

Senate Committee on Federal and State Affairs  
Presented by Alexandra Blasi, Executive Secretary  
On behalf of  
The Kansas State Board of Pharmacy  
March 15-16, 2023

Chairman Thompson and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this neutral testimony on SB 135. 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 the proposed legislation.

Kansas Prescription Monitoring Program (K-TRACS)

**The Board supports inclusion of medical cannabis dispensations in the Kansas prescription monitoring program, K-TRACS, as well as a physician requirement to review K-TRACS records prior to recommending medical cannabis for a patient.** In 2008, the legislature created the Prescription Monitoring Program Act (PMP 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 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 cannabis and controlled substance history prior to recommending medical cannabis. While the proposed language achieves this, the bill allows delegation of this task to the physician's delegate. The definition of physician's delegate includes an individual authorized by regulations of the Board of Healing Arts. For K-TRACS purposes, the Board would encourage use of the term "delegate" as defined by the PMP Act in K.S.A. 65-1682, which is nearly identical but only authorizes the Board of Pharmacy to adopt such regulations. This would create uniformity and ensure protection of sensitive K-TRACS data. If this

change would disrupt other provisions of the bill, perhaps two separate terms could be used, for example “K-TRACS delegate” and “physician’s delegate.”

The Board supports requiring retail dispensaries to report to K-TRACS. However, the language is unclear which state agency is responsible for enforcement of this provision. While Sec. 4(d) references the Board’s authority over the pharmacist consultant, there is no similar language for the Board’s enforcement over the retail dispensary’s reporting responsibility in Sec. 28.

As for enforcement, the Board inquires of the Committee: How will the Division of Alcohol and Cannabis 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 is also tasked with creating a data linkage between K-TRACS and CJIS in the bill. While the Board understands and supports the need for sharing cannabis dispensing information with law enforcement, the language provided doesn’t seem to achieve this goal. Additionally, placing K-TRACS information in CJIS seems redundant, expensive, and potentially risky. If considering expansion of access to K-TRACS data, the Board would encourage the Legislature to consider the most narrowly tailored approach. One option could include K-TRACS access with a role that limits data to those receiving medical cannabis dispensations. The Board also notes that K-TRACS would not be able to share the physician’s written recommendation because this cannot be reported to K-TRACS, or the unique patient identification number because K-TRACS is based on name and date-of-birth patient matching. Regardless, any configurations would be very costly.

The Board supports 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 bill 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 cannabis dispensations, which could allow this information to travel to similar providers in other states that query Kansas patients.

## Pharmacist Involvement

**The Board supports the requirement for a pharmacist consultant at each medical cannabis 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 cannabis 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 cannabis 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.

## Labeling, Packaging, and Storage

**The Board supports requirements to carefully label medical cannabis 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 appreciates the Legislature’s careful consideration of these issues prior to finalizing language.

## Funding

While the bill authorizes the Board to charge a fee for the pharmacist consultants and sets up a requisite fee fund, that amount is capped at \$100 per annual registration. The bill provides no other revenue or transfers to the pharmacy fee fund to cover the costs associated with operating K-TRACS. Based on estimates of Board expenditures, the Board would require more than 2,225 pharmacist consultants per year (\$100 fee) to cover the necessary expenditures. This seems unlikely given there are only 3,506 active, licensed pharmacists residing in Kansas. Previous bills included transfers from the medical cannabis business regulation fund to cover the costs associated with operating K-TRACS.

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 cannabis 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 (\$30,000) have been included in the fiscal impact statement, in addition to other agency overhead. The Board may also require an additional \$15,000 per year if reporting or analytics are required for compliance reporting or other reporting to law enforcement. These costs are estimated to be even higher if the Board is required to create a data linkage to CJIS, the cost of which is unknown to the Board.

### Other Responsibilities

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

Respectfully submitted.