

Testimony concerning SB 366
Senate Committee on Commerce
Presented by Alexandra Blasi, Executive Secretary
On behalf of
The Kansas State Board of Pharmacy
February 17, 2020

Madam Chair and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this neutral testimony regarding SB 366. 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. The Board fulfills this mission by licensing individuals in accordance with the highest standards of ethics, accountability, efficiency, and transparency. In reviewing an application, the Board does not rely on subjective opinions or arbitrary factors, but instead looks to the Pharmacy Act and Kansas precedent to objectively and consistently review each application.

Effectively, this bill expands the current language of K.S.A. 48-3406 to apply to any individual applicant for licensure, reciprocity, or reinstatement. With respect to pharmacy, SB 366 impacts applicants for a pharmacist license, pharmacy intern/student permit, and pharmacy technician registration. The Board received approximately 2,650 applications in these categories last year. The proposed amendments to K.S.A. 48-3406 are concerning to the Board for one key reason: the timeline of 10 business days.

The Board of Pharmacy does its level best to thoroughly and competently review each application within 30 days. In fact, and as reported in the Board's 2019 performance-based budget measures, the Board processes 97.9% of applications within 30 days of receipt of a completed application. The remaining 2.1% of applications are often complex, indicate misrepresentation on an application, disclose a lengthy disciplinary or criminal history, or fail to provide sufficient detail.

The Board of Pharmacy takes their licensing responsibility very seriously and, in instances where an applicant has a criminal or disciplinary history, gives applicants ample opportunity and leeway to provide statements, documents, and other evidence of their rehabilitation to support their application. This results in more individuals ultimately acquiring their desired license or registration, and always requires more than 10 days. In some cases, the Board refers individuals to the impaired provider program to receive assistance or tables an application to allow an applicant additional time to demonstrate their rehabilitation, which buttresses the Board's strong commitment to transparency in how applications are reviewed, in the degree of consideration and latitude for demonstration of rehabilitation, and the level of public trust and responsibility placed in Kansas' pharmacy licensees.

In addition to the above, the 10-business-day timeline is further abbreviated by the agency waiting for the KBI/FBI background check and check deposits to return for agency review and confirmation. The Board currently conducts background checks on all applicants. In an ideal world, all individuals with criminal or disciplinary history would honestly self-report such information on their application. However, that is not the

reality. Applicants often misrepresent their past offenses, “forget” to report certain offenses, or fail to report them altogether. The Board does not have a clear picture of an application until reports are received from the KBI/FBI and reviewed by staff in comparison with the documents received from the applicant. Though these reports are provided swiftly from the KBI, it often takes 7-10 business days. It could pose a danger to the public to rush review of these more sensitive matters. In addition, if the Board finds concerning information in an application, such matters must be reviewed by senior staff and then a Board member. Our current monthly meetings would not suffice to meet the 10-business-day requirement for these potential application denials.

While the Board recognizes the authority to decline issuance of a temporary license if issuance would jeopardize the safety of the public, this may create the opportunity for litigation against the Board. In the practice of pharmacy, it seems unlikely that issuance of a temporary license would ever be appropriate if there were concerns about whether to issue a registration or license to an applicant. But that would not stop an applicant or attorney from arguing the opposite. In addition, it is always more difficult to take away a license or registration after it has been issued than to deny it in the first place. Under the Kansas Administrative Procedure Act, if the Board wants to revoke a license or registration and the individual requests a hearing, that individual is entitled to continue practicing the profession until a final ruling is issued by the hearing officer unless there is an imminent danger to the public. This is often a lengthy process and is a high standard to meet.

This bill also raises questions about when an application is considered complete and who is responsible for making that determination. The Board would appreciate clarity on these questions.

The Board did submit a fiscal impact statement to the Division of Budget which has been included in the fiscal note. A one-time or temporary increase in agency expenditures will be related to the mandatory adoption and/or revision of regulations to be compliant with SB 366. The staff time involved in reviewing, drafting revisions, and pushing changes through the administrative review process will require additional agency resources not previously budgeted. In addition, Board meetings for review and public hearings would contribute to costs, as well as publication of necessary administrative regulations. Agency forms, FAQs, and published information would need updates and staff would need to be re-trained based on updated requirements. Many of these Board resources are developed through our software vendor directly in our electronic and web-based licensing system with internal and external portals. Additional expenditures would also include the ongoing costs of review and determination for completed applications within the brief timeline. This would be a substantial increase in workload for existing staff, volunteer Board members, contractual services from attorneys, etc, and Board processes, staff, and resources to support these functions within this timeframe are insufficient. The Board currently operates with the minimum staff required to timely and accurately complete our statutory duties, so there is no cushion to absorb this additional work. Necessary work stations, equipment, and system/Internet access would also be required.

Respectfully submitted,

Alexandra Blasi, JD, MBA
Executive Secretary