepared before they are released to the public. The Board of Pharmacy does this by a formal vote to approve the minutes from the previous meeting. It is only after this formal approval that staff releases minutes to the public by publishing them on our website and Public Square. The process outlined in HB 2219 completely removes this authority from the Board and, in some regard, eliminates the need for written minutes. As the previous paragraph indicates, this also places a heavier burden on the staff member responsible for the recording and any supervisor conducting the review.

The bill does not contemplate expenditure authority or a revenue source for costs associated with additional web storage space for compiled recordings. Also, the bill provides no language that would allow the Board to purge any recording from our website at any time, ever. While that may not matter today, it is short-sighted. The bill fails to account for any limitation on the look-back period for these archived meetings and, therefore, has the potential to require a large amount of storage space for audio or video recordings. Each agency pays for its own website, storage space, etc., and would be charged for any increase necessary to accommodate these recordings. In addition, the Board does not currently record open meetings of Board committees such as the K-TRACS Advisory Committee, Collaborative Drug Therapy Management Committee, and Continuing Education Review Committee. In addition to the additional storage required for Board meeting audio recordings, the Board would also have to begin staffing, recording, and maintaining web storage space for each of these additional statutorily-mandated committees which meet on monthly and quarterly bases.

While we routinely create temporary recordings of open meetings to facilitate accurate minutes, these recordings are collected on inexpensive and low-quality devices. Posting low-quality recordings on our website may generate confusion or questions as to what transpired during the meeting and result in increased inquiries to our office. The Board is also concerned that low-quality recordings would not comply with this legislation. If we were to upgrade this equipment, there would be a financial impact for which we have not budgeted. In addition, the bill creates a bright-line requirement for these recordings with no allowance for good faith failure. What are the consequences of recording device malfunctions, user error, etc.? In an ideal world, technology would work perfectly every time. However, that is not the reality and without careful attention to these potential pitfalls, there could be unintended violations.

As a result of these challenges, the Board would likely need to budget for additional staff time and resources, upgraded recording equipment, and costs associated with web storage. The Board currently operates with the minimum staff and financial resources required to timely and accurately complete our statutory duties, so there is no cushion to absorb this additional work and the Board would need additional legislative expenditure authority before we were able to implement these changes.

The Board appreciates your careful consideration of these points.

Respectfully submitted,

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Executive Secretary