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Testimony concerning HB 2596
Senate Committee on Public Health and Welfare
March 5, 2024

Madam Chair and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this testimony in support of HB 2596. These amendments include vital updates to the Kansas Uniform Controlled Substances Act to protect Kansas citizens. Timely passage of these amendments are paramount to public safety. Therefore, the Board respectfully requests that the contents of HB 2596 not be unnecessarily entangled with other matters.

The Kansas State Board of Pharmacy (Board) is created by statute and is comprised of seven members, each of whom is appointed by the Governor. Of the seven, six are licensed pharmacists and one is a member of the general public. Pursuant to K.S.A. 65-4102(b), the Board is required to submit to the Speaker of the House of Representatives and the President of the Senate a report on substances proposed by the Board for scheduling, rescheduling or deletion by the legislature with respect to any one of the schedules as set forth in the Kansas Uniform Controlled Substances Act, K.S.A. 65-4101 et seq. The Board submitted the aforementioned letter on January 22, 2024. In its determination, the Board shall consider the following:

(1) The actual or relative potential for abuse;
(2) The scientific evidence of its pharmacological effect, if known;
(3) The state of current scientific knowledge regarding the substance;
(4) The history and current pattern of abuse;
(5) The scope, duration and significance of abuse;
(6) The risk to the public health;
(7) The potential of the substance to produce psychological or physiological dependence liability; and
(8) Whether the substance is an immediate precursor of a substance already controlled under the Controlled Substances Act.

The Drug Enforcement Administration (DEA) also issues their rulings based on information provided by the DEA's Deputy Administrator and the Department of Health and Human Services using the same factors and criteria that the state uses.

The Board staff has an ongoing relationship with the Kansas Bureau of Investigation (KBI) and collaborates with them to make necessary recommendations for updates to the Act. Beginning in August of 2023, we began a dialogue and have conducted a comparison of the controlled substances listed in Schedules I-V of the Federal Controlled Substances Act to protect the public health and safety of Kansans. This bill is the result of that work.

Congress created five schedules or classifications with varying qualifications for a substance to be included in each. The Drug Enforcement Agency ("DEA") and the Food and Drug Administration ("FDA") make recommendations after considering various factors that indicate the drug should have more restrictions.

- Schedule I are those drugs that have a high potential for abuse and have no accepted medical use in treatment in the United States.
- Schedule II substances have a high potential for abuse but have an accepted medical use in the United States or a currently accepted medical use with severe restrictions. Abuse of the drug may lead to severe psychological or physical dependence.
- Schedule III substances have less potential for abuse than drugs in Schedule I or II and they have an accepted medical use in treatment in the United States. Abuse may lead to moderate or low physical dependence or high psychological dependence.
- Schedule IV substances have a low potential for abuse relative to the drugs in Schedule III. The substances have a currently accepted medical use in treatment in the United States. Abuse may lead to limited physical dependence or psychological dependence relative to drugs or substances in Schedule III.
- Schedule V substances have a low potential for abuse relative to the drugs in Schedule IV. The drug or substance has a currently accepted medical use in treatment in the United States. Abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs or substances in Schedule IV.

The Board and KBI recommend that 35 new substances be added to Schedule I because they present an imminent and significant risk to the health and safety of the public. There is no known medical use of these drugs in the United States. Of those, 23 are fentanyl-related substances. The 2023 Legislature also passed SB 174, which made updates to K.S.A. 21-5701 by defining "fentanyl-related controlled substances" in subsection (g) to make allowances for fentanyl test strips, etc. The Board and KBI recommend updating this section with all fentanyl substances added to K.S.A. 65-4105(b) in HB 2596, and that has been included in the proposed language.

Passage of the bill is critical this year because amendments to Schedule I include two new substances, flubromazolam and clonzolam. Pursuant to K.S.A. 65-4102, the Board is required to initiate emergency scheduling proceedings an attorney notifies the Board of the initiation of prosecution with respect to a controlled substance analog, and the Board makes a finding that the substance presents an imminent hazard to public safety. The Board utilized this authority to act swiftly on these new threats to public safety. The drugs were temporarily scheduled by the DEA in December 2022, noticed to the Board by an Assistant District Attorney in mid-2023, and subsequently scheduled by the Board in K.A.R. 68-20-32 and 68-20-33. It is now the responsibility of this body to permanently schedule these drugs before regulations expire on July 1, 2024.

The Board recommends the following changes to Schedule IV:

> Daridorexant is a medication used to treat insomnia (brand name Quviviq) https://www.federalregister.gov/documents/2022/09/30/2022-21253/schedules-of-controlled-substances-placement-of-daridorexant-in-schedule-iv
>
> Fenfluramine (remove) is a medication used to treat seizures (brand name Fintelpla)

https://www.federalregister.gov/documents/2022/12/23/2022-27400/schedules-of-controlled-substances-removal-of-fenfluramine-from-control

Serdexmethylphenidate is an active ingredient in medication used to treat ADHD
https://www.federalregister.gov/documents/2021/05/07/2021-09738/schedules-of-controlled-substances-placement-of-serdexmethylphenidate-in-schedule-iv

The Board recommends the following substances be added to Schedule V:

Ganaxolone is a medication used to treat a particular type of seizure (brand name Ztalmy)
https://www.federalregister.gov/documents/2022/11/09/2022-24157/schedules-of-controlled-substances-placement-of-ganaxolone-in-schedule-v

In addition, the Board recommends amending K.S.A. 65-4107(b)(1) as follows:

Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone, 6β-naltrexol ~~and~~, naltrexone, and samidorphen, and their respective salts, but including the following:

Other minor edits to the section are made to update substance numbers and ensure substances are in the correct sections and in alphabetical order.

All recommendations are consistent with the Federal Controlled Substance Act.

Respectfully submitted.