

Testimony concerning HB 2184
House Committee on Federal and State Affairs
Presented by Alexandra Blasi, Executive Secretary
On behalf of
The Kansas State Board of Pharmacy
February 24-25, 2021

Chairman Barker and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this neutral testimony on HB 2184. 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 was able to identify 35 states (and D.C.) that allow the use of marijuana for medical purposes and wishes to provide testimony concerning two aspects of the bill.

Kansas Prescription Monitoring Program (K-TRACS)

The Board strongly supports inclusion of medical marijuana dispensations in K-TRACS, as well as the physician requirement to review patient K-TRACS reports to inform prescribing.

HB 2184 requires the physician or such physician's designee to request a patient K-TRACS report for the one-year period prior to the patient recommendation. The Board wonders who these physician designees are, how they would gain lawful access to K-TRACS, and what restrictions would surround their access to or further dissemination of this highly sensitive information. The Board is unaware of system controls that would segregate controlled substance prescriptions from medical marijuana dispensations in K-TRACS. As a result, any patient report will contain medical marijuana and controlled substance data for a patient. The Board suggests limiting access to physicians and physician designees authorized under K.S.A. 65-1685. Furthermore, the bill does not limit further dissemination or storage of the K-TRACS report consistent with the Prescription Monitoring Program Act and the Board recommends inclusion of this language.

HB 2184 also requires retail dispensaries report to K-TRACS the information required by K.S.A. 65-1683. Though the Board strongly supports reporting of this information to K-TRACS, there are a few functional issues with the bill setup. First, the bill does not articulate a frequency of reporting. Controlled substance prescription data is required to be reported to K-TRACS daily and the Board recommends a similar timeline for reporting of medical marijuana information. This prevents the patient from shopping for multiple dispensations for the same physician authorization and ensures that physicians are able to review accurate patient reports. Second, retail dispensaries do not have access to the K-TRACS clearinghouse to submit this information, nor is it clear whether they can meet the technical requirements for electronic submission. The Board of Pharmacy is responsible for providing user accounts for pharmacies submitting data to the K-TRACS clearinghouse. The Board is also the only agency vested with authority to review the clearinghouse data for submission compliance and receive alerts for non-reporting pharmacies. The Board wonders who will be creating these accounts and ensuring compliance. Third, K.S.A. 65-1683 requires the submission of information to K-TRACS specific to prescriptions for controlled substances. While translating these requirements to medical marijuana dispensations may seem logical or intuitive, it is not correctly outlined in the statute and could create confusion.

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 the enforcement of HB 2184 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.

The Board also notes multiple provisions throughout HB 2184 making patient and caregiver information confidential and not subject to further disclosure. Unfortunately, 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 Appriss Inc. for the K-TRACS software and data hosting services. Fees and terms are set by the contract between the vendor and the Board and cannot be changed without an agreement between the parties. Any increase in the volume of data reported to K-TRACS or the number of K-TRACS users may affect the agreement with the vendor, as well as any change in obligations. K-TRACS is not currently configured to accept anything except controlled substance prescription medication information. Though the vendor has provided medical marijuana reporting and hosting services in at least one other state, it is likely that this change would require software reconfiguration. The one-time implementation costs and ongoing annual contractual fees are not included in the Board's current budget or vendor contract. In addition, the Board is required to staff this program and any increase in duties or responsibility may require additional Board staff and agency resources to implement the new program and provide ongoing support. HB 2184 contemplates no revenue for the Board of Pharmacy Fee Fund, from which expenditures for the K-TRACS program are paid. Furthermore, K-TRACS has struggled since 2016 to maintain funding for current operations before any major modification for a medical marijuana program. The Board expects this addition would have a substantial financial impact on the Board and appreciates the Committee's consideration of this concern.

Pharmacist Involvement

The Board appreciates the time and consideration that has been invested in crafting HB 2184, but believes its silence on pharmacist involvement in retail dispensaries falls short on patient safety. For example, Arkansas and Louisiana 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. Others require a licensed pharmacist dispense the medical marijuana to the patient. Many states now require some form of pharmacist involvement at the retail dispensary. The Board was most impressed with Ohio's model and believes it could be employed in Kansas to bridge some of the aforementioned gaps.

Respectfully submitted.