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Susan Gile, Acting Executive Director

Laura Kelly, Governor

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Written KSBHA Neutral Testimony for the Special Committee on Medical Marijuana

Dear Chair and Honorable Committee Members:

The Kansas State Board of Healing Arts (“Board”) submits this written neutral testimony to assist legislators in evaluating provisions of H Sub for SB 158 and SB 560 from the 2021-2022 biennium as it relates to the Board. I am Courtney Cyzman, General Counsel of the Board, on behalf of the Board and Acting Executive Director, Susan Gile. The Board is the executive body tasked with licensing and regulating 16 healthcare professions in Kansas, including physicians. *See* K.S.A. 65-2801 *et seq.* The Board is composed of 15 members, 12 of whom are licensed healthcare professionals from various professions, including eight licensed physicians. The statutory mission of the Board is patient protection. *See* K.S.A. 65-2801.

H Sub for SB 158 and SB 560 are substantially similar in the requirements of the Board. Either bill would require significant, challenging, and important new work for the Board. Under both bills, in summary: (1) a physician must obtain a certificate from the Board authorizing the physician to recommend treatment with medical marijuana; (2) the certified physician must annually report to the Board on the physician’s observations as to the effectiveness of treatment; (3) the certified physician must annually complete two or more hours of continuing medical education on the treatment and use of medical marijuana; and (4) the certified physician must pay an annual fee for certification.

Both bills require substantial regulatory implementation by the Board. To begin, we would request the Committee extend any regulatory deadlines as the date(s) have passed or would be quickly approaching. Regulatory work is important, and it is vital it be implemented correctly. Additionally, the Board would request a minor amendment to the Board’s regulation mandate, to be consistent with Kansas law as it relates to the standard of care.

Both bills mandate the Board implement a regulation setting forth the standard of care when recommending medical marijuana as treatment. The “standard of care” is a legal term and **incredibly fact dependent**. The legal definition of the standard of care is “to exercise reasonable and ordinary care and diligence. But the particular decisions and acts required to satisfy that duty of care vary, *i.e.*, the required skill depends on the patient’s situation and the physician’s medical specialty.” *Biglow v. Eidenberg*, 308 Kan. 873, 887 (2018); *Foster ex rel. Foster v. Klaumann*, 296 Kan. 295, 302 (2013).¹ In general terms, it is what a reasonable physician would have done under the same or similar circumstance. Additionally,

¹ *See also*, “A licensee has a duty to use the learning and skill ordinarily used by other members of the same filed [of healthcare] in the same or similar communities and circumstances. In using this learning and skill, the licensee must also use ordinary care and diligence.” Pattern Jury Instructions for Kansas – Civil 4th, 123.01, Duty of Health Care Provider (2022).

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physicians licensed by the Board already must adhere to applicable standards of care or be subject to Board action against their license. See K.S.A. 65-2836(b) and K.S.A. 65-2837(a). A minor amendment would resolve the Board's concern and ensure the regulatory structure is consistent with existing Kansas law.

Current Provisions:

H Sub for SB 158, New Section 18, (lines 29-42):

- (a) On or before **July 1, 2022**, the board of healing arts shall adopt rules and regulations to implement and enforce provisions of section 17...such rules and regulations shall include:
 - (6) the minimum standards of care when recommending treatment with medical marijuana.

SB 560 New Section 19, (lines 22-34):

- (a) On or before September 1, 2023, the board of healing arts shall adopt rules and regulations to implement and enforce provisions of section 18...such rules shall include the:
 - (6) minimum standards of care when recommending treatment with medical marijuana.

Potential Solution(s):

- **Strike out (a)(6) in its entirety.**
- **Strike out (a)(6) in its entirety and add a new provision in statute that states:**

“Each certified physician who recommends medical marijuana for treatment to a patient shall meet the applicable standard of care.”

- **Amend (a)(6) to the following:**

(6) the minimum factors to be considered by the certified physician when recommending treatment with medical marijuana.

Thank you for considering this testimony. I welcome any comments, questions, or further dialogue with members of the Committee. Please feel free to contact me at (785) 250-8021 or at any time via email at courtney.cyzman@ks.gov.

Sincerely,



Courtney Cyzman
General Counsel