

HOUSE BILL No. 2149

By Committee on Governmental Organization and Elections

1-25

9 AN ACT concerning the disclosure of certain information; concerning
10 nurses, dentists and pharmacists; amending K.S.A. 65-1135, 65-1467
11 and 65-1627 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 65-1135 is hereby amended to read as follows: 65-
15 1135. (a) Any complaint or report, record or other information relating
16 to the investigation of a complaint about a person licensed by the board
17 which is received, obtained or maintained by the board is confidential
18 and shall not be disclosed by the board or its employees in a manner
19 which identified or enables identification of the person who is the subject
20 or source of such information except:

21 (1) In a disciplinary proceeding conducted by the board pursuant to
22 law or in an appeal of the order of the board entered in such proceeding,
23 or to any party to such proceeding or appeal or such party's attorney;

24 (2) to the proper licensing or disciplinary authority of another juris-
25 diction, if any disciplinary action authorized by K.S.A. 65-1120 and
26 amendments thereto has at any time been taken against the licensee or
27 the board has at any time denied a license certificate or authorization to
28 the person; ~~or~~

29 (3) to the person who is the subject of the information, but the board
30 may require disclosure in such a manner as to prevent identification of
31 any other person who is the subject or source of the information; *or*

32 (4) *to a prospective employer of the person who is the subject of the*
33 *information. The board may require such prospective employer to submit*
34 *documentation verifying that the person is seeking employment which*
35 *such employer or a release to disclose such information from the person*
36 *who is the subject of the information.*

37 (b) This section shall be part of and supplemental to the Kansas nurse
38 practice act.

39 Sec. 2. K.S.A. 65-1467 is hereby amended to read as follows: 65-
40 1467. (a) Any complaint or report, record or other information relating
41 to a complaint which is received, obtained or maintained by the Kansas
42 dental board shall be confidential and shall not be disclosed by the board
43 or its employees in a manner which identifies or enables identification of

1 the person who is the subject or source of the information except the
 2 information may be disclosed:

3 (1) In any proceeding conducted by the board under the law or in an
 4 appeal of an order of the board entered in a proceeding, or to any party
 5 to a proceeding or appeal or the party's attorney;

6 (2) to the person who is the subject of the information or to any
 7 person or entity when requested by the person who is the subject of the
 8 information, but the board may require disclosure in such a manner that
 9 will prevent identification of any other person who is the subject or source
 10 of the information;

11 (3) to a state or federal licensing, regulatory or enforcement agency
 12 with jurisdiction over the subject or the information or to an agency with
 13 jurisdiction over acts or conduct similar to acts or conduct which would
 14 constitute grounds for action under this act. Any confidential complaint
 15 or report, record or other information disclosed by the board as author-
 16 ized by this section shall not be redisclosed by the receiving agency except
 17 as otherwise authorized by law; or

18 (4) *to a prospective employer of the person who is the subject of the*
 19 *information. The board may require such prospective employer to submit*
 20 *documentation verifying that the person is seeking employment with such*
 21 *prospective employer or a release to disclose such information from the*
 22 *person who is the subject of the information.*

23 (b) This section shall be part of and supplemental to the Kansas den-
 24 tal practices act.

25 Sec. 3. K.S.A. 65-1627 is hereby amended to read as follows: 65-
 26 1627. (a) The board may revoke, suspend, place in a probationary status
 27 or deny a renewal of any license of any pharmacist upon a finding that:

28 (1) The license was obtained by fraudulent means;

29 (2) the licensee has been convicted of a felony and the licensee fails
 30 to show that the licensee has been sufficiently rehabilitated to warrant
 31 the public trust;

32 (3) the licensee is found by the board to be guilty of unprofessional
 33 conduct or professional incompetency;

34 (4) the licensee is addicted to the liquor or drug habit to such a degree
 35 as to render the licensee unfit to practice the profession of pharmacy;

36 (5) the licensee has violated a provision of the federal or state food,
 37 drug and cosmetic act, the uniform controlled substances act of the state
 38 of Kansas, or any rule and regulation adopted under any such act;

39 (6) the licensee is found by the board to have filled a prescription not
 40 in strict accordance with the directions of the practitioner or a mid-level
 41 practitioner;

42 (7) the licensee is found to be mentally or physically incapacitated to
 43 such a degree as to render the licensee unfit to practice the profession

1 of pharmacy;

2 (8) the licensee has violated any of the provisions of the pharmacy
3 act of the state of Kansas or any rule and regulation adopted by the board
4 pursuant to the provisions of such pharmacy act;

5 (9) the licensee has failed to comply with the requirements of the
6 board relating to the continuing education of pharmacists;

7 (10) the licensee as a pharmacist in charge or consultant pharmacist
8 under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and
9 amendments thereto has failed to comply with the requirements of sub-
10 section (c) or (d) of K.S.A. 65-1648 and amendments thereto;

11 (11) the licensee has knowingly submitted a misleading, deceptive,
12 untrue or fraudulent misrepresentation on a claim form, bill or statement;

13 (12) the licensee has had a license to practice pharmacy revoked,
14 suspended or limited, has been censured or has had other disciplinary
15 action taken, or voluntarily surrendered the license after formal proceed-
16 ings have been commenced, or has had an application for license denied,
17 by the proper licensing authority of another state, territory, District of
18 Columbia or other country, a certified copy of the record of the action
19 of the other jurisdiction being conclusive evidence thereof;

20 (13) the licensee has self-administered any controlled substance with-
21 out a practitioner's prescription order or a mid-level practitioner's pre-
22 scription order; or

23 (14) the licensee has assisted suicide in violation of K.S.A. 21-3406
24 and amendments thereto as established by any of the following:

25 (A) A copy of the record of criminal conviction or plea of guilty for a
26 felony in violation of K.S.A. 21-3406 and amendments thereto.

27 (B) A copy of the record of a judgment of contempt of court for
28 violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and
29 amendments thereto.

30 (C) A copy of the record of a judgment assessing damages under
31 K.S.A. 2002 Supp. 60-4405 and amendments thereto; or

32 (15) the licensee has failed to furnish the board, its investigators or
33 its representatives any information legally requested by the board.

34 (b) In determining whether or not the licensee has violated subsec-
35 tion (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion
36 of such violation has authority to compel a licensee to submit to mental
37 or physical examination or drug screen, or any combination thereof, by
38 such persons as the board may designate. To determine whether reason-
39 able suspicion of such violation exists, the investigative information shall
40 be presented to the board as a whole. *Except as provided by subsection*
41 *(h)*, information submitted to the board as a whole and all reports, findings
42 and other records shall be confidential and not subject to discovery by or
43 release to any person or entity. The licensee shall submit to the board a

1 release of information authorizing the board to obtain a report of such
2 examination or drug screen, or both. A person affected by this subsection
3 shall be offered, at reasonable intervals, an opportunity to demonstrate
4 that such person can resume the competent practice of pharmacy with
5 reasonable skill and safety to patients. For the purpose of this subsection,
6 every person licensed to practice pharmacy and who shall accept the
7 privilege to practice pharmacy in this state by so practicing or by the
8 making and filing of a renewal application to practice pharmacy in this
9 state shall be deemed to have consented to submit to a mental or physical
10 examination or a drug screen, or any combination thereof, when directed
11 in writing by the board and further to have waived all objections to the
12 admissibility of the testimony, drug screen or examination report of the
13 person conducting such examination or drug screen, or both, at any pro-
14 ceeding or hearing before the board on the ground that such testimony
15 or examination or drug screen report constitutes a privileged communi-
16 cation. In any proceeding by the board pursuant to the provisions of this
17 subsection, the record of such board proceedings involving the mental
18 and physical examination or drug screen, or any combination thereof, shall
19 not be used in any other administrative or judicial proceeding.

20 (c) The board may temporarily suspend or temporarily limit the li-
21 cense of any licensee in accordance with the emergency adjudicative pro-
22 ceedings under the Kansas administrative procedure act if the board de-
23 termines that there is cause to believe that grounds exist for disciplinary
24 action under subsection (a) against the licensee and that the licensee's
25 continuation in practice would constitute an imminent danger to the pub-
26 lic health and safety.

27 (d) The board may suspend, revoke, place in a probationary status or
28 deny a renewal of any retail dealer's permit issued by the board when
29 information in possession of the board discloses that such operations for
30 which the permit was issued are not being conducted according to law or
31 the rules and regulations of the board.

32 (e) The board may revoke, suspend, place in a probationary status or
33 deny a renewal of the registration of a pharmacy upon a finding that: (1)
34 Such pharmacy has been operated in such manner that violations of the
35 provisions of the pharmacy act of the state of Kansas or of the rules and
36 regulations of the board have occurred in connection therewith; (2) the
37 owner or any pharmacist employed at such pharmacy is convicted, sub-
38 sequent to such owner's acquisition of or such employee's employment
39 at such pharmacy, of a violation of the pharmacy act or uniform controlled
40 substances act of the state of Kansas, or the federal or state food, drug
41 and cosmetic act; (3) the owner or any pharmacist employed by such
42 pharmacy has fraudulently claimed money for pharmaceutical services;
43 or (4) the registrant has had a registration revoked, suspended or limited,

1 has been censured or has had other disciplinary action taken, or an ap-
2 plication for registration denied, by the proper registering authority of
3 another state, territory, District of Columbia or other country, a certified
4 copy of the record of the action of the other jurisdiction being conclusive
5 evidence thereof.

6 (f) A registration to manufacture or to distribute at wholesale a drug
7 or a registration for the place of business where any such operation is
8 conducted may be suspended, revoked, placed in a probationary status
9 or the renewal of such registration may be denied by the board upon a
10 finding that the registrant or the registrant's agent: (1) Has materially
11 falsified any application filed pursuant to or required by the pharmacy
12 act of the state of Kansas; (2) has been convicted of a felony under any
13 federal or state law relating to the manufacture or distribution of drugs;
14 (3) has had any federal registration for the manufacture or distribution of
15 drugs suspended or revoked; (4) has refused to permit the board or its
16 duly authorized agents to inspect the registrant's establishment in ac-
17 cordance with the provisions of K.S.A. 65-1629 and amendments thereto;
18 (5) has failed to keep, or has failed to file with the board or has falsified
19 records required to be kept or filed by the provisions of the pharmacy
20 act of the state of Kansas or by the board's rules and regulations; or (6)
21 has violated the pharmacy act of the state of Kansas or rules and regu-
22 lations adopted by the state board of pharmacy under the pharmacy act
23 of the state of Kansas or has violated the uniform controlled substances
24 act or rules and regulations adopted by the state board of pharmacy under
25 the uniform controlled substances act.

26 (g) Orders under this section, and proceedings thereon, shall be sub-
27 ject to the provisions of the Kansas administrative procedure act.

28 (h) *Information received by the board pursuant to this section may*
29 *be disclosed to a prospective employer of the person who is the subject of*
30 *the information. The board may require such prospective employer to*
31 *submit documentation verifying that the person is seeking employment*
32 *with such prospective employer or a release to disclose such information*
33 *from the person who is the subject of the information.*

34 Sec. 4. K.S.A. 65-1135, 65-1467 and 65-1627 are hereby repealed.

35 Sec. 5. This act shall take effect and be in force from and after its
36 publication in the statute book.